

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. E033 OF 2022

**ABRAHAM KIPKOSGEI CHELANGA
PLAINTIFF**

-VERSUS-

**SALOME WANJIRU KIGUMI 1ST
DEFENDANT**

**HIGHRISE DESIGNERS COMPANY LIMITED 2ND
DEFENDANT**

**BENSON KIMEMIA 3RD
DEFENDANT**

**SILVIA WAMBUI 4TH
DEFENDANT**

JUDGMENT:

1. The Plaintiff instituted the present suit vide a Plaint dated 8th June, 2022, against the Defendants, seeking the following orders:-

- i. **An order for cancellation of the title deed issued to the 2nd defendant in respect of property known as PIONEER/ NGERIA/ BLOCK 1114 (EATEC) and any resulting subdivision therefrom.**
- ii. **A permanent injunction restraining the Defendants, their agents and/or servants from entering into, constructing on, fencing, wasting, selling, alienating and/or in any manner whatsoever dealing with and/or interfering with**

the plaintiff's land parcel known as ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/1020 and one (1) acre of land known as PIONEER/ NGERIA/BLOCK 1114 (EATEC) currently occupied by the Plaintiff.

- iii. A permanent injunction restraining the Defendants, their agents and/or servants from selling, alienating and/or in any manner whatsoever dealing with and/or interfering with the Plaintiff's land parcel known as ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/1020 and one (1) acre of land known as PIONEER/ NGERIA/BLOCK 1114 (EATEC) currently occupied by the Plaintiff.**
- iv. A declaration that the plaintiff is the absolute owner of land known as ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/1020**
- v. An order that the land known as PIONEER/ NGERIA/BLOCK 1114 (EATEC) be subdivided and the plaintiff given one (1) acre thereof from where he is currently in possession.**
- vi. Costs of the suit.**
- vii. Any other relief that this honourable court may deem fit to grant.**

Plaintiff's Case:

2. The Plaintiff avers that he is the legal owner of suit parcels known as ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/ 1020 measuring 0.1000Ha and PIONEER/NGERIA BLOCK 1114 (EATEC) measuring 1 acre, having purchased the same from one Joram Kimemia.
3. It is his claim that he purchased the suit parcel known as PIONEER/NGERIA BLOCK 1114 (EATEC) measuring 1 acre on 18.01.2010 at a consideration price of Kshs. 2,400,000/= which was paid in full and he took immediate vacant possession upon signing the sale agreement.
4. Further, that on 08.01.2019, he also purchased the property known as ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/ 1020 measuring 0.1000Ha from the same Joram Kimemia and upon full payment of the consideration price of Kshs. 700,000/=, he took immediate possession of the said parcel of land.
5. He, however, confirmed that both parcels of land previously belonged to the late David William Kigumi Kimemia, who died on 15.07.2003, where upon succession proceedings were instituted in respect of his estate vide Eldoret High Court Succession Cause No. 217 of 2003.
6. The plaintiff avers that before purchasing the said suit parcels, he conducted his due diligence and established that the Grant had been confirmed on 22.05.2006 and a Certificate of Confirmation of Grant issued on 30.05.2006

- and whose effect was to give the suit properties to the said Joram Kimemia.
7. It was also his contention that the said Certificate of Confirmation of Grant was rectified on 14.05.2007 but the said vendor, Joram Kimemia, still retained the suit properties, which he later sold to the plaintiff.
 8. He therefore maintained that at the time of sale, it was clear that the suit properties belonged to the vendor, Joram Kimemia, since he had procedurally acquired the same by way of transmission.
 9. He avers that the cause of action arose sometimes in January, 2019, when the said Joram Kimemia discovered that the 1st defendant had forged a general power of attorney and purported to transfer the suit land known as PIONEER/NGERIA BLOCK 1114 (EATEC) to the 2nd defendant without his consent and/or authority, and as a result, Joram Kimemia instituted both Civil and Criminal proceedings against the 1st and 2nd defendants.
 10. He further stated that the 1st and 2nd Defendants colluded with the 3rd and 4th defendants and filed an application in the succession court seeking to revoke the grant issued in favor of the vendor, Joram Kimemia, vide Eldoret High Court Succession Cause No. 217 of 2003, which application was allowed and the 3rd and 4th defendants were made the administrators of the estate of the late David William Kigumi Kimemia.

11. The plaintiff avers that he also applied to be joined in that succession cause as an interested party and his application was allowed.
12. It is his claim that the transfer of the suit parcel PIONEER/NGERIA BLOCK 1114 (EATEC) was done fraudulently and unprocedurally to defeat justice and in contravention of the provisions of Article 40 of the constitution. He outlined the particulars of fraud and malice on the part of the defendants.
13. In conclusion, he urged the court to allow his claim against the defendants and grant the orders sought.
14. The plaintiff's case was opposed.

2nd Defendant's Case:

15. The 2nd Defendant filed a Statement of Defence and Counter-claim dated 25.07.2022 in response to the averments made in the plaint.
16. It denied the ownership claims made by the plaintiff over the suit parcel known as PIONEER/NGERIA BLOCK 1114 (EATEC) measuring 2.023 Ha and stated that at all material times, the suit land was registered in the name of the 2nd defendant company and the same lawfully belonged to it and that the 2nd defendant has never sold the same to the plaintiff neither was it a party to the agreement of sale dated 18.01.2010.

