



Gatu & another (Suing as Legal Representatives of the Estate of John Gatuu Gichuhi alias John Gatu Gichuhi) v Kibubu & 10 others (Environment and Land Case E006 of 2024) [2025] KEELC 6944 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6944 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E006 OF 2024
LA OMOLLO, J
OCTOBER 9, 2025**

BETWEEN

**ERASTUS GATHAGE GATU 1ST PLAINTIFF
SERAH NJERI MWANGI 2ND PLAINTIFF
SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF JOHN GATUU
GICHUHI ALIAS JOHN GATU GICHUHI**

AND

**JOHN KAIRU KIBUBU 1ST DEFENDANT
DOMINIC MUHUHA GITAU 2ND DEFENDANT
ADMINISTRATORS OF THE ESTATE OF REUBEN THUKU
MUNENE 3RD DEFENDANT
LERWA CENTRE FOR EXCELLENCE LIMITED 4TH DEFENDANT
HERMOTIMUS MUNENE THUKU 5TH DEFENDANT
PHERECYAES WACHIRA THUKU 6TH DEFENDANT
PARTHENDU WANDIA THUKU 7TH DEFENDANT
PROMETHEUS NJUGUNA THUKU 8TH DEFENDANT
THE LAND REGISTRAR, NAKURU COUNTY 9TH DEFENDANT
THE CHAIRMAN, LAND CONTROL BOARD BAHATI
DIVISION 10TH DEFENDANT
THE ATTORNEY GENERAL OF KENYA 11TH DEFENDANT**



JUDGMENT

INTRODUCTION.

1. The Plaintiffs commenced the present proceedings vide the Complaint dated 2nd February, 2015 which was amended on 6th April, 2016.
2. The Plaintiffs aver that they are the administrators of the estate of the late John Gatutu Gichuhi and that they were issued with letters of Administration in Nairobi High Court Succession Cause No. 380 of 1991.
3. The Plaintiffs also aver that the late John Gatutu Gichuhi was registered as the proprietor of land parcel No. Nakuru/ Municipality Block 22/4 which measures 6.493 Ha on 29th January, 1987.
4. The Plaintiffs further aver that the late John Gatutu Gichuhi died on 1st January, 1989 and add that he died after being in a comatose state due to diabetes complications.
5. It is their averment that two years after his death, his wife one Esther Muciku Gatutu and his son one Peter Njogu Gatutu, who reside in Kikuyu, Kiambu County filed a succession Cause at the High Court in Nairobi and were granted Letters of Administration.
6. It is also their averment that after the succession proceedings were finalized, the administrators went to Nakuru to facilitate the transfer of land parcel No. Nakuru/Municipality Block 22/4 into their names.
7. It is further their averment that they presented transfer documents together with the original title deed to the Land Registrar, Nakuru who rejected the said documents without giving any valid reason. They add that they made several attempts to have the suit parcel transferred but they were unsuccessful.
8. They aver that Peter Njogu Gatutu, one of the administrators, travelled to Britain on 1st January, 1999 and therefore the other administrator Esther Muciku Gatutu was unable to facilitate the transfer on her own and she asked the Plaintiffs herein to take up the matter.
9. They also aver that the Plaintiffs tried to transfer the land but they were unable to and as at the year 2003, they were yet to transfer the land.
10. They further aver that after numerous visits to the Nakuru Lands Registry, they began to suspect that there was an issue preventing the said transfer of the land.
11. It is their averment that they requested for copies of the green card for Land parcel No. Nakuru/ Municipality Block 22/4 but instead they were issued with copies of the green card for land parcel No's Nakuru/Municipality Block 22/53, Nakuru/Municipality Block 22/54 and Nakuru/Municipality Block 22/55.
12. It is also their averment that the said green cards showed that they were opened on 23rd December, 1988 upon subdivision of land parcel No. Nakuru/Municipality Block 22/4.
13. It is further their averment that at the time of the alleged subdivision, the late John Gatutu Gichuhi was in a coma at the Kenyatta National Hospital and they (Plaintiffs) were still in possession of the original title deed of the suit parcel.
14. They aver that they requested for and were issued with the Certified Land Control Board Consents and a Certified Copy of the application for subdivision on 28th August, 2012.



15. They also aver that the said consents were issued by the Bahati Land Control Board on 28th May, 1987 after holding a meeting on 28th May, 1988. (sic)
16. They further aver that they were issued with a certified copy of the application for subdivision. It was certified on 28th August, 2012. It was purportedly applied for by the deceased and it stated that the suit parcel was to be subdivided into three portions of 4 acres, 7 acres and 6 acres respectively.
17. It is their averment that one of the resultant subdivisions of Nakuru/Municipality Block 22/4 that is Nakuru/Municipality Block 22/53 which measures 5.434 acres was subdivided on 30th June, 1989 adding that this is as per the mutation form.
18. It is also their averment that the said mutation form is dated 21st October, 1988 and received at the Nakuru Lands Registry on 30th June, 1989.
19. It is further their averment that the said subdivision allegedly took place on the farm and in the presence of the deceased. The resultant subdivisions of Nakuru/Municipality Block 22/53 were Nakuru/Municipality Block 22/60, Nakuru/Municipality Block 22/61 and Nakuru/Municipality Block 22/62.
20. They aver that it is alleged that the late John Gatui Gichuhi paid Kshs. 250/= for the opening of the register for land parcel No. Nakuru/Municipality Block 22/53 on 29th June, 1989.
21. They also aver that on the same date, that is 29th June, 1989, one Reuben Thuku Munene paid for the Certificate of Title, Registration and Stamp Duty for land parcel No. Nakuru/Municipality Block 22/60.
22. They further aver that land parcel No's Nakuru/Municipality Block 22/61 and Nakuru/Municipality Block 22/62 are registered in the name of the 3rd Defendant.
23. It is their averment that on the same date, that is 29th June, 1989, the register for land parcel No. Nakuru/Municipality Block 22/54 was opened and the land transferred to the 1st Defendant.
24. It is further their averment that on 10th June, 1994 the register for land parcel No. Nakuru/Municipality Block 22/54 was closed upon subdivision into 42 portions that is land parcel No's Nakuru/Municipality Block 22/ 372 to 143 (sic).
25. They aver that Nakuru/Municipality Block 22/55 which measures 1.66 Ha was transferred to the 2nd Defendant, the same date the register was opened.
26. They also aver that on 2nd March, 2011, land parcel No. Nakuru/Municipality Block 22/55 was transferred to the 4th Defendant and that on 23rd May, 2011, the register of the said parcel was closed upon subdivision into 17 parcels; the resultant subdivisions are Land parcel No's Nakuru/Municipality Block 22/3940 to 3956.
27. They further aver that upon getting the said documents from the Lands Registry in 2012, they realized that there was massive fraud and irregularities in the subdivision and transfer of land parcel No. Nakuru/Municipality Block 22/4.
28. The Plaintiffs set out particulars of fraud against the Defendants and pray for judgement against the Defendants for;
 - a. A declaration that the 1st Defendant and the 2nd Defendant, Defendant (sic) did not have a good title over Nakuru/Municipality Block 22/53, Nakuru/Municipality Block 22/54, Nakuru



Municipality Block 22/55 capable of being transferred to the 3rd Defendant, 4th Defendant, 5th Defendant, 6th Defendant, 7th Defendant and 8th Defendant.

- b. A declaration that the sale, subdivision and subsequent transfer of Nakuru/Municipality Block 22/4 was erroneous, illegal and unlawful.
 - c. A declaration that the registration and issuance of subsequent title deeds in respect of Nakuru/Municipality Block 22/4 was erroneous, illegal and unlawful.
 - d. A declaration that the 11th Defendant 9th Defendant (sic) fraudulently issued separate title deeds to the property formerly Nakuru/Municipality Block 22/4.
 - e. An order directing the Land Registrar Nakuru County to cancel entries resulting in the issuance of separate titles to the property formerly compromised in Nakuru/Municipality Block 22/4 and to rectify the same register so as to restore the said title to Nakuru/Municipality Block 22/4.
 - f. A mandatory injunction do issue restraining the Defendants by themselves, their respective agents, servants, employees or otherwise in their name from charging, selling, transferring, dealing and or interfering with the suit property currently known as Nakuru/Municipality Block 22/60, Nakuru Municipality Block 22/61 and Nakuru/Municipality Block 22/62 (formerly Nakuru/Municipality Block 22/53) and sequentially from Nakuru/Municipality Block 22/372 all through to Nakuru/Municipality Block 22/413 (formerly Nakuru/Municipality Block 22/54) and sequentially Nakuru/Municipality Block 22/3940 all through to Nakuru/Municipality Block 22/3956 (Formerly Nakuru/Municipality Block 22/55) all formerly the suit property Nakuru/Municipality Block 22/4.) (sic)
 - g. Eviction of the Defendants from the suit property.
 - h. General damages for loss of uses, occupation and enjoyment thereof.
 - i. Costs of the suit.
29. The 1st and 4th Defendants filed their Statement of Defence dated 17th February, 2015 and it was amended on 11th May, 2016.
30. They state that the 1st Defendant entered into an agreement dated 24th February, 1979 with John Gatu Gichuhi (deceased) for the purchase of seven acres of his land at Muguga Farmers' Co-operative Society Limited Farm then known as Plot No. 21.
31. They also state that in the year 1979, the 1st Defendant took possession of the said land, built a permanent house and has been living on it to date.
32. They further state that on 23rd December, 1988, John Gatu Gichuhi (deceased) transferred land parcel No. Nakuru/Municipality Block 22/54 to the 1st Defendant and he was issued with a title deed.
33. The 1st and 4th Defendants state that at the time of the transfer, John Gatu Gichuhi (deceased) was in good health and he obtained all the relevant consents and signed the requisite documents to facilitate the transfer to the 1st Defendant's name.
34. The 1st and 4th Defendants deny that the 1st Defendant irregularly and/or fraudulently obtained the said title.
35. The 1st and 4th Defendants state that no claim has been made with regard to the 4th Defendant and that it does not own the suit land.



36. The 1st and 4th Defendants state on a without prejudice basis that the 4th Defendant was gifted land parcel No. Nakuru Municipality Block 22/55 by the administrators of the estate of Rahab Wamuhu Kamau. The 4th Defendant subdivided the said parcel of land and sold it to third parties.
37. The 1st and 4th Defendants state that the suit against the 1st Defendant is statute barred since the cause of action arose in the year 1979 and they intend to file a Notice of Preliminary Objection.
38. The 1st and 4th Defendants then prayed that the Plaintiffs suit be dismissed with costs.
39. The 2nd Defendant filed his statement of Defence dated 24th June, 2016.
40. The 2nd Defendant denies the averments in the Amended Plaint and states that John Gatut Gichuhi (deceased) sold land parcel No. Nakuru/Municipality Block 22/4 before his death and the property could not have devolved to the deceased's beneficiaries as alleged.
41. The 2nd Defendant also states that the Plaintiffs were not the owners of the suit parcel at the time it was subdivided and sold and therefore their possession of the original title deed is questionable.
42. The 2nd Defendant further states that the subdivision of the suit property was lawfully done upon issuance of the necessary consents for subdivision and transfer.
43. The 2nd Defendant states that he purchased land parcel No. Nakuru/Municipality Block 22/62 from Gachera Muiruri (the 3rd Defendant in the original Plaint) vide the agreement dated 10th February, 2000.
44. The 2nd Defendant also states that he paid the consideration between the year 2000 and 2001. Upon executing all the necessary documents and obtaining all the required consents, the said property was registered in his name.
45. The 2nd Defendant also states that he acquired land parcel No. Nakuru/Municipality Block 22/61 from John Gatut Gichuhi (deceased).
46. The 2nd Defendant further states that he entered into a land sale agreement with John Gatut Gichuhi (deceased) in the year 1982 and the sale transaction was handled by the firm of Kamere & Company Advocates.
47. The 2nd Defendant states that John Gatut Gichuhi (deceased) acknowledged the sale and transfer of the said property to him.
48. The 2nd Defendant therefore seeks that the Plaintiffs suit be dismissed with costs to him.
49. The 5th, 6th, 7th and 8th Defendants filed their statement of Defence dated 20th June, 2022.
50. The 5th, 6th, 7th and 8th Defendants deny the averments in the Amended Plaint and state that their deceased father one Robert Thuku Munene purchased a portion of LR No. 4730/72 measuring 2 acres from John Gatut Gichuhi (deceased) vide the agreement dated 29th June, 1982. The said parcel of land had been purchased from Muguga Farmers Co-operative Society Limited.
51. The 5th, 6th, 7th and 8th Defendants state that John Gatut Gichuhi (deceased) transferred land parcel No. Nakuru/Municipality Block 22/4 (sic) to their deceased father Reuben Thuku Munene and a title deed was issued.
52. The 5th, 6th, 7th and 8th Defendants also state that all the relevant consents were obtained and they were used to facilitate the transfer.



53. The 5th, 6th, 7th and 8th Defendants further state that sometime in the year 1983, their deceased father took possession of the said land and they (5th, 6th, 7th and 8th Defendants) have been living on the said parcel of land to date.
54. The 5th, 6th, 7th and 8th Defendants seek that the Plaintiffs suit be dismissed with costs.
55. The 9th, 10th and 11th Defendants filed their Statement of Defence dated 27th September, 2021.
56. The 9th, 10th and 11th Defendants deny the averments in the Amended Plaint and urge the Court to dismiss the Plaintiffs suit with costs.

THE PLAINTIFFS EVIDENCE.

57. Erastus Gathage Gatu testified as PW1. He stated that he filed a witness statement dated 2nd February, 2015. He prayed that the Court adopts the said statement as part of his evidence in chief, which prayer the Court acceded to.
58. It was his evidence that his late father John Gatu Gichuhi (deceased) was the registered owner of Land Parcel No. Nakuru/Municipality Block 22/4.
59. It was also his evidence that his deceased father died on 1st January, 1989 at Kenyatta National Hospital and added that his father was diabetic and as per his death certificate, the cause of death was Hypoglycemic Coma. He produced a copy of the death Certificate as Exhibit P1.
60. It was further his evidence that the suit parcel was in his late father's name. He produced a copy of the title deed as Exhibit P2.
61. He testified that they filed Nairobi High Court Succession Cause No. 380 of 1991 and a grant was issued in the name of Esther and Peter who are his mother and brother respectively.
62. He also testified that the said grant was confirmed. He produced a copy of the Grant of Letters of Administration as Exhibit P3(a) and a copy of the Certificate of Confirmation of Grant as Exhibit P3(b).
63. He further testified that item No. 5 on the Certificate of Confirmation of Grant is land parcel No. Nakuru/Municipality Block 22/4.
64. It was his evidence that his mother and brother wanted to transfer the said parcel of land through transmission but they were not able to because they were informed that they had no land.
65. It was also his evidence that when they took the said documents to the Lands Registry, some documents were thrown at them and they included a title deed in the name of Esther Muciki Gatu. The said title deed was neither signed nor sealed. He produced a copy of the title deed as Exhibit P4.
66. It was further his evidence that they followed up and tried to find out why the registration was declined until his mother fell sick.
67. He testified that his brother left for the United States of America in the year 1999 while his mother joined him in the year 2003.
68. He also testified that his mother came back in the year 2012 while his brother came back in the year 2019.



69. He further testified that his mother relinquished her role as the administrator and the grant was rectified to reflect his name and the name of his sister one Serah Njeri Mwangi. He produced a copy of the rectified grant as Exhibit P5.
70. It was his evidence that the suit property is listed as No. 5 on the rectified grant.
71. It was also his evidence that in the year 2013, he sought the intervention of the then Minister for Lands who wrote a letter and gave it to him to give to the Land Registrar. Upon delivering the said letter, he was able to access the register.
72. It was further his evidence that he established that land parcel No. Nakuru/Municipality Block 22/4 was no longer in existence as it had been subdivided and new titles issued.
73. He testified that he had three green cards for land parcel No's Nakuru Municipality Block 22/53, 54 and 55. The mother title of the said parcels of land was Nakuru/Municipality Block 22/4. He produced copies of the green cards for the said parcels of land as Exhibit P6 (a), (b) and (c) respectively.
74. He also testified that he still had the original title for land parcel No. Nakuru/Municipality Block 22/4.
75. He further testified that the green card for land parcel No. Nakuru Municipality Block 22/53 (Exhibit P6 (a)) was processed on 23rd December, 1988, the green card for land parcel No. Nakuru Municipality Block 22/54 (Exhibit P6 (b)) was processed on 23rd December, 1988 while the green card for land parcel No. Nakuru Municipality Block 22/55 (Exhibit P6 (c)) was processed on 25th December, 1988.
76. It was his evidence that at the time of the opening of the said green cards, his late father was in a coma. He had been in a coma from 3rd November, 1988 and died in January, 1989.
77. It was also his evidence that he was unable to get other documents for land parcel No's Nakuru/Municipality Block 22/54 and 55.
78. It was further his evidence that he had in his possession a copy of the Letter of Consent dated 28th May, 1987 which he produced as Exhibit P7.
79. He testified that he got a copy of the mutation form of the suit property from the Land Registrar which had a sketch map and added that it was received for registration on 23rd December, 1988. He produced a copy of the said mutation as Exhibit P8.
80. He also testified that he had in his possession a copy of the mutation form for land parcel No. Nakuru/Municipality Block 22/53 which was subdivided into land parcel No's Nakuru Municipality Block 22/60, 61 and 62.
81. He further testified that the said mutation form had the name of his late father and his address as the person applying for it and added that it was registered on 30th June, 1989. He produced a copy of the said mutation form together with the attached sketches as Exhibit P9.
82. It was his evidence that he had in his possession a document that allegedly showed that his deceased father paid for the mutation form for land parcel No. Nakuru/Municipality Block 22/53 and that it is dated 29th June, 1989. It was marked and produced as Exhibit P10.
83. It was also his evidence that at the time land parcel No. Nakuru/Municipality Block 22/53 was being subdivided, his father was already dead and reiterated that he died on 1st January, 1989. He went on to state that the alleged dealing could not therefore be true.



84. It was further his evidence that the 2nd Defendant contended that his (1st Plaintiff) deceased father subdivided land parcel No. Nakuru/Municipality Block 22/53 into land parcel No's Nakuru Municipality Block 22/60, 61 and 62. He (2nd Defendant) also contended that the deceased transferred the suit parcel to him (2nd Defendant) and one Gacheru. He testified that he never saw the transfer documents for the alleged transaction.
85. PW1 also testified that he conducted a series of searches for land parcel No. Nakuru/Municipality Block 22/4 which he produced as Exhibit P11 (a) to (g).
86. He further testified that the 1st Defendant contended that he purchased land parcel No's Nakuru/Municipality Block 22/54 and 55 in the year 1979. He (1st Defendant) filed a copy of a land sale agreement dated 24th February, 1979 and upon perusal of the said sale agreement, it indicated that it was for purchase of plot No. 21. It was his evidence that his deceased father's title was created in the year 1987 and therefore in the year 1979 it was non-existent.
87. It was also his evidence that the sale agreement dated 19th April, 1982 that was filed by the 1st Defendant was for the sale of LR No. 4730/72 and it therefore had no connection to the suit parcel.
88. It was further his evidence that there was no way his late father's land could be subdivided without the original title being surrendered.
89. When he was referred to a copy of the green card for land parcel No. Nakuru Municipality Block 22/53 (Exhibit P6 (a)), he testified that the subdivision was done after the death of his father.
90. He also testified that as per the copy of the green card for land parcel No. Nakuru Municipality Block 22/54 (Exhibit P6 (b)), his deceased father was registered as the owner and on the same date the land was transferred to the name of the 1st Defendant.
91. He further testified that the green card for land parcel No. Nakuru Municipality Block 22/55 (Exhibit P6 (c)), showed that the said parcel of land was registered in his deceased father's name on 25th December, 1988 and later transferred to Rahab Wamahu Kamau. The land was then transferred to the 4th Defendant on 23rd December, 1988.
92. He reiterated that land parcel No. Nakuru/Municipality Block 22/53 was subdivided into land parcel No's Nakuru/Municipality Block 22/60, 61 and 62.
93. He testified that the 2nd Defendant stated that the said parcel of land was transferred to his name in the year 1982 and yet in the year 1982, the suit parcel of land did not exist.
94. He also testified that his prayer was that the suit property be returned to the administrators of the estate of his deceased father and that he be granted costs of the suit.
95. In his witness statement, PW1 states that the application for the Land Control Board Consent is not dated and there are alterations on the section of the sizes of the resultant subdivisions.
96. Upon cross examination by Counsel for the 1st and 4th Defendants, PW1 was referred to Exhibit P4 (the title deed in the name of Esther Muciki Gatui) and he confirmed that it was not signed by the Land Registrar.
97. He also confirmed that page 2 showed that under entry No. 2, the suit parcel was registered in the name of John Gatui Gichuhi (deceased) on 28th January, 1987. He further confirmed that it was issued on 29th January, 1987 a day after it was registered.