17. In response to paragraph 8 of the plaint, the 2nd defendant averred that the plaintiff took possession of a parcel of land that was not his and his actions amounts to trespassing upon the 2nd defendant's property. The particulars of trespass thereof were outlined.
18. In response to paragraph 9 of the plaint and the allegations that one Joram Kimemia sold the suit parcel, it was stated that the said Joram Kimemia did not have the power to sell the suit property in question to the plaintiff as the same did not belong to him. It was further their contention that purchasing land from someone who had no ownership rights to it also denies the purchaser of any ownership title.
19. The 2nd defendant further denied the particulars of the sale between the plaintiff and the said Joram Kimemia and stated that it is a stranger to the said facts and issues raised therein. It argued that the rights of the late David William Kigumi Kimemia were extinguished upon purchase of the suit land by the 2nd defendant.
20. It denied the averments by the plaintiff that he conducted due diligence before the alleged sale and stated that had the same actually been done, then the plaintiff would have discovered that the suit land belonged to the 2nd defendant.
21. The 2nd defendant also denied the allegations contained in paragraph 12 and 13 of the plaint that the suit parcel belonged to the said Joram Kimemia and maintained that it is the owner and registered proprietor of the suit land, which

- it acquired legally and lawfully and invited the plaintiff to strict proof to the contrary.
22. It admitted the fact that the application for revocation was allowed and the 3rd and 4th defendants were thereafter made administrators of the estate of the late David William Kigumi Kimemia, but contended that the said estate does not include the suit land and therefore the 3rd and 4th defendants have no claim over the said suit land.
 23. In response to paragraphs 20 and 21 of the plaint and the 2nd defendant's acquisition of the suit land, it was asserted that the 2nd defendant legally and lawfully acquired the suit land and did not contravene any provision of the constitution as alleged.
 24. The 2nd defendant reiterated that it was lawfully and rightfully issued with the title deed of the suit land as the legal proprietor and hence the said ownership document cannot be cancelled as sought by the plaintiff.
 25. It dismissed the plaintiff's suit as being time barred pursuant to the provisions of the Limitation of Actions Act and further that the plaintiff lacks the requisite locus standi to file the suit for the reason that he has no interest or claim in the suit land.
 26. It thus urged the court to dismiss the plaintiff's suit against it with costs.

27. The 2nd defendant also filed a Counter-claim dated 25.07.2022 against the plaintiff, wherein it sought the following orders against him: -

a) An Order of eviction be issued against the defendant, his agents and/or servants being that they are trespassing on the plaintiff's land.

b) A Declaration that the plaintiff is the absolute owner of that land known as PIONEER/NGERIA BLOCK (EATEC)1114.

c) An Order of payment of mesne profits for the period the defendant was a trespasser in the plaintiff's land.

4. General damages be awarded to the plaintiff for the trespass by the defendant.

5. Costs of the suit and the counter-claim.

6. Any other relief as the court may deem fair, just and lawful.

28. In its counter-claim, the 2nd defendant/counter-claimer stated that it is the registered owner of the suit land known as PIONEER/NGERIA BLOCK 1114 (EATEC), having legally and lawfully acquired the same and a title deed duly issued.

29. It was its claim that the plaintiff's presence and possession of the suit land is unlawful and amounts to trespass and outlined the particulars of trespass thereof.

30. It averred that the agreement entered into by the plaintiff to purchase the suit property is invalid as the vendor in the said agreement had no title and therefore could not give a better title than one he had.
31. It maintained that the dispute had already been settled by the court in Eldoret High Court Succession Cause No. 217 of 2003 vide the judgment issued on 27.05.2021, wherein it contends that it was held that the plaintiff, being an innocent purchaser for value had a claim against one Joram Kimemia who sold the land to him. It therefore contends that the plaintiff has no claim over the suit land.

1st, 3rd and 4th Defendants' Case;

32. The 1st, 3rd and 4th defendants also opposed the plaintiff's suit. They filed a statement of defence dated 29.01.2024 denying all the allegations raised by the plaintiff.
33. They denied the contents of paragraph 6, 7 and 8 of the plaint on the allegations of purchase of the suit parcels of land, particularly ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/1020, from one Joram Kimemia, the payment of the consideration and the taking of possession and put the plaintiff to strict proof thereof.
34. In response to paragraphs 11 - 17 and 20 - 23 of the plaint, they denied the contents thereof in its entirety and put the plaintiff to strict proof thereof. It was further their contention that the said averments have been dealt with substantively

in the succession cause and judgment entered to that effect by a court of competent jurisdiction, which judgment has never been appealed from nor challenged in any manner.

35. It was also their contention that the court in the said succession cause No. 217 of 2003, advised the plaintiff herein to sue the said Joram Kimemia, who sold him the suit parcel to recover the monies he allegedly paid as consideration for the impugned properties.
36. In conclusion, they maintained that the plaintiff is not entitled to the reliefs sought in the plaint and urged the court to dismiss the plaintiff's suit against them with costs.

Trial:

37. The Plaintiff's case proceeded for hearing on 10.02.2025. The plaintiff testified as PW1 and thereafter closed his case.
38. PW1 adopted his witness statement dated 08.06.2022 as his evidence in chief.
39. He also produced the documents in his list of documents dated 08.06.2022 as exhibits and were marked as **Pexhibits 1 - 12** respectively and the documents in his Further List of Documents dated 17.05.2024 which were marked as **Pexhibits 13 - 15** respectively in support of his case.
40. It was also his testimony that he purchased the suit land known as PIONEER/ NGERIA (EATEC)/ 1114 from Joram Kimemia at an agreed purchase price of Kshs. 2,400,000/= and the said sale was reduced into writing vide sale

agreement dated 18.01.2010 produced as Pexh.9. He stated that the said sale agreement was duly signed by the vendor, Joram Kimemia, himself and their witnesses before their advocate Mr. Wilson Kigen.

41. It was further his testimony that upon purchasing the suit land, he took possession thereof, ploughed and started living thereon. That he has also planted maize, nappier grass, has a cattle and dairy farm and has fenced the property.
42. He stated that there was a second sale over parcel of land known as ELDORET MUNICIPALITY/ BLOCK 15 (WEST FARMERS)/ 1020 measuring 0.1000Ha between him and Joram Kimemia at a consideration price of Kshs. 700,000/= . The sale was reduced into an agreement for sale dated 08.01.2019 and was duly signed by all parties and their witnesses before their advocate.
43. It was his testimony that from Pexh. 2, Certificate of Confirmation of Grant dated 30.05.2006; the vendor, Joram Kimemia was given parcel No. Eldoret Municipality/Block 15 (West Farmers)/ 1020, Pioneer/ Ngeria Block 1 (EATEC)/ 1114 measuring 1 acre, Uasin Gishu/ Kimumu/312 measuring 1 acre. He thus urged the court to look at the said Certificate of Confirmation of Grant together with the rectified certificate of Confirmation of Grant issued on 14.05.2007 produced as Pexh. 3.
44. It was his assertion that there was also an Amended Certificate of Grant produced as Pexh. 4 and which he

- maintained that the vendor, Joram Kimemia, was given all the parcels that he sold to him.
45. He further argued that from Pexh. 5, which is a ruling in Succession Cause No. 217 of 2003, at paragraph 17 of the said ruling, it was held that the properties had been sold to him after they had been distributed.
 46. That he only purchased 1 acre out of the suit land and the remaining 4 acres were given to Salome Wanjiru (the 1st defendant). He maintained that from the succession cause, no land was given to the 2nd defendant.
 47. He added that the said Joram Kimemia has never denied that he sold the suit parcels to him and that he received the full consideration and thus urged the court to issue an order that the parcels of land he purchased be transferred to him together with costs of the suit.
 48. On cross-examination by Mr. E. Oduor, he reiterated that he bought the suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 for Kshs. 2,400,000/= . That from the sale agreement dated 18.01.2010 and produced as Pexh. 9, paragraph 6 states that the family of the vendor had no objection to the said sale.
 49. It was his contention that the vendor, Joram Kimemia, is not a party in the present suit since he does not dispute that he sold the land to him.
 50. He conceded that he has never appealed against the judgment dated 27.05.2021 in the Succession Cause No. 217

of 2003. He admitted that from paragraphs 19, 20 & 21 of the said judgment, the grant was revoked and the 3rd and 4th defendants were appointed as the administrators of the estate. That from paragraph 43 of the judgment, revocation was allowed and they went back to redistribute the estate. He conceded that all the grants and the rectified grant were revoked.

51. On cross-examination by Mr. Mathai for the 2nd defendant, it was his testimony that he sued the 1st, 3rd and 4th defendants in their personal capacities and not as the administrators of the estate of the deceased. He confirmed that the judgment in the Succession Cause No. 217 of 2003 that revoked the grant was delivered on 27.05.2021 and that he has never appealed against the said judgment.
52. He further conceded that when the grants that he used to purchase the suit properties from Joram Kimemia were revoked, there were no grants. He further admitted that at the time of filing the present case in 08.01.2022, there was no grant and he was fully aware of the revocation of the earlier grants by the court.
53. It was his testimony that he bought the suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 on 18.01.2010 and at the time of filing the suit, it had been approximately 12 years but maintained that he seeks to enforce the said agreement dated 18.01.2010.

54. He confirmed that from his plaint, he pleaded particulars of fraud and malice against the defendants, but conceded that he did not indicate when he discovered the said malice.
55. When referred to Pexh. 15, which is a ruling from the succession cause, he admitted that from paragraph 26(e), the court ruled that the property known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 be part of the estate, but the one acre which he had bought, be deferred until determination of the instant case.
56. When referred to Pexh. 12, a copy of the Green Card, he stated that Entry Nos. 5 - 7 shows that the land was registered in the names of Salome Wanjiru Kigumi and Joram Kimemia and title deed issued. It was however his testimony that Entry No. 8 shows the registered proprietor as Salome Wanjiru Kigumi alone and Entry No. 9, title was issued. Entry No. 10 is a registration in the name of the 2nd defendant on 07.09.2011 and title deed issued.
57. He further conceded that he never registered a caution or restriction in respect to the suit land over the said registration. When referred to paragraph 43 of the judgment in Succession Cause No. 217 of 2003, he confirmed that it was held that his interest is well secured by the clause included in the sale agreement.
58. Further, that from Pexh. 16 (which is still a ruling by the Succession court), it was ruled that the 2nd defendant be