98. He was referred to the Certificate of Official search produced as Exhibit P11(a) and he admitted that the proprietorship section showed that the suit parcel was registered in the name of John Gatu Gichuhi on 22nd December, 1988. He also admitted that the date on the Certificate of Title and the Search produced as Exhibit P11(a) were at variance but denied that the title was fake.
99. He further admitted that the said title was rejected and thrown back at him.
100. He confirmed that page 3 of the title deed for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit P2) was not signed by the Land Registrar and stated that he did not refuse to produce the said page in Court.
101. The Court observed that pages 3 and 4 of Exhibit P2 were not attached to the copy produced in Court.
102. He confirmed that he did not have a certified copy of the green card for land parcel No. Nakuru/Municipality Block 22/4 and stated that what he had were copies of the green cards for land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
103. He stated that it was not true that he did not produce the green card for land parcel No. Nakuru/Municipality Block 22/4 because he wanted to conceal something.
104. He acknowledged that he had a copy of the green card for land parcel No. Nakuru/Municipality Block 22/4 in Court. It showed under Entry No. 2 that the land was registered in the name of the deceased on 22nd December, 1988. He confirmed that the said green card had the same date of registration as the Certificate of Official Search produced as Exhibit P11 (a).
105. He admitted that the date on the title deed for land parcel No. Nakuru/Municipality Block 22/4 was 28th January, 1987.
106. He then reiterated that he did not produce the said green card deliberately.
107. He confirmed that his deceased father was in a coma from November and he also confirmed that he had his death certificate which showed that he died while he was in a coma. He had produced the death certificate as Exhibit P1.
108. He admitted that the death certificate stated that the cause of death was Hypoglycemia Coma. He also admitted that the death certificate did not indicate when his deceased father went into a coma and neither did he have any medical evidence that showed when he went into a coma.
109. He further admitted that he had no treatment notes and neither did he have the date of admission to hospital.
110. He stated that he was not aware if it was possible to get medical records.
111. He stated that the information on the Certificate of Official Search produced as Exhibit P11(a) was not true as it was not possible that the deceased was registered as the owner of the suit parcel on 22nd December, 1988 and he then transferred it on 23rd December, 1988 which was the next day.
112. He reiterated that at that time, the deceased was in hospital and admitted that they have never lived in Kikuyu.
113. He confirmed that they lived in Muguga when their deceased father was working in Nakuru but denied that his deceased father was a clerk in a law firm.
114. He stated that his deceased father was the Chairman of Muguga Farmers' Co-operative Society as well as the Farm Manager.



115. He confirmed that his deceased father was a man of modest education and he was a director of Land Buying Companies in Nakuru. He then stated that he did not know if his deceased father was a director at Kahururia.
116. He admitted that his deceased father also lived in Muguga farm and stated that he did not know if he had another parcel of land in Nakuru.
117. He also admitted that his deceased father lived in a permanent house that was initially owned by a white settler who was a farmer. The house was next to Stem Hotel and he assumed that the house was still there.
118. He confirmed that between the years 1978 and 1979, he was nineteen years old. He was in high school and living in the said house in Nakuru. He also confirmed that his elder brother was also schooling in Nakuru.
119. He admitted that the white settler's house was not on his late father's parcel of land and it instead shared a boundary with the suit parcel.
120. He denied that the 1st Defendant constructed a house on land parcel No. Nakuru/Municipality Block 22/4 in the year 1979. He stated that instead, it was his deceased father who constructed a semi-permanent house made of timber.
121. He confirmed that he did not see the 1st Defendant on the suit parcel of land in the year 1979 and neither did he see him move into the land between the years 1979 and 1980.
122. He also confirmed that the 1st Defendant begun squatting on the suit parcel between the years 1981 and 1982 but never put up a house. He then stated that the 1st Defendant was squatting on parcel No. 4 in Muguga Farm.
123. PW1 was referred to two photographs appearing at page 13 of the 1st Defendant's trial bundle and he confirmed that they were photographs of houses on a certain parcel of land. He confirmed that he had been passing by the suit parcel but he had not seen the said houses.
124. He stated that if the 1st Defendant has been staying on the suit parcel, then he was doing so as a squatter.
125. PW1 was referred to the photographs appearing at page 14 of the 1st Defendant's trial bundle and he confirmed that they were photos of a school.
126. He admitted that the said school was on land parcel No. Nakuru/Municipality Block 22/4 and confirmed that he did not know the owner.
127. He also admitted that his deceased father did not file any suit against the 1st Defendant.
128. He confirmed that members of Muguga Farmers did not occupy their parcels of land before registration.
129. He also confirmed that on 24th June, 1991, his mother and brother were issued with a grant of Letters of Administration and further confirmed that they remained as administrators until 20th May, 2014 when he became the new administrator.
130. He further confirmed that his brother and mother did not institute any proceedings between the years 1991 and 2014.
131. He admitted that his brother and mother knew that the 1st Defendant was squatting on the land since the year 1991 which was for a period of about thirteen years but they never filed a suit.



132. He confirmed that his brother left for the United Kingdom in the year 1999 but admitted that he had nothing to show that he indeed left the Country.
133. He also confirmed that his mother left for the United States of America in June, 2003 and admitted that he had no evidence to confirm that.
134. He further confirmed that at page 43 of the 2nd Defendant's bundle of documents, there was a list of assets filed in Succession Cause No. 380 of 1991 which did not include the suit parcel. He admitted that the suit parcel was included on the Certificate of Confirmation of Grant which he had produced as Exhibit P3(b).
135. PW1 was referred to page 9 of the 1st and 4th Defendants trial bundle and he confirmed that the said document was an agreement between John Gatu and John Kairu dated 24th February, 1979.
136. He confirmed that his deceased father was the vendor and the agreement stated that he was a shareholder at Muguga.
137. He also confirmed that the agreement stated that his deceased father was allocated plot number 21 and he was selling seven acres of the said plot.
138. He further confirmed that the said agreement was signed by the parties and witnessed by N.K Githua Advocate.
139. He admitted that he was not aware if plot No. 21 became block 22/4.
140. PW1 was referred to the agreement appearing at page 11 of the 1st and 4th Defendant's bundle of documents. He confirmed that the agreement was between John Gichuhu and Rahab Wamuhu.
141. He also confirmed that the said agreement was for the sale of two acres of land parcel No. LR 4730/72. It stated that LR No. 4732/72 measured 17 acres.
142. He further confirmed that there was some marking on the signature part of the document.
143. He confirmed that the green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit P6 (b)) showed that John Kairu the 1st Defendant was registered as the owner on 23rd December, 1988.
144. He also confirmed that the 1st Defendant remained the registered owner until the year 1994 when he subdivided it.
145. He further confirmed that the 1st Defendant was registered as the owner of the said parcel of land for more than five years.
146. He admitted that the green card for land parcel No. Nakuru/Municipality Block 22/55 (Exhibit P6 (c)) showed that the said parcel of land was registered in his father's name on 25th December, 1988 and later transferred to Rahab on 23rd December, 1988.
147. He also admitted that there was an anomaly on the said green card as government offices do not work on Christmas day.
148. He further admitted that Entry No. 4 showed that Rahab transferred the said parcel of land to the 4th Defendant and that the land had been in her name for more than twenty years.
149. He confirmed that entry No. 6 showed that the green card was closed upon subdivision and that the said parcel was subdivided into sixteen parcels of land.



150. He admitted that he did not know that the resultant subdivisions i.e. land parcel No's Nakuru/Municipality Block 22/3940-3956 were sold.
151. He also admitted that he did not conduct a search to find out the registered owners of the said parcels of land.
152. He further admitted that he was not aware that the 4th Defendant no longer owned the said parcel of land.
153. He confirmed that entry No. 6 on the green card showed that on 2nd March, 2011 the 4th Defendant was registered as the owner of the said parcel.
154. PW1 was referred to Exhibit P8 (mutation form). He confirmed that it was for land parcel No. Nakuru/Municipality Block 22/4. He also confirmed that the name of his deceased father appeared on the mutation form. He further confirmed that there was a sketch at page 2 of the Mutation Form and it shows that the new numbers were 53, 54 and 55. Parcel No. 53 was to measure 2.20 Ha, parcel No. 54 was to measure 1.66 Ha while parcel No. 55 was to measure 2.36 Ha.
155. He stated that he was disputing the proprietor's signature at page 2 of the Mutation Form.
156. He confirmed that at page 3 of the Mutation Form, there was a date which was 28th November, 1988. He also confirmed that the said Mutation Form had a signature and stamp of a surveyor.
157. He admitted that there was a road on the far right of land parcel No. Nakuru/Municipality Block 22/43 which led to land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
158. He confirmed that the white settler's house was on land parcel No. Nakuru/Municipality Block 22/6 which shared a boundary with land parcel No. Nakuru/Municipality Block 22/55.
159. He also confirmed that he never saw his father visit the 1st Defendant on land parcel No. Nakuru/Municipality Block 22/55.
160. He further confirmed that he was not aware that the 1st Defendant frequently visited his deceased father.
161. He confirmed that he was not aware that his brother one Njogu used to buy sheep and goats from Narok and leave them with the 1st Defendant on land parcel No. Nakuru/Municipality Block 22/55.
162. He also confirmed that he was not aware that his deceased father knew that the 1st Defendant was in occupation of land parcel No. Nakuru/Municipality Block 22/55 and that was why he never sued him.
163. He further confirmed that it was not true that his mother and brother left land parcel No. Nakuru/Municipality Block 22/55 out of the succession cause. He denied that it was the reason why his mother and brother did not sue the 1st Defendant for the thirteen years they were administrators of his deceased father's estate.
164. He denied that he was trying his luck together with his sister to try and get the 1st Defendant's parcel of land.
165. He admitted that page 4 of the Mutation Form had an endorsement by one Mr. Olweny. It was dated 29th November, 1988. Mr. Olweny stated that the survey work was done by the owners and that he was only setting out the boundaries.