- given the whole 5 acres of the suit land and did not mention that the plaintiff be given the 1 acre he purchased.
59. On re-examination, it was his testimony that in the new grant, the 2nd defendant was neither given any property nor mentioned at all. That Joram Kimemia filed ELC Case No. 9 of 2019 and even though the same has allegedly been withdrawn, it was his testimony that he has not been shown any order marking ELC Case No. 9 of 2019 as withdrawn.
 60. Further, that from the ruling by Wananda J. at paragraph (g), the 2nd defendant was not given anything. It was also his contention that he took possession of the land immediately in the year 2010 and since then he has been living on the suit property.
 61. That from Pexh. 12, a copy of the Green Card of the suit land, Entry No. 5 is dated 15.07.2011 and the proprietors were Salome Wanjiru Kigumi and Joram Kimemia. Entry No. 6 is dated 15.07.2011 in the name of Benson Mwenda Kimemia, Joram Kimemia, Sylvia Wambui Kimemia, Jacinta Wanjiru Kimemia and Edith Karogo Kimemia. Entry No. 7, title deed was issued.
 62. That Entry No. 8 is also dated 15.07.2011 in the name of Salome Wanjiru Kigumi and title deed is issued.
 63. The plaintiff thereafter closed his case.
 64. The Defence case proceeded for hearing on 25.03.2025. Benson Mwenda Kimemia, the 3rd defendant herein, testified

- as DW1. He adopted his witness statement dated 29.01.2024 as his evidence in chief.
65. He also produced the documents in their list of documents as DW1 Exhibit 1 - 5 in support of his case as follows:- copy of a grant dated 14.05.2007 as DW1 Exhibit 1, Summons for revocation and supporting affidavit as DW1 Exhibit 2, an application in the succession cause no. 217 of 2003 wherein the plaintiff was seeking to be enjoined as an interested party as DW1 Exhibit 3, copy of the plaintiff's submissions as DW1 Exhibit 4 and copy of a judgment dated 27.05.2021 by Hon. Justice H. Omondi as DW1 Exhibit 5.
66. It was further his testimony that at paragraph 43 of the judgment (DW1 Exhibit 5), it was stated that the plaintiff's interest is well secured by the clause in the sale agreement and a claim against one Joram Kimemia.
67. He added that when the grant was revoked, all the properties of Mr. David William Kigumi Kimemia were directed to be returned to the estate as they were before the confirmation of the grant vide the ruling by Justice Wananda issued on 26.04.2024. All the parcels reverted back to the estate. However, he stated that the court excluded Pioneer/ Ngeria Block 1 (EATEC)/ 1114 and 130 from distribution pending hearing and determination of the instant suit.
68. He confirmed that he had been sued in his personal capacity and not as the administrator of the estate of the late David William Kigumi Kimemia. He admitted that from the sale

agreements presented in court by the plaintiff dated 18.01.2010 and 08.01.2019 the same were between the plaintiff and Joram Kimemia, who is not a party in the present case.

69. It was his testimony that the family objected to the said sale between the plaintiff and Joram Kimemia and that is why they applied for the revocation of the grant that had earlier been issued to Joram Kimemia, who is their elder brother. In conclusion of his evidence in chief, he urged the court to dismiss the suit against them with costs.
70. On cross-examination by Mr. Mathai, it was his testimony that they filed an application for revocation of grant in the succession cause No. 217 of 2003, because he did not give consent to the issuance of the grant. He thus dismissed the allegations by the plaintiff that they conspired to have the grant revoked.
71. He confirmed that in the judgment dated 27.05.2021, Hon. Justice H. Omondi revoked the grant and the said court went on to state that the plaintiff had a right to seek indemnity from the person who sold him the suit parcels, that is Joram Kimemia. He added that the plaintiff did not appeal against the said judgment but chose to file the instant suit.
72. He stated that he is currently the administrator of the estate of their late father together with the 4th defendant. It was further his contention that as at the year 2022 when the instant suit was filed, 12 years had since lapsed.

73. Further, that from paragraph 23 of the plaint, it does not state when and how the plaintiff discovered the fraud. That at page 10 paragraph (g) of the ruling dated 26.04.2024, the 2nd defendant was to be allocated the whole 5 acres of the suit land. He confirmed that there was a sale agreement between the 1st defendant and the 2nd defendant for the sale of the 5 acres.
74. When referred to Pexh. 12, copy of the Green Card, it was his testimony that Salome Wanjiru Kigumi (1st defendant) was the registered owner on 15.07.2011 and the sole owner of the suit land thereof. Further, that there were no encumbrances registered against the title.
75. That Entry No. 10 confirms that the 2nd defendant subsequently became the registered owner of the suit land on 07.09.2011. He finished his cross-examination by stating that he did not have any evidence that contradicts what is contained in Entry No. 10 of the Green Card.
76. On cross-examination by Mr. Mukhabani for the plaintiff, when referred to Pexh. 12, copy of the Green Card dated 15.07.2011 over the parcel of land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114, he stated that that on 15.07.2011, the registered owners were Benson Mwenda Kimemia, Joram Kimemia, Sylvia Wambui Kimemia, Jacinta Wanjiru Kimemia and Edith Karogo Kimemia. He explained that they are 5 siblings and the land is 5 acres.