166. He denied being aware that his deceased father subdivided the suit parcel before the year 1979 after selling the land to the 1st Defendant and that he (John Gatu (deceased) had shown him (1st Defendant) the seven acres he purchased.
167. He admitted that land parcel No. Nakuru/Municipality Block 22/55 was bigger than land parcel No. Nakuru/Municipality Block 22/54. He then denied knowing where the 1st Defendant's parcel of land was located.
168. He also denied being aware of an exchange and/or misdescription (sic) in the registration of land parcel No's Nakuru/Municipality Block 22/54 and 55.
169. He further denied that he was aware that the 1st Defendant was registered as the owner of land parcel No. Nakuru/Municipality Block 22/54 but he was in occupation of land parcel No. Nakuru/Municipality Block 22/55.
170. He denied being aware that Rahab occupied land parcel No. Nakuru/Municipality Block 22/54 but was given a title deed for land parcel No. Nakuru/Municipality Block 22/55.
171. Upon cross examination by Counsel for the 2nd Defendant he confirmed that it was only his deceased father who would answer certain questions.
172. He admitted that there were some things he could not answer relating to what his deceased father, mother and brother did.
173. He also admitted that he would not know if his father knew the 2nd Defendant and/or whether they transacted in any way.
174. He further admitted that he would not know if his deceased father had any business dealings with one Mr. Gacheru who was the 3rd Defendant before the Plaintiff was amended.
175. He confirmed that if his deceased father had sold land, then he would have told them.
176. He also confirmed that when the succession proceedings were filed he was present and land parcel No. Nakuru/Municipality Block 22/4 was included.
177. He admitted that there was an error in the initial succession pleadings that appeared at page 43 of the 2nd Defendant's bundle of documents as they did not include land parcel No. Nakuru/Municipality Block 22/4.
178. He confirmed that he was not aware why his mother did not include land parcel No. Nakuru/Municipality Block 22/4 in the succession proceedings.
179. He also confirmed that an application was filed in Nairobi High Court Succession Cause No. 390 of 1991 to rectify the grant.
180. He admitted that the said application did not disclose that land parcel No. Nakuru/Municipality Block 22/4 was left out and neither did it disclose the other parcels of land.
181. He also admitted that on 28th August, 2012 he discovered that there was fraud with respect to the suit parcel and he filed the present suit on 2nd February, 2015.
182. He reiterated that the previous administrators did not file any suit against the Defendants and admitted that his deceased father could read and write.



183. He also confirmed that he had seen documents that had been filed by the 2nd Defendant and one of the documents was a letter dated 25th April, 1986. He admitted that in the said letter, his deceased father was listed as a vendor.
184. He also admitted that the letter dated 18th July, 1986 that had been filed by the 2nd Defendant, was written by Gatu Gichuhi and he stated that he had sold two acres of plot No. 21.
185. He further admitted that the letter dated 14th May, 1986 was written by his deceased father and it confirmed that LR No. 4730/72 had been sold to two people. The letter requested that at the time of registration, the said parcel be registered in their names.
186. He admitted that as per the Mutation Form produced as Exhibit P8, land parcel No. Nakuru/Municipality Block 22/4 measured seventeen acres.
187. PW1 confirmed that he was neither a director nor a shareholder of Muguga Farmers. He also confirmed that land parcel No. Nakuru/Municipality Block 22/4 was registered in his deceased father's name in the year 1987 which was the year the parcel of land was created.
188. He admitted that he was involved in the subdivision of LR No. 4730/72.
189. He also admitted that he was not aware of how Muguga Farmers would allocate land and confirmed that he did not know what plot No. 21 referred to.
190. PW1 was referred to various receipts that had been filed by the 2nd Defendant and he confirmed that the said receipts showed that the 2nd Defendant received some money.
191. He confirmed that one of the receipts showed that the 2nd Defendant payed a sum of Kshs. 700 and admitted that he did not know what the payment was for. He reiterated that if the 2nd Defendant had purchased land from his deceased father, then his deceased father would have told them.
192. He confirmed that the signatures on the receipts did not belong to his deceased father.
193. He admitted that he was not a handwriting expert and stated that he had a report.
194. He confirmed that the subdivision of land parcel No. Nakuru/Municipality Block 22/4 was done by a Surveyor one Olweny.
195. He also confirmed that his deceased father had several lawyers.
196. He further confirmed that the receipt at page 15 of the 2nd Defendant's bundle of documents was issued by Kamere & Co. Advocates and it was for the payment of survey fees. He admitted that he did not know what was being surveyed.
197. He also admitted the letter at page 31 of the 2nd Defendant's trial bundle was dated 14th May, 1986. The letter referred to Plot No. 21 Muguga Farmers Co-operative Society (I.R 4730/72). He acknowledged that he was not aware if the said parcel of land was subdivided.
198. He confirmed that the letter dated 18th July, 1986 referred to LR No. 4730/72.
199. He also confirmed that the title deed produced as Exhibit P2 had a serial number at the back of page 4. The number was GPK L1/24/90 – 200,000.
200. He further confirmed that the title deed in the name of Esther Muciki Gatu (Exhibit P4) was issued by the Land Registry.



201. He admitted that their documents were accepted at the Lands Registry before they were issued with Exhibit P4.
202. He also admitted that he did not have the receipt for any payments and neither did he have the booking receipt.
203. He confirmed that he had discussions with the then Minister for Lands one James Orengo and admitted that he did not produce the letter he wrote in evidence.
204. When he was referred to the Certificate of Official Search produced as Exhibit P11(a), he confirmed that the search showed that the register for land parcel No. Nakuru/Municipality Block 22/4 was closed on 23rd December, 1988.
205. He reiterated that at that time, his deceased father was in a coma.
206. He admitted that he was an engineer and not a medical doctor and reiterated that he did not have any documents to show how long his deceased father had been in a coma.
207. He stated that he could only respond to the issues that were documented and was not in a position to respond to the things that were not documented.
208. Upon cross examination by Counsel for the 5th, 6th, 7th and 8th Defendants, he reiterated that a letter was written by Mr. Orengo the then Minister for Lands.
209. He confirmed that it was after approaching the Lands Minister in the year 2013 that he was able to access the documents he produced in Court.
210. He also confirmed that the transfer documents that they took to the Lands Registry in the year 1992 were thrown back at them.
211. He confirmed that his mother and brother wrote numerous letters and admitted that he did not produce them.
212. He reiterated that his deceased father was in a coma for two months but he did not have any medical records to show that he was in the said coma.
213. He confirmed that he only had the death Certificate which did not show the period within which he was in a coma.
214. He also confirmed that it was not possible for his deceased father to sign the documents before he went into a coma.
215. He reiterated that had his deceased father transferred the suit parcel, then he would have told them.
216. He reiterated that the suit parcel was seventeen acres in size and admitted that there were many structures on the land.
217. He also reiterated that land parcel No. Nakuru/Municipality Block 22/4 was not in the schedule filed in the succession Cause and admitted that it was included in the rectified schedule.
218. He confirmed that the schedule that he had was certified.
219. He also confirmed that it had both his mother and brother's signature.
220. He further confirmed that there was an application for rectification of grant that was filed.



221. He stated that he did not know whether his father knew one Thuku Munene who was the father of the 5th, 6th, 7th and 8th Defendants.
222. He confirmed that in the Succession Cause filed in Nairobi, they attached a copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4.
223. He denied being aware that his deceased father owned LR No. 4730/72.
224. He stated that it was not possible for LR No. 4730/72 to become the suit parcel as it belonged to Muguga Co-operative and not his father.
225. He was referred to the letter dated 18th July, 1986 that was filed by the 2nd Defendant and he confirmed that it referred to LR No. 4730/72.
226. He stated that his mother was elderly and sickly and that is why he left him and his sister to follow up on the issue.
227. Upon re-examination he stated that the original title had a seal and it was signed on the first page.
228. He also stated that the second page showed when the register was opened, had the name of the registered owner and it was signed by the Land Registrar.
229. He further stated that the third page did not have any writing and neither was it signed.
230. When he was asked about the disparities between the title and the green card, he stated that he obtained the title deed from the Lands office and he was not the one who filled in the details.
231. He stated that the title deed for land parcel No. Nakuru/Municipality Block 22/4 was issued by the Nakuru District Lands Registry.
232. He also stated that if there were any errors, then they were made by the Land Registrar.
233. He was referred to the Certificate of official Search produced as Exhibit P 11(a) and he stated that the details were filed in by the Land Registrar.
234. He also stated that he did not fill the entries on the said document and further stated that entry No. 2 was dated 22nd December, 1988 while Entry No. 3 showed that the register was closed for subdivision on 23rd December, 1988.
235. When referred to the green card for land parcel No. Nakuru/Municipality Block 22/53 (Exhibit P6(a), PW1 stated that it showed that the register was opened on 23rd December, 1988 and was therefore in tandem with the Certificate of Search produced as Exhibit P 11(a).
236. When referred to the Certificate of Confirmation of Grant (Exhibit P3(b), PW1 confirmed that it was issued on 23rd July, 1992 and land parcel No. Nakuru/Municipality Block 22/4 appears on the schedule.
237. He was then referred to the rectified grant that was produced as Exhibit P5. He stated that land parcel No. Nakuru/Municipality Block 22/4 appears on the schedule.
238. He was referred to the copy of the green card for land parcel No. Nakuru/Municipality Block 22/55 (Exhibit P6(c) and he stated that he got it from the Lands Registry. He also stated that he did not make the errors that were on the said document.
239. He further stated that Entry No. 4 shows that the said parcel of land was transferred to the 4th Defendant upon payment of kshs. 600,000/=.



240. He stated that the green card shows that in the year 2011, the said parcel of land was subdivided into several portions. He also added that the whole process was illegal and that there were no entries in favour of the third parties.
241. He further stated that the mutation form produced as Exhibit P8 shows that it was registered on 25th December, 1988 when his deceased father was in a Coma and it had comments by a Surveyor one Mr. Olweny.
242. He stated that there was no connection between LR No. 4730/72 and land parcel No. Nakuru/Municipality Block 22/4.
243. He also stated that he was not aware of any connection between plot No. 21 and land parcel No. Nakuru/Municipality Block 22/4.
244. He further stated that had his father sold the suit property, then the original title would not be in their possession.
245. He reiterated that they became aware of the problem in the year 2012 and that is when they took action.
246. When he was referred to the receipt dated 15th July, that was filed by the 2nd Defendant, he confirmed that the receipt was issued to the 2nd Defendant and not his father.
247. He also stated that the other receipt also dated 15th July showed that the 2nd Defendant had received money and not his father.
248. He further stated that the 1st Defendant was a squatter on the suit parcel and sought that the prayers in the Complaint be granted.
249. The Plaintiff's case was then closed.

1st Defendant's Evidence.

250. John Kairu Kibubu testified as DW1. He stated that he filed a witness statement dated 17th February, 2015 and prayed that the Court adopts the said statement as part of his evidence in Chief, which prayer the Court acceded to.
251. He testified that he knew Gatu Gichuhi (deceased) as he was his friend and added that he purchased a parcel of land from him on 24th February, 1979 and that the said parcel of land measures seven acres.
252. He also testified that the parcel of land he purchased was located at Muguga and it was plot No. 21.
253. He further testified that he went with Gatu Gichuhi (deceased) and he showed him the land. The land was fenced and it had beacons.
254. It was his evidence that they entered into an agreement that was drafted by Githua Advocate which they both signed. He produced a copy of the said agreement as Exhibit D1.
255. It was also his evidence that they had entered into another agreement before they went to Githua Advocate. The agreement was between him, John Gatu and Daniel Kairu Kimani who was also a friend of Mr. Gatu.
256. It was further his evidence that the agreement was written in Kikuyu and it was later translated into English.



257. He testified that the agreement was for the payment of Kshs. 40,000/=. He paid Kshs. 30,000/= and had a balance of Kshs. 10,000/= which he also paid. He produced copies of the agreement written in Kikuyu and the translated agreement as Exhibits D2(a) and (b).
258. He also testified that Exhibit D1 and Exhibits D2(a) & (b) had different purchase prices. This was because of a directive that had been issued by the former president that land in the Rift Valley should not be sold for more than Kshs. 1,000/=.
259. He further testified that the said agreements were entered into in the year 1979 on a willing buyer and willing seller basis.
260. It was his evidence that he was not aware of the reason why the said directive was issued.
261. It was also his evidence that at that time he was a business man operating matatus.
262. It was further his evidence that upon purchase, he occupied the land and built a permanent house.
263. He testified that he had photographs that showed the developments on the land. He produced a photograph of the kitchen built on the land as Exhibit D3(a) and a photograph of his house as Exhibit D3(b).
264. He also testified that Gatu Gichuhi (deceased) accompanied him to the Lands Office on 23rd December, 1988 to pick a title deed.
265. It was his evidence that Gatu Gichuhi (deceased) had picked him from his home in Muguga in his car.
266. It was also his evidence that once they got to the Lands Registry, Gatu Gichuhi (deceased) made some payments for land parcel No. Nakuru/Municipality Block 22/55 and they were issued with a receipt.
267. It was further his evidence that they only picked one title deed, signed and went back home.
268. He testified that the title deed he picked was for land parcel No. Nakuru/Municipality Block 22/54 and not Nakuru Municipality Block 22/55.
269. He produced a copy of the receipt issued to Gatu Gichuhi (deceased) as Exhibit D4.
270. He also testified that he had a copy of the title deed for land parcel No. Nakuru/Municipality Block 22/54 which measured 1.66 Ha. He produced it as Exhibit D5.
271. He further testified that it was not true that Gatu Gichuhi (deceased) was at the hospital on the said date as they had gone to the Lands Office together.
272. It was his evidence that Gatu Gichuhi later passed on 1st January, 1989.
273. It was also his evidence that he had been living with his family on the suit parcel of land since the year 1979 and that he did not have any quarrels with the deceased.
274. He testified that he knew two sons of Gatu Gichuhi (deceased) who were named Peter and Geoffrey.
275. He was referred to the mutation form produced as Exhibit P8 and he testified that land parcel No. Nakuru/Municipality Block 22/4 was subdivided into land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
276. It was his evidence that on the ground he occupied land parcel No. Nakuru/Municipality Block 22/55 which measured seven acres.



277. It was also his evidence that land parcel No. Nakuru/Municipality Block 22/54 was purchased by his aunt one Rahab Wamuhu.
278. He reiterated that he purchased land parcel No. Nakuru/Municipality Block 22/55 but he was issued with a title deed for land parcel No. Nakuru/Municipality Block 22/54 while on the ground he was in occupation of land parcel No. Nakuru/Municipality Block 22/55.
279. He testified that according to the records, he subdivided land parcel No. Nakuru Municipality Block 22/54 into 41 plots which measure 50 by 100 and clarified that on the ground he subdivided land parcel No. Nakuru/Municipality Block 22/55.
280. He further testified that he sold ten of the forty-one plots to different people.
281. It was his evidence that he consolidated the remaining 31 plots and got a title deed which was Nakuru/Municipality Block 22/4137 (Muguga) and that it measures 1.983 Ha. He produced a copy of the said title deed as Exhibit D6.
282. It was also his evidence that at the time he was being sued in the year 2015, he had taken a loan from Equity Bank of Kshs. 10,000,000/=. He produced a copy of the offer letter from Equity Bank as Exhibit D7.
283. It was further his evidence that he signed the charge instrument while the title was in his name, the borrower was Lerwa Center the 4th Defendant.
284. He testified that a charge was registered on land parcel No. Nakuru/Municipality Block 22/4137 (Muguga) as per the Certificate of Official Search which he produced as Exhibit D9. he added that the loan was repaid.
285. He further testified that his aunt one Rahab Wamuhu bought four acres of land from John Gatu (deceased). She initially bought two acres and subsequently added two more acres.
286. It was his evidence that his aunt lived in Kericho and had approached him to request John Gatu (deceased) to sell a portion of the suit parcel to her.
287. It was also his evidence that they entered into an agreement of sale of land dated 17th April, 1982 and he produced a copy of the said agreement as Exhibit D10.
288. When referred to the mutation form produced as Exhibit P8, DW1 testified that his aunt was issued with a title deed for land parcel No. Nakuru/Municipality Block 22/55 but on the ground, she was in occupation of land parcel No. Nakuru/Municipality Block 22/54 which measured 1.66 Ha.
289. He produced a copy of the title deed for land parcel No. Nakuru/Municipality Block 22/55 which measured 2.86 Ha registered in the name of Rahab Wamuhu Kamau as Exhibit D11.
290. It was his evidence that on the ground Rahab Wamuhu Kamau occupied 4 acres of land. It was also his further evidence that Rahab Wamuhu Kamau was deceased and added that after she died, her dependents took over, subdivided the said parcel of land into plots and sold them.
291. It was further his evidence that the green card for land parcel No. Nakuru/Municipality Block 22/55 (Exhibit P6(c) showed at entry No. 4 that on 2nd March, 2011 the said parcel of land was registered in the name of the 4th Defendant.
292. He testified that the 4th Defendant subdivided it into sixteen plots and sold them to different people and no plot remained in the name of the 4th Defendant.



293. He also testified that the 4th Defendant was a company that was incorporated on 15th October, 2010. He produced a copy of the Certificate of Incorporation as Exhibit D12.
294. He further testified that he had the CR12 of the 4th Defendant which he got from the Registrar General and it shows that the shareholders and directors of the 4th Defendant were Margaret Wanja Wambugu and John Kairu Kibubu. Each of them had 35 shares. He produced a copy of the CR12 as Exhibit D13.
295. It was his evidence that he was the caretaker of Rahab's portion and he was later given the said property by Rahab's family as a gift.
296. The Court sought clarification from DW1 on how land parcel No. Nakuru/Municipality Block 22/55 moved from Rahab to the 4th Defendant and DW1 testified that he was the caretaker of the said parcel (sic).
297. The Court observed that DW1 was having trouble and/or was not clear in responding to the said question and the hearing was briefly adjourned.
298. After the adjournment, DW1 testified that he was not involved in the transfer of land parcel No. Nakuru/Municipality Block 22/55 from Rahab to the 4th Defendant.
299. He also testified that it was the other director one Margaret who facilitated the transfer.
300. He further testified that the description on the agreement was Plot No. 21.
301. It was his evidence that the property being sold in the agreement of sale of land dated 17th April, 1982 (Exhibit D10) was LR 4730/72.
302. It was also his evidence that LR 4730/72 referred to the entire parcel of land that was owned by Muguga Co-operative and that his aunt Rahab purchased two acres of the said parcel of land.
303. It was further his evidence that plot No. 21 was the entire parcel of land that was owned by Mr. Gatu and that he had purchased a portion of it.
304. He testified that the title deed for land parcel No. Nakuru/Municipality Block 22/4 was issued at the Lands Registry and they were the best people to explain how they did it.
305. He also testified that after Mr. Gatu died, Grant of Letters of Administration (Exhibit P3(a)) were issued and added that he had seen the said Grant and it was issued in the year 1991 when he was already living on the said parcel of land.
306. He also testified that the Plaintiffs were later given the Grant of Letters of Administration of the Estate of Mr. Gatu. He further testified that he never met Gatu's wife and that he only knew his son who used to buy livestock from Maasai Land, leave them with him and later sell them.
307. It was his evidence that he had no dispute with Mr. Gatu's wife and son. It was also his evidence that he never had any discussions with them about the land when they were administrators.
308. It was further his evidence that there were other buildings on the suit parcel. They included the 4th Defendant which was a school and it was on land parcel No. Nakuru/Municipality Block 22/4137.
309. He testified that the 4th Defendant had both an Early Childhood Development section and a Primary School. The Primary School had eight classrooms and there were boarding facilities. Two of the dormitories were for boys while the other two were for girls.