77. He maintained that they did not at any point dispose of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114. That according to the sale agreement relied on by the plaintiff, Joram Kimemia disposed of his portion of the suit land measuring 1 acre. Further, that at the time of the said sale agreement, grant had been confirmed and Joram Kimemia had been given 1 acre.
78. He conceded that the 2nd defendant had not been given any portion of the suit land either from the initial grant or from the subsequent grant and they therefore have no claim over the suit property herein.
79. When referred to paragraph 17 of the ruling dated 04.05.2020 in the Succession Cause No. 217 of 2003, he conceded that at the time of the purported sale agreement, the estate had been distributed and the suit properties herein had been given to Joram Kimemia. He went on to explain that after distribution has been done and one has been given their properties, he/she has a right to dispose of that property.
80. When shown the sale agreement dated 09.01.2011 in respect to the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114, in the 2nd defendant's list of documents dated 19.09.2023, it was his testimony that he did not know if the 1st defendant had the requisite capacity to sell the suit land at the said time. He also confirmed that none of the siblings signed the sale agreement except the 1st defendant and

hence the sale agreement was not executed as it was supposed to be. That as a result thereof, Francis B.S. Kariuki could not get a good title.

81. He also admitted that from Pexh. 2 (certificate of grant dated 30.05.2006) suit land No. Eldoret Municipality/ Block 15 (West Farmers)/ 1020 was given to Joram Kimemia, and 1 acre of Pioneer/ Ngeria Block 1 (EATEC)/ 1114 was also given to Joram Kimemia, who sold his portions of land to the plaintiff herein. That the remaining 4 acres was distributed among the 4 remaining siblings with each of them getting 1 acre each. He confirmed that his mother, the 1st defendant was not given any portion out of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114, hence could not sell the same.
82. That paragraph 10 of the sale agreement dated 09.01.2011 referred to the rectified certificate of confirmation of grant dated 14.05.2007 wherein each of the 5 siblings were given 1 acre out of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114 but conceded that none of the siblings signed the said agreement.
83. In concluding the cross-examination, he stated that he had no interest in the portion of land given to Joram Kimemia. It was also his testimony that he does not believe that the 2nd defendant was entitled to a share that was previously given to Joram Kimemia.
84. He also confirmed that the properties subject to this suit were set aside from distribution in the succession cause

- pending the determination herein. He acknowledged that the plaintiff had been in possession of the suit property.
85. On re-examination, he reiterated that in the ruling by Hon. Justice Hellen Omondi, the plaintiff was given a recourse. That both the initial grant and the rectified grant were revoked by Justice H. Omondi and that there was no appeal preferred by the plaintiff against the said revocation.
 86. He also restated that pursuant to the ruling dated 26.04.2024, all the properties reverted back to the estate of the deceased. That based on paragraph 26(g) of the said ruling, the suit property was not given to the 2nd defendant. That no appeal was preferred against the said ruling.
 87. The 1st, 3rd and 4th defendants thereafter closed their case.
 88. The 2nd defendant's case proceeded for hearing on 24.04.2025. Francis B.S. Kariuki, a Director of the 2nd defendant testified as DW2. He adopted his witness statement dated 19.09.2023 as his evidence in chief.
 89. He also produced the documents in their list of documents dated 19.09.2023 as DW2 Exhibits 1 - 23 respectively in support of the 2nd defendant's case.
 90. He also stated that Pexh. 1, was a copy of the sale agreement dated 09.01.2011, between the 1st defendant and himself over the parcel of land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 measuring 5.0 acres. That the consideration price was Kshs. 6 million, which he stated was paid in full to the 1st defendant.

91. With regard to clause 10 of the said agreement, he testified that the beneficiaries had provided their consent by action because when they were transacting with the 1st defendant, they had allowed the 1st defendant to transfer the whole land to her name.
92. He further explained that DW2 Exh. 7 (copy of search certificate) shows that the title deed was issued to the 2nd defendant on 07.09.2011, a fact which can also be seen from a copy of the title deed produced as DW2 Exh. 11 with respect to the date of registration.
93. He thus maintained that at the time of sale, the 1st defendant was the registered owner of the suit land and further that there was no restriction registered against the title to his knowledge.
94. It was also his testimony that from the date of sale agreement dated 18.01.2010 produced by the plaintiff as Pexh.9 up to the year 2022 when the suit was filed is 12 years.
95. He also made reference to the judgment dated 27.05.2021 by the succession court in Succession Cause No. 217 of 2003, wherein at page 25, the court noted that the interest of the plaintiff was well secured as he could claim against Joram Kimemia. He however stated that he was not aware if the plaintiff had taken any recourse against Joram Kimemia or if any appeal has been filed against the said judgment.

96. He confirmed that from Pexh. 15, a copy of the ruling dated 26.04.2024, at page 10 paragraph (e), the suit land was declared to comprise the estate but distribution was subject to the conclusion of the instant suit. He thus contends that the plaintiff had no ownership of the suit land. Further, that the effect of the decision by the succession cause was to revoke the initial grants issued and rectified grants.
97. That at the time of filing the instant suit, the grant had already been revoked. It was also his testimony that he had not seen any registrable interest in favor of the plaintiff from the Green Card.
98. It was further his claim that at the time he was acquiring the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114, the 1st defendant was in possession of the suit parcel. That in the year 2022, the plaintiff trespassed into his parcel of land and he reported the matter to the relevant authorities and the police and was issued with OB/ No. 52/ 28/3/22 produced as DW2 Exhibit 20.
99. He thus urged the court to restore the sanctity of the title issued in the name of the 2nd defendant and find that it is entitled to 5 acres. He further asked the court to issue an order of eviction against the plaintiff as well as dismiss the plaintiff's suit with costs.
100. On cross-examination by Mr. Oduor, it was his testimony that he was aware that the grant issued in Succession Cause No. 217 of 2003 had been partially confirmed and that 4 acres

out of the 5 acres of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114 had been confirmed.