310. He also testified that the school had a dining hall and a kitchen. He produced photographs of various facilities of the 4th Defendant as Exhibits 14 (a), (b) and (c).
311. He was referred to the Letter dated 14th May, 1986 that was filed by the 2nd Defendant. He testified that the said letter was addressed to the Chairman Land Control Board and it was written by John Gatu (deceased). He also testified that the said letter referred to Plot No. 21 Muguga Farmers' Co-operative Society. He further testified that the said letter mentioned another parcel number which was LR No. 4730/72.
312. It was his evidence that the letter stated that John Gatu (deceased) had sold land to him (DW1) and Rahab. The letter requested that during registration, they be issued with a title deed in their name.
313. It was also his evidence that the agreement he produced as Exhibit D1 referred to Plot No. 21 while the agreement Rahab entered into (Exhibit D10) referred to LR No. 4730/72.
314. He reiterated that he had lived on the suit parcel since the year 1979 and sought that the Court dismisses the suit with costs.
315. He testified that he did not acquire the suit parcel fraudulently as he had purchased the land from the owner one John Gatu (deceased).
316. He also testified that he did not forge any documents and neither did he forge John Gatu's signature.
317. He further testified that he did not transfer the land without the consent of the Land Control Board.
318. In his witness statement, John Kairu Kibubu states that in the year 1988, John Gatu Gichuhi (deceased) informed him that the title deeds for Muguga Farm that had been purchased by Muguga Farmers Co-operative Society Limited had been issued to the shareholders.
319. He also states that Gatu Gichuhi (deceased) also informed him that he would like to transfer to him the portion of land he had purchased.
320. He further states that the portion of land he had purchased was transferred to his name upon obtaining the consent of the Land Control Board.
321. He states that the land he purchased was registered as Nakuru/Municipality Block 22/54 and he was issued with a title deed on 23rd December, 1988.
322. Upon cross examination by Counsel for the Plaintiff, he confirmed that in the year 1979 he entered into an agreement with John Gatu (deceased).
323. He also confirmed that he produced a copy of the said agreement as Exhibit D1 and added that it shows that both him and John Gatu (deceased) signed it.
324. He confirmed that Rahab also entered into a land sale agreement. He admitted that he was the one who signed the said sale agreement on behalf of Rahab.
325. He also admitted that Rahab was not present and he was the one who went to Kamere Advocate to have the agreement drafted.
326. He further admitted that in the year 1979, he purchased Plot No. 21 which was the same Plot that Rahab bought.
327. He confirmed that he never saw the title to the Muguga Farm and neither did he see the share certificate for Plot No. 21.



328. He also confirmed that they went to the Land Control Board where they got the consent.
329. He admitted that he did not have the said consent in Court and he stated that he would have to look for it.
330. He also admitted that he went to the Land Control Board on behalf of Rahab soon after the agreement was made and signed the transfer forms on her behalf.
331. He further admitted that he had produced two sale agreements which were Exhibit D2 (a) & (b) and Exhibit D1. One of the sale agreements showed that the purchase price was Kshs. 40,000/= while the other one showed that the purchase price was kshs. 1,000/=.
332. He admitted that in the year 1979, he did not pay stamp duty and with regard to the transfer forms, he confirmed that he did not have them in Court.
333. He stated that the said transfer forms were not lost and that the only thing he needed to do was look for them.
334. He admitted that it was not possible to know if he signed the transfer forms.
335. When referred to the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D5), he confirmed that it did not mention Plot No. 21. He also confirmed that the title deed showed that the acreage was 1.66 Ha which was about 4 acres.
336. He further confirmed that as per the agreement produced as Exhibit D1, he purchased seven acres in the year 1979 and the title deed for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D5) showed that it measured 4 acres.
337. He admitted that the acreage shown on the title deed was less by three acres.
338. He also admitted that for one to subdivide a parcel of land, they must apply for consent from the Land Control Board and after getting the consent that is when the surveyor goes to the parcel of land.
339. He confirmed that the surveyor prepares a mutation form and after approval each plot gets a parcel number. The mother title is then surrendered to the Land Registry and individual plots bearing the name of the persons subdividing the land are issued.
340. He also confirmed that the said process cannot take one day as the seller had to also seek consent from the Land Control Board.
341. He was referred to the green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit P6(a)) and he stated that he could not comment on it as he did not know what happens at the Lands Office.
342. He reiterated that they went to the Land Control Board in the year 1979 after he purchased the said parcel of land and confirmed that he was issued with the consent in the year 1987.
343. He was referred to the Letter of Consent produced as Exhibit P7 and he confirmed that it was dated 23rd May, 1988. He then admitted that he could not remember the exact date.
344. He was referred to the Mutation Form produced as Exhibit P8 and he confirmed that it was registered on 23rd December, 1988 which was the same date he was given the title deed as per the green card. He stated that on that day, John Gatui (deceased) was alive and healthy.
345. He also stated that the parcel of land that he subdivided belonged to him and that he did not subdivide the parcel of land belonging to Rahab Wamuhu.



346. He reiterated that there was a mix up because his parcel of land measured seven acres but the title stated that the said parcel measured 4 acres.
347. He confirmed that he subdivided the said parcel of land in the year 1994 and only became aware of the mix up later.
348. He admitted that he was not informed that the said parcel of land did not belong to him.
349. He also admitted that he subdivided the entire parcel of land into 41 plots that measured 50 by 100.
350. He confirmed that one acre gave rise to 8 plots that measured 50 by 100 and then later stated that he did not subdivide the entire seven acres of land.
351. He admitted that he had nothing to show that John Gatu (deceased) received money from Rahab.
352. He was referred to Exhibit D2(a) and 2(b) which were the two sale agreements he produced and he admitted that Rahab purchased a portion of LR No. 4730/72. He also admitted that he did not have anything to show how the said parcel of land became land parcel No. Nakuru/Municipality Block 22/54.
353. He confirmed that Rahab's parcel of land was land parcel No. Nakuru/Municipality Block 22/55 which as per the green card (Exhibit P6(c) measured 4 acres and it was in tandem with her agreement for sale of land.
354. He admitted that from the sale agreement, he purchased seven acres but his title deed stated that his land measured 4 acres while the green card also stated that the said parcel of land measured 4 acres.
355. He confirmed that on some documents the said acreage was corrected while on other documents, it was not corrected.
356. He stated that Rahab's parcel of land was not given to the 4th Defendant. He admitted that he did not know how the registration of the said parcel of land moved to the 4th Defendant from Rahab's name.
357. He then denied having any knowledge about the payment of kshs. 600,000/=.
358. He confirmed that one Margaret used to be his business partner but not anymore.
359. He also confirmed it was John Gatu (deceased) who transferred the land to his (1st Defendant) name.
360. He confirmed that it was the 4th Defendant who subdivided the said parcel of land and sold it through brokers upon receiving authority from Rahab's relatives.
361. He admitted that even though he testified that the said plots were sold, he had nothing to confirm the sale.
362. He confirmed that the parcel of land that remained was land parcel No. Nakuru/Municipality Block 22/4137.
363. Upon cross examination by Counsel for the 2nd Defendant he confirmed that when he dealt with Mr. Gatu (deceased) in December, 1988 he was in good health.
364. He reiterated that when he purchased the said parcel of land he personally dealt with Mr. Gatu (deceased) and he had been in occupation since the year 1979.
365. He confirmed that he had neighbors on the suit parcel of land who were Dominic Gitau, Reuben Thuku and Gacheru Muiruri.



366. He also confirmed that Gacheru Muiruri sold his parcel of land to Reuben Gitau.
367. He confirmed that Reuben Thuku was the father of the 5th, 6th, 7th and 8th Defendants.
368. He admitted that when he purchased the said land, it had no title and that it was Mr. Gatui (deceased) who was to process the title.
369. He was referred to the letter dated 14th May, 1986 which was at page 31 of the 2nd Defendant's bundle of documents. He confirmed that the letter was written by John Gatui (deceased) and was addressed to the Land Control Board Chairman. The letter stated that the title deed was to be processed in their names.
370. He stated that the title deed came out in his name.
371. When he was referred to the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D5) he admitted that page 3 of the said title was signed by the Registrar.
372. He also admitted that Rahab's title deed for land parcel No. Nakuru/Municipality Block 22/55 (Exhibit D11) was also signed by the Land Registrar on the encumbrance section.
373. He confirmed that John Gatui (deceased) had a vehicle which was a 504 Station Wagon.
374. He also confirmed that Dominic also had a car and they were all living at Muguga in Lanet.
375. Upon cross examination by Counsel for the 5th, 6th, 7th and 8th Defendants, he confirmed that he knew Mr. Gatui (deceased) from the year 1979.
376. He also confirmed that no one from John Gatui's family had ever asked him to leave the said parcel of land.
377. He further confirmed that one Reuben Thuku Munene was his neighbor and his family was still on the land.
378. Upon re-examination, he stated that the transfer forms he had were for Plot No. 21.
379. He reiterated that the said parcel of land did not have a title deed in the year 1979.
380. He reiterated that the portion of land he purchased measured 7 acres but the title deed indicated that it was four acres.
381. He stated that on the ground he occupied seven acres which portion he subdivided into plots and sold some of them.
382. He also stated that Rahab purchased two acres of the said parcel of land for Kshs. 20,000/= which she paid as per the agreement and that the money was paid before John Gatui (deceased) signed.
383. He further stated that Clause 4 of the agreement states that there was purchase of an additional two acres.
384. Collins Liyai Alela testified as DW2. It was his evidence that he was an advocate of the High Court of Kenya and the Land Registrar Nakuru.
385. It was also his evidence that he had served as the Land Registrar Nakuru for a period of over three years.
386. It was further his evidence that he had in Court a certified copy of the green card for land parcel No. Nakuru/Municipality Block 22/4.
387. He testified that the green card was edition one and it was opened on 14th November, 1986 and added that the parcel of land measures 6.493 Ha.



388. It was his testimony testified that entry No. 1 is dated 14th November, 1986 when the land was registered to the Government of Kenya.
389. Entry No. 2 is dated 22nd December, 1988 when it was transferred to John Gatu Gichuhi of ID No. 362xxxx/xx P.O Box 220 Kikuyu.
390. Entry No. 3 is dated 22nd December, 1988 when the title deed was issued.
391. Entry No. 4 is dated 23rd December, 1988 when the title deed was closed for subdivision into land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
392. It was his evidence that the said parcel of land did not have any encumbrances.
393. It was also his evidence that he certified the said green card on 20th April, 2023. He produced a copy of the said green card as Exhibit D15.
394. It was further his evidence that he had a certified copy of the green card for land parcel No. Nakuru/Municipality Block 22/54. The green card was edition one and its shows that the said parcel of land measures 1.66 Ha. The said parcel was one of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/4.
395. Entry No. 1 is dated 23rd December, 1988 when it was registered in the name of John Gatu Gichuhi of ID No. 362xxxx/xx P.O Box 220 Nakuru.
396. Entry No. 2 is dated 28th December, 1988 when the land was transferred to John Kairu Kibubu ID No. 383xxxx/xx P.O Box 2693 Nakuru.
397. Entry No. 3 is dated 23rd December, 1988 when the title deed was issued.
398. Entry No. 4 is dated 10th June, 1994 when the green card was closed on subdivision into land parcel No's 372 to 413.
399. He testified that he certified the said green card and he produced it as Exhibit D16.
400. He also testified that he had a certified copy of the green card for land parcel No. Nakuru/Municipality Block 22/55. The green card was edition one and it was opened on 23rd December, 1988. The land measures 1.66 Ha and it was a resultant subdivision of land parcel No. Nakuru/Municipality Block 22/4.
401. He further testified that Entry No. 1 appears to be 25th December, 1988. It was his evidence that he used the word appears because there should be a connection between the date of closing a green card upon subdivision and the date of opening of the new title.
402. It was also his evidence that the date the mother title was closed was on 23rd December, 1988. The date that should have therefore appeared on the green card for land parcel No. Nakuru/Municipality Block 22/55 ought to have been 23rd December, 1988.
403. It was further his evidence that the said date was captured on the date the green card was opened and it ought to have also appeared at Entry No. 1. He explained that there seemed to be an error.
404. He also testified that Entry No. 2 is dated 23rd December, 1988 when the parcel of land was registered in the name of Rahab Wamuhu Kamau of ID No. 600xxxx/xx P.O Box 393 Kericho.
405. Entry No. 3 is dated 23rd December, 1988 when the title deed was issued.