101. He however conceded that the 4 acres had not been allocated to him but that there was a proposal. He denied knowledge of whether the 2nd defendant had acquired the suit land through the revoked grant.
102. When referred to Pexh. 15, at paragraph (c) in page 10, he stated that from the said paragraph, the properties were declared to be part of the estate. That no appeal has been filed against the said ruling.
103. He further contended that the instant suit was filed on 09.06.2022 as per the court stamp on the plaint and at the said time, the grant had already been revoked pursuant to the judgment of the court issued on 27.05.2021. That no appeal nor review has been lodged against the said judgment.
104. On cross-examination by Mr. Mukhabani, it was his testimony that he is one of the directors of the 2nd defendant company. He however conceded that he had not filed a company resolution by the 2nd Defendant allowing him to file the suit.
105. When referred to Pexh. 9, the sale agreement between the plaintiff and Joram Kimemia dated 18.01.2010 and the 2nd defendant's sale agreement dated 09.01.2011, he conceded that by the time the 2nd defendant was entering into the agreement for sale, the plaintiff had already purchased 1

acre out of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114.

106. It was his testimony that the 1st defendant sold to him the whole suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114 in her capacity as an administrator of the estate of the late David William Kigumi Kimemia, pursuant to a certificate of grant issued in Succ. Cause No. 217 of 2003.
107. He however maintained that even without the certificate of confirmation of grant, his claim over the suit land still stands. He confirmed that Pexh. 3 dated 14.05.2007 is the same grant referred to in paragraph 10 of his sale agreement.
108. When referred to paragraph 10 of his sale agreement, he conceded that he had not produced a consent or agreement signed by the beneficiaries as provided in the sale agreement.
109. He confirmed that the properties listed in the said grant included the suit parcel Pioneer/ Ngeria Block 1 (EATEC)/ 1114 measuring 5 acres, which was to be distributed amongst the 5 siblings with each sibling getting 1 acre, including Joram Kimemia, who sold his portion to the plaintiff.
110. He further conceded that from the said grant as relied on in his sale agreement, the 1st defendant who sold to him the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114, had not been given any portion of the suit land.

111. He acknowledged that at the time Joram Kimemia was selling the 1 acre portion of the suit land to the plaintiff, he had been given the said portion as per the grant.
112. It was his testimony that he did not know that the 4 acres out of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114 was not given to the 2nd defendant. He however maintained that he is entitled to the entire 5 acres of the suit land.
113. On re-examination, he stated that he had not been shown any evidence that his title in respect to the suit land had been revoked or shown any grant showing that the 4 acres was given to any other person than the 2nd defendant.
114. He reiterated that at the time of purchase of the suit land, the 1st defendant was the registered owner of the suit land. That since the 2nd defendant had been sued as a company, it was not necessary for him to obtain a resolution.
115. The 2nd defendant thereafter closed their case.
116. Upon close of the defence case, the court issued directions on the filing of final written submissions. On a perusal of the court record, only the plaintiff has filed his submissions together with authorities, which I have read and considered.

Analysis and Determination:

117. I have carefully considered and reviewed pleadings filed herein, the testimony in court together with the respective exhibits produced by the parties as well as the submissions

in totality and it is my considered opinion that the following issues arise for determination: -

- i. Whether the Plaintiff is a bonafide innocent purchaser for value without notice.***
- ii. Whether the plaintiff is entitled to be registered as the proprietor of the parcels of land purchased from Joram Kimemia.***
- iii. Whether an order of cancellation of title can issue against the 2nd defendant's title in respect to suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114.***
- iv. Whether the 2nd defendant has proved its counter-claim to the required standard to warrant the grant of the orders sought.***
- v. Whether the Plaintiff is entitled to the reliefs sought in the Plaint***
- vi. Who shall bear the costs of the suit and the Counter-claim.***

i. Whether the Plaintiff is a bonafide innocent purchaser for value without notice;

118. The first issue is whether the plaintiff herein is a bonafide and innocent purchaser for value. The term bonafide and innocent purchaser for value was defined in the case of **Samuel Kamere -vs- Lands Registrar, Kajiado Civil**

Appeal Number 28 of 2005 where the Court of Appeal held that: -

“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a VALID and LEGAL title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

119. It is not in dispute that there was a sale between the plaintiff and one Joram Kimemia in respect to the suit parcels of land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 and Eldoret Municipality/ Block 15 (WEST FARMERS)/ 1020. The Plaintiff produced Pexh. 9 and 10 respectively in support of the said averments of sale.
120. The 1st, 3rd and 4th defendants did not dispute the said sale between the plaintiff and Joram Kimemia, who is a brother to the 3rd and 4th Defendant while the 1st Defendant is their mother, save that the plaintiff's claim ought to have been against the said Joram Kimemia as the vendor as advised in DW1 Exhibit 5.
121. PW1 in his testimony stated that at the time of the purchase, he conducted his due diligence and confirmed that there was a valid Certificate of Confirmation of Grant and which was

later rectified. He produced the said certificates of grant as Pexh. 2 and 3 respectively.

122. He further confirmed that from the said Confirmed Grant, a mode of distribution of the assets of the estate had been outlined and that the properties under sale had indeed been

given to the vendor, Joram Kimemia as his share entitlement of the estate.

123. DW1 in his cross-examination confirmed these facts and admitted that at the time of sale by Joram Kimemia to the plaintiff, indeed there was a confirmed grant and the properties in question had actually been given to Joram Kimemia as per the said grant.

124. It is not in dispute that Pexh. 2 and 3 were later revoked vide a judgment issued on 27.05.2021 by Lady Justice H. Omondi in Succession Cause No. 217 of 2003 for the reasons outlined therein. Be that as it may, it is evident that the plaintiff at the time of purchase may not have been privy to any fraud or misrepresentation by the Administrators of the estate of the deceased in the process leading to the issuance of the confirmation of grant and/or the distribution of the estate.

125. Therefore, guided by the decision above and from the facts of the case, it is the finding of this court that the plaintiff was indeed an innocent and bonafide purchaser for value without notice of any fraudulent dealings in the process. He demonstrated how he honestly and in good faith acquired

the suit parcels of land, paid valuable consideration for the same and had no notice of any fraud or misrepresentation on the part of the vendor, Joram Kimemia, in the administration process of his late father's estate.

ii. Whether the plaintiff can be declared as the absolute owner of the suit parcels of land;

126. The second issue and which goes to the root of the plaintiff's claim is whether the plaintiff can be declared as the absolute owner of the suit parcels of land.
127. The plaintiff has urged the court to declare him as the absolute owner of the suit parcels of land. It is his claim that at the time of the sale transaction, the vendor, Joram Kimemia had the requisite capacity to sell the properties for the reason that the same were his share entitlement, duly given to him pursuant to the certificate of confirmation of grant and the rectified grant produced as Pexh. 2 and 3. It is his contention that upon paying the consideration price, he took possession and has been using the same since then. That he is therefore entitled to be declared as the absolute owner of the said parcels.
128. The 2nd defendant on its part maintained that it is the absolute owner of the entire suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114. DW2 testified that the 2nd defendant duly purchased the said land from the 1st

defendant, who was the registered owner at the time of sale and he relied on Pexh. 12 to support his averments.

129. It was therefore his contention that the 1st defendant had the requisite capacity to sell the 2nd defendant the whole parcel and that its subsequent registration was both regular and lawful. He urged the court to protect the sanctity of the title deed document held in the 2nd defendant's name.
130. It is not in dispute that Pexh. 2 and 3 were both revoked vide the decision of the court contained in DW1 Exhibit 5. It is on the strength of Pexh. 2 as rectified in Pexh. 3 that both sale transactions were effected; the alleged sale to the plaintiff and the alleged sale to the 2nd defendant.
131. The question that therefore follows is what is the effect of the said revocation on the initial sale to the plaintiff and what recourse, if any, is available to the plaintiff as an innocent purchaser for value without notice of fraud or misrepresentation.
132. I have critically looked at the judgment of the succession court in Eldoret High Court Succession No. 217 of 2003 issued on 27.05.2021 and the reasons outlined therein for the revocation of the grant, which is misrepresentation on the part of the then administrators, Joram Kimemia and the 1st defendant, in which the court found them liable for misrepresentation in the process leading up to the confirmation and subsequent rectification of the grant and in

the general administration of the estate of the deceased David William Kigumi Kimemia. This court is however mindful not to delve into the jurisdiction of the succession court.

133. What then is the effect of the said order of revocation on the said sale transactions, one may ask? The implication of the decision of the succession in essence points to the fact that neither Joram Kimemia nor his mother and co-administrator (the 1st defendant) had the capacity to sell the suit properties, either to the plaintiff or to the 2nd defendant respectively. It therefore means that they could not pass good title to the respective purchasers at the time of sale capable of registration.
134. In light of the same, it is my considered opinion that the plaintiff cannot be declared as the absolute owner of the suit parcels, when the instrument used as a basis of the said sale transaction was declared invalid.

iii. Whether an order of cancellation of title can issue against the 2nd defendant's title in respect to suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114;

135. The plaintiff has urged the court to issue an order of cancellation of the title deed issued to the 2nd defendant in respect to suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 and any resulting subdivision.

136. The 2nd defendant on its part maintained that it is the rightful, legal and lawful registered proprietor of the said parcel and is therefore entitled to all the rights and privileges arising from the said registration. DW2 further accused the plaintiff of trespass and/or unlawful occupation of the suit parcel and urged the court to issue an order of eviction against him.
137. As stated hereinabove, it is not in dispute that both sale transactions were pursuant to the revoked grant. The effect of the revocation of 27.05.2021 on the said transactions in my opinion was to invalidate the said transactions.
138. I have also noted with concern the discrepancies on the copy of the Green Card produced as Pexh. 12 particularly on Entries Nos. 5, 6, 7, 8, 9 and 10. It is not clear on what basis the land was transferred from the joint names of all the 5 siblings to the sole name of the 1st defendant and who then transferred the whole parcel to the 2nd defendant. It is interesting to note that Entries Nos. 5 - 8 were all done on the same date 15.07.2011, while Entry Nos. 9 and 10 were done on the 07.09.2011. Thus, the speed at which the said transactions were done raises more questions and doubts on the mind of this court.
139. DW1 during cross-examination confirmed that their mother, the 1st defendant, was not entitled to a share of the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114 and therefore had no capacity to sell the entire parcel of land. Further, he

confirmed that the said Joram Kimemia had a share entitlement in the said portion and could not be denied the same.