406. Entry No. 4 is dated 2nd March, 2011 when the land was transferred to Lerwa Center for Excellence Limited the 4th Defendant.
407. He further testified that a figure of kshs. 600,000/= was indicated next to the name of the 4th Defendant which stood for the approximate valuation. It was his evidence that P.O Box No. 9773 was provided.
408. Entry No. 5 is dated 2nd March, 2011 when the title deed was issued.
409. Entry No. 6 is dated 26th May, 2011 when the green card was closed on subdivision and new title numbers issued. The numbers were 3940 to 3956.
410. He produced a certified copy of the green card as Exhibit D17.
411. He was referred to the copy of the green card for land parcel No. Nakuru/Municipality Block 22/55 which was produced as Exhibit P6 (c), he confirmed that Entry No. 2 appears to be 25th December, 1988. He testified that it was an error and it ought to have been 23rd December, 1988.
412. He also testified that he was requested to come to Court with the parcel files for land parcel No's Nakuru/Municipality Block 22/4, 54 and 55 but he was not able to get them.
413. He further testified that he tried to trace the parcel files but he was not able to find them.
414. Upon cross examination by Counsel for the 2nd Defendant, DW1 confirmed that upon subdivision of land, the original title is surrendered to the Lands office.
415. He also confirmed that if a person had the original title deed for land that had been subdivided, then the said title was absolute.
416. He stated that if a party produced the original title for Nakuru/Municipality Block 22/4, it would be of no legal effect.
417. He was referred to a copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 that was produced as Exhibit P2. He confirmed that the title deed was dated 29th January, 1987.
418. He was then referred to the copy of the green card for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit D15) and he confirmed that the date of 29th January, 1987 did not appear on it.
419. He was referred to the green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D16) and the green card for land parcel No. Nakuru/Municipality Block 22/55 (Exhibit D17) and he confirmed that the date 29th January, 1987 did not appear on the said documents.
420. He then reiterated that land parcel No. Nakuru/Municipality Block 22/4 no longer existed.
421. Upon cross examination by Counsel for the 5th, 6th, 7th and 8th Defendants, he confirmed that during the subdivision of land parcel No. Nakuru Municipality Block 22/4 there were no encumbrances registered on the land.
422. Upon cross examination by Counsel for the Plaintiffs, he confirmed that he had been an advocate for seven years.
423. He also confirmed that he knew the Registration of Titles Act and the Government *Land Act*.
424. He further confirmed that under the two registration regimes the government would give long leases of up to 999 years.



425. He admitted that Cap 300 was repealed and under the said act the government would give free hold title.
426. He also admitted that titles under the Registration of Titles Act start with the prefix LR.
427. He confirmed that a title registered as Nakuru/Municipality Block 22/4 was a freehold title and was registered under the Registered [Land Act](#).
428. He admitted that Nakuru Municipality had both free hold and leasehold titles.
429. He confirmed that there was a process for a title to be converted from the registration regime under the Registration of Titles Act to the regime under the Registered [Land Act](#).
430. He also confirmed that if someone said that LR No. 4730/72 was the same as land parcel No. Nakuru/Municipality Block 22/4 then they needed to show the conversion documents.
431. He admitted that without the conversion documents, it was hard to make a connection between the two parcels of land.
432. When he was referred to the green card for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit D15) he confirmed that the registration of the said parcel of land started on 14th November, 1986.
433. He admitted that the interest of Government was registered on the said date.
434. He also admitted that under Entry No. 2 was dated 22nd December, 1988 when John Gatw (deceased) was registered as the owner and issued with a title.
435. He further admitted that John Gatw (deceased) could not have sold the said parcel of land before 22nd December, 1988 and anyone saying that they bought the said parcel of land before the said date was not truthful.
436. He confirmed that the green card showed all the transactions.
437. He also confirmed that unless someone requested for the green card, they wouldn't know the information contained therein.
438. He further confirmed that getting a copy of the green card required the writing of a letter stating the reasons for requesting for the green card. The reasons could include someone intending to purchase land.
439. He confirmed that land parcel No. Nakuru/Municipality Block 22/4 was described as measuring 6.493 Ha.
440. He also confirmed that a consent of the Land Control Board was required before land was subdivided.
441. He further confirmed that the Land Control Board sat at the District Officer's office in Nakuru Town and added that the Land Control Board did not sit in Lanet or in Bahati.
442. He also confirmed that a party who intended to subdivide land had to first fill an application to the Land Control Board (sic) and book a date to appear before it. The consent of the Land Control Board was the first thing to be obtained.
443. He admitted that he did not know how long it took to get the Land Control Board Consent.
444. He also admitted that he was not aware if the Law allowed for the special sitting of the Land Control Board.



445. He confirmed that after obtaining the consent, the next step would be to visit the Surveyor's Office for the mutation form that would aid in subdivision and added that this process would take a day or a few hours depending on the size of the land.
446. He also confirmed that thereafter, the Registry Index Map was to be amended at the Regional Surveyor's Office. He admitted that he did not know how long the process of amendment of the Registry Index Map took.
447. He further confirmed that after amendment of the Registry Index Map, the bundle of documents would then be submitted to the Lands Office for Registration.
448. DW1 was referred to the green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D16) and asked to compare it with the green card for land parcel No. Nakuru Municipality Block 22/54 (Exhibit 6(b)).
449. He admitted that he was not the one who made the entries on the green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D16).
450. He also admitted that the entries were made by clerks. He further admitted that the source of the entries were the documents presented.
451. He further admitted that Entry No. 1 on the green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D16) was made upon presentation of the mutation form.
452. He confirmed that Entry No. 4 was also made upon presentation of the relevant mutation form.
453. He admitted that the mutation forms formed part of the parcel file and confirmed that he could not trace the parcel file for land parcel No. Nakuru/Municipality Block 22/54.
454. He also admitted that they could not trace the documents that were used to fill in the details.
455. He further admitted that the green card for land parcel No. Nakuru/Municipality Block 22/54 produced Exhibit D16 and the copy of the green card for land parcel No Nakuru/Municipality Block 22/54 produced as Exhibit P6(c) had the same entries.
456. He confirmed that the only difference between the said green cards were that Exhibit D16 was a Certified Photocopy of the Original while Exhibit P6(c) was a certified copy that was issued on 19th September, 2012.
457. He also confirmed that the original green card for land parcel No. Nakuru/Municipality Block 22/54 (Exhibit D16) was in the Registry Binder and it was handwritten as it appeared on the certified copy.
458. He admitted that the title deed for land parcel No. Nakuru/Municipality Block 22/4 was issued on 22nd December, 1988 and on 23rd December, 1988 the land was subdivided.
459. He also admitted that for the said subdivision to happen, the Survey must have been done, the consent for subdivision issued and the Registry Index Map amended.
460. He reiterated that he did not have the said documents because he could not trace the parcel file.
461. He was then referred to the copy of the Consent produced as Exhibit P7 and he admitted that the date when the meeting took place appeared to be 23rd May, 1988. He then stated that the said date was not very clear.
462. He confirmed that when they receive documents from the Surveyor's Office, they cross check.



463. He also confirmed that on the date of registration, they would not require the attendance of the proprietor unless the Registrar needed to have some questions answered.
464. He further confirmed that the title deed was normally issued to the proprietor or the person whose name was on the booking form who would in most instances be an Advocate.
465. He admitted that registration on the green card happened on different days but the current practice was that the date of registration must be the day of issuance of the title deed.
466. He stated that there was nothing unusual about the registration of title to John Gatu (deceased) reading 22nd December, 1988 and the title deed reading 29th January, 1987 as the date it was issued. Save that the date of issuance also had to appear on his register as it was their office that had to make the said entry.
467. When he was referred to the receipt produced as Exhibit P10 he confirmed that it was issued upon payment of Kshs. 250 for registration of the Certificate of Title.
468. He also confirmed that the receipt was issued to John Gatu Gichuhi (deceased) with respect to land parcel No. Nakuru/Municipality Block 22/53. The money was received on 29th June, 1989 and it was issued by the Lands Registry.
469. He was then referred to a copy of the green card for land parcel No. Nakuru/Municipality Block 22/55 produced as Exhibit P6(c) in order to compare it with the certified copy of the green card for land parcel No. Nakuru/Municipality Block 22/55 produced as Exhibit D17.
470. He confirmed that the date on Entry No. 1 was initially written as 30th December, 1988 but it was cancelled.
471. He also confirmed that after the cancellation, the date that was written was 25th December, 1988.
472. He further confirmed that he was not the one who made the cancellation. He admitted that it was an error which error he refused to own.
473. He also admitted that the date 25th December, 1988 was common to both green cards.
474. He further admitted that the second entry was consistent in both documents as the registration to John Gatu Gichuhi (deceased) was done on 25th December, 1988.
475. He admitted that both documents did not indicate that John Gatu Gichuhi (deceased) was issued with a title deed. He also admitted that the said parcel of land was transferred on 23rd December, 1988.
476. He confirmed that it was necessary for John Gatu Gichuhi (deceased) to get all the necessary consents before the land was transferred to Rahab.
477. He also confirmed that the said date on the green card suggested that someone was working on Christmas day.
478. Upon clarification by the Court, he acknowledged that there was an anomaly in the sequence of dates as between the date of registration and the date of transfer.
479. He admitted that the date of 25th December, 1988 was erroneous and that it should have been 23rd December, 1988 which was the date the green card for land parcel No. Nakuru/Municipality Block 22/4 was closed.
480. He confirmed that the said date translated to the opening dates of the green cards for land parcel No's Nakuru/Municipality Block 53, 54 and 55.