140. The grounds of cancellation of title are well settled and are provided under section 26 (1) (a) and (b) of the Land Registration Act. The said section provides as follows: -

“(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

141. In light of the above findings, the question that this court seeks to answer is whether an order of cancellation of the

title can issue against the title held by the 2nd defendant in respect to Pioneer/ Ngeria Block 1 (EATEC)/ 1114.

142. It has been held that it is not enough for a party to dangle a title document and plead the sanctity of the said title. The court in the case of **Elijah Makeri Nyangwara Vs Stephen Mungai Njuguna & another ELC Case No. 609 B of 2012 (Eldoret)** Justice Sila Munyao held as follows:-

“It need to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, un-procedurally, or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions”.

143. Associating myself with the above findings as read with the findings of the succession court in Eldoret High Court Succession Cause No. 217 of 2003 in the judgment dated

27.05.2021 and taking the circumstances of the case in totality, it is the finding of this court that the title held by the 2nd defendant in respect to the entire suit parcel Pioneer/ Ngeria Block 1 (EATEC)/ 1114 ought to be cancelled.

iv. Whether the 2nd defendant has proved its counter-claim to the required standard to warrant the grant of the orders sought;

144. The 2nd defendant in its Counter-claim sought an order of eviction, a declaration that the 2nd defendant is the absolute owner of the suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114, mesne profits for the period the plaintiff has been in possession of the land, general damages for trespass as well as costs of the counter-claim.
145. This court has carefully considered the rival positions taken by the parties and particularly the testimony and cross-examination of DW1, who in his testimony confirmed that the suit land Pioneer/ Ngeria Block 1 (EATEC)/ 1114 measuring 5 acres was to be divided among all the 5 siblings, with each one of them being entitled to one (1) acre portion and admitted that the 1st defendant was not given a share out of the said 5 acres, hence could not have the whole 5 acres allocated to the 2nd defendant which was in any event not a beneficiary to the estate of the deceased.

146. In light of the findings in issue No. (iii) above, it is the finding of this court that the 2nd Defendant is not entitled to the reliefs sought in the counter-claim.

v. Whether the plaintiff is entitled to the reliefs sought in the plaint;

147. The plaintiff sought among other orders, a declaration that he is the absolute owner of the suit parcels, permanent injunction, cancellation of title as well as costs.

148. In light of this court's findings in the preceding issues, and in view of the circumstances of this case as well as the findings of the succession court in Eldoret High Court Succession Cause No. 217 of 2003, it is the finding of this court that the plaintiff is not entitled to all the reliefs sought. However, the plaintiff is partially entitled to some of the reliefs sought in the plaint.

149. This court has taken cognizance of the fact that the plaintiff is currently in possession, occupation and use of the suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114. As a result, therefore, it is my considered view that in the interest of justice it would be appropriate to issue an order of status quo pending the final determination of the Succession Cause in respect of the estate of the deceased by the Succession Court in Eldoret High Court Succession Cause No. 217 of 2003.

Who shall bear the costs of the suit and the Counter-claim;

150. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.
151. In this case, having held that the Plaintiff has partially proved his case against the Defendants, I find that he is entitled to costs of the suit.

CONCLUSION:

152. The upshot of the above is that the Plaintiff has partially proved his claim against the defendants. Consequently, it is the finding of this court that the Plaintiff is partially merited and is accordingly allowed in the following terms: -
- a)** A declaration be and is hereby made that the plaintiff was an innocent and bonafide purchaser for value without notice of the suit properties.
 - b)** An order for cancellation of the title deed issued to the 2nd defendant in respect of property known as PIONEER/ NGERIA/ BLOCK 1114 (EATEC) and resulting subdivisions therefrom be and is hereby issued.
 - c)** Pursuant to the order of cancellation of the title deed held by the 2nd defendant in respect to suit land known as Pioneer/ Ngeria Block 1 (EATEC)/ 1114 above, it is hereby directed that the said parcel of land do revert back to the estate of the deceased for distribution.

- d)** This court calls upon the succession court in Eldoret High Court Succession Cause No. 217 of 2003 to take into consideration the finding of this court declaring the plaintiff a bona fide innocent purchaser for value of the suit land and in the interest of justice find that he is entitled to the share of the estate to be taken out from/ carved out from Joram Kimemia's share entitlement.
- e)** An Order of status quo be and is hereby issued pending the final distribution of the estate of David William Kigumi Kimemia by the succession court in Eldoret High Court Succession Cause No. 217 of 2003.
- f)** The Counter-claim by the 2nd Defendant dated 25.07.2022 be and is hereby dismissed.
- g)** Costs of the suit and the counter-claim be borne by the defendants.

153. It is so ordered.

DATED, SIGNED and DELIVERED in open court at
ELDORET on **9TH day** of **OCTOBER, 2025.**

HON. C. K. YANO
JUDGE

In virtual presence of; -

Mr. Oduor for 1st, 3rd & 4th Defendants.

Mr. Mathai for 2nd Defendant.

Ms. Oduor holding brief for Mr. Mukabane for Plaintiff.

Court Assistant - Laban

ORIGINAL