481. He then reiterated that the correct date was 23rd December, 1988.
482. He admitted that registration was sequential and upon registration John Gatu Gichuhi (deceased) remained to be the owner of the resultant subdivisions.
483. He confirmed that before transfer was done to the new owners, the Consent of the Land Control Board had to be obtained and valuation done.
484. He also confirmed that as per the entries on Exhibit D15 and D17, the consent to transfer and the consent to subdivide were issued on the same date which was not unusual.
485. When he was referred to the green card for land parcel No. Nakuru/Municipality Block 22/55 (Exhibit D17), he confirmed that a figure of Kshs. 600,000/= appeared next to entry No. 4.
486. He confirmed that said figure was as a result of valuation of the land and admitted that the said figure did not always appear.
487. He also confirmed that even transfer by way of a gift required payment of stamp duty which parties could seek to be exempted from.
488. He further confirmed that the fact of transfer on account of a gift was not usually recorded.
489. He confirmed that the original title deed was normally returned by the proprietor or his agent and it was cancelled by putting a line across it. The original title deed could also be punched before being returned to the parcel file. He confirmed that the said document was not completely defaced.
490. He admitted that it was possible that the original title could be returned and none of those things are done to it.
491. He confirmed that if the original title was not surrendered, then new titles could not be issued. He also confirmed that if the titles were issued without the surrender, then the Land Registrar would put a restriction that no further dealings could be done until the surrender of the old title was done to cover the said mistake.
492. He was referred to the green card for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit D15) and he confirmed that the Land Registrar did not put any such restriction.
493. Upon re-examination he stated that as per Exhibit D15, John Gatu Gichuhi was registered as the owner of land parcel No. Nakuru/Municipality Block 22/4 on 22nd December, 1988.
494. He also stated that as per the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 produced as Exhibit P2, he was registered as the owner on 28th January, 1987.
495. He further stated that the date of issue appeared on the front page and on Part B, the second entry after registration. The date of issue was 29th January, 1987.
496. He stated that there was no entry on issuance on Part B. He also stated that this entry was not mandatory on the title document but it was mandatory on the register.
497. He further stated that it would not have been possible for John Gatu (deceased) to be issued with a title deed on 29th January, 1987 and the entry be made on the register on 22nd December, 1988 which was two years later.
498. He stated that as per Exhibit P15 the title deed was issued to John Gatu Gichuhi (deceased) on 22nd December, 1988.



499. He also stated that there was no correspondence on the dates on the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit P2) and the copy of the green card for the same parcel of land produced as Exhibit D15.
500. He further stated that the signature appearing on the register was not the same as the signature appearing on the copy of title.
501. He stated that the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 produced as Exhibit P2 was not the title that was issued to John Gatut as per the register and it was therefore not genuine.
502. He reiterated that at the point of subdivision, the original title must be surrendered to the Land Registrar. He stated that that meant that John Gatut (deceased) surrendered the original title for subdivision.
503. He reiterated that the sittings of the Land Control Board were done at the office of the District Officer as the District Officer was the Chairperson of the Land Control Board.
504. He stated that the consents for subdivision of land parcel No. Nakuru/Municipality Block 22/4 were issued in the year 1988.
505. He also stated that he did not know the Nakuru Division but when he was referred to the consent produced as Exhibit P7, he admitted that the consent was issued by the Bahati Land Control Board.
506. He further stated that currently, the Land Control Board sits in Nakuru Town and admitted that he did not know where the Land Control Board sat in the year 1988.
507. He stated that he was not aware if there were special sittings of the Land Control Board.
508. He also stated that it was possible to register several transactions on a single day.
509. He further stated that upon subdivision, the proprietor did not need to get a title deed before transfer provided that the entry was made on the green card.
510. He stated that it was possible for the Land Control Board to issue more than one consent for a parcel of land in respect to different transactions. For instance, the Land Control Board could issue a consent to transfer land and could also issue a consent to charge.
511. He was referred to the Mutation Form produced as Exhibit P8 and he confirmed that subdivision of land parcel No. Nakuru/Municipality Block 22/4 was done.
512. He stated that the Mutation Form was signed by the proprietor. It was also signed by the field surveyor on 29th November, 1988 and the District Surveyor and Land Registrar further signed on 23rd December, 1988.
513. He also stated that the field Surveyor one Mr. Olweny made a comment that the owners had already subdivided the land and the only thing remaining was the picking of boundaries.
514. He was referred back to the Letter of Consent produced as Exhibit P7, he stated that the dates were not very clear but the date of the letter appeared to be 28th May, 1987 while the consent was issued on 28th May, 1988.
515. He further stated that the difference was in the years. The letter was dated 1987 while the consent was issued in the year 1988.
516. The 1st and 4th Defendant's case was then closed.



2nd Defendant's Evidence.

517. Dominic Muhuha Gitau testified as DW3. It was his evidence that he was the 2nd Defendant. He stated that he had filed in Court a witness statement dated 7th February, 2019.
518. He stated that paragraph 6 of his witness statement should be corrected to read Nakuru Municipality Block 22/6. He also stated that paragraph 9 should read Gacheru instead of Gatu and paragraph 13 should read 62 instead of 61.
519. He prayed that the Court notes the corrections and adopts the said statement as part of his evidence in chief, which prayer the Court acceded to.
520. He stated that he had filed a list of documents dated 7th February, 2019 which he wished to produce in the order in which they appear.
521. He produced the said documents as follows;
- a. Copy of the title deed for land parcel No. Nakuru Municipality Block 22/62 as Exhibit D3(1).
 - b. Copy of the Official Search dated 15th August, 2012 as Exhibit D3(2).
 - c. Copy of the title deed for land parcel No. Nakuru/Municipality Block 22/61 as Exhibit D3 (3).
 - d. Copy of the official search for land parcel No. Nakuru Municipality Block 22/61 dated 15th August, 2012 as Exhibit D3 (4).
 - e. Copy of the death certificate for John Gatu Gichuhi as Exhibit D3 (5).
 - f. Copy of the handwritten agreement between Gacheru and Dominic Gitau dated 10th February, 2000 as Exhibit D3 (6).
 - g. Copy of the land sale agreement dated 15th February, 2000 as Exhibit D3 (7).
 - h. Copy of the handwritten acknowledgement of payment by Gacheru Muiruri dated 13th October, 2000 as Exhibit D3 (8).
 - i. Copy of the handwritten acknowledgement dated 15th May, 2000 as Exhibit D3 (9).
 - j. Copy of the handwritten acknowledgement dated 4th May, 2000 as Exhibit D3 (10).
 - k. Copy of the typed acknowledgement dated 7th June, 2001 as Exhibit D3 (11).
 - l. Copies of receipts issued by Kamere & Company Advocates in the year 1982 as Exhibit D3 (12) (a), (b) & (c).
 - m. Copy of an application for Land Control Board Consent for land parcel No. Nakuru/Municipality Block 22/4 as Exhibit D3 (13).
 - n. Copy of the Mutation form dated 30th June, 1989 for land parcel No. Nakuru/Municipality Block 22/53 as Exhibit D3 (14).
 - o. Copy of a fee receipt dated 29th June, 1989 for land parcel No. Nakuru/Municipality Block 22/53 as Exhibit D3 (15).
 - p. Copy of Certificate of Official search dated 10th August, 2012 for land parcel No. Nakuru Municipality Block 22/4 as Exhibit D3 (16).



- q. Copy of handwritten acknowledgement note by John Gatu dated 27th July, 1982 as Exhibit D3(17).
 - r. Copy of handwritten letter by John Gatu dated 10th October, 1985 as Exhibit D3 (18).
 - s. Copies of handwritten acknowledgement receipts dated 4th November, 1985, 30th September, 1985, 19th September, 1985, 28th August, 1985, 11th September, 1985, 16th October, 1985 and 29th October, 1985 as Exhibit D3 (19) (a), (b), (c), (d), (e), (f) and (g).
 - t. Copy of a letter by Dominic Gitau to the Deputy Provincial Commissioner dated 25th April, 1986 as Exhibit D3(20).
 - u. Copy of a letter written by the Nakuru District Commissioner and addressed to Dominic Gitau dated 25th June, 1986 as Exhibit D3 (21).
 - v. Copy of a letter from John Gatu to the Nakuru District Officer dated 18th June, 1986 as Exhibit D3(22).
 - w. Copy of a letter dated 14th May, 1986 written by John Gatu and addressed to the Nakuru Land Control Board as Exhibit D3 (23).
 - x. Copy of the Mutation Form dated 23rd December, 1988 for land parcel No. Nakuru/ Municipality Block 22/4 as Exhibit D3 (24).
 - y. Copy of the Land Control Board Consent dated 28th May, 1987 as Exhibit D3 (25).
 - z. Copies of pleadings filed in Petition No. 380 of 1991 as Exhibit D3 (26).
 - aa. Copy of calendar for the year 1987 as Exhibit D3 (27).
 - ab. Copies of a Further Affidavit and a Replying Affidavit filed in ELC Case No. 23 of 2015 as Exhibit D3 (28).
522. It was his evidence that he used to work with Kenya Seed Company in Nakuru as a Production Manager and he would enter into contracts with farmers who grew crops in the larger Nakuru area.
523. It was also his evidence that John Gatu (deceased) had a large farm where they grew crops upon entering into a contract with him.
524. It was further his evidence that John Gatu (deceased) requested to grow the crops by himself and he asked him to assess his land.
525. He testified that he visited several parcels of land belonging to John Gatu (deceased) but they were not suitable.
526. He also testified that in the said process they got to know each other and John Gatu (deceased) asked him if he would be interested in buying land from him.
527. He further testified that John Gatu (deceased) informed him that he had land at Ole-Rongai in Kabarak and he, together with his wife, went to see the said parcel of land and they thought that it was not suitable to build.
528. It was his evidence that John Gatu (deceased) took him to another parcel of land in Mbaruk and they found it to be more suitable for a Commercial Plot.



529. It was also his evidence that John Gatu (deceased) took him to another parcel of land in Muguga Farm. He found John Kairu, Munene Thuku and Gacheru Muiruri already living on the said parcel of land.
530. It was further his evidence that there was one parcel of land that measured two acres and John Gatu (deceased) offered to sell him one acre of the said parcel of land.
531. He testified that he contacted one Olweny who surveyed the said parcel of land and found that it measured one acre and not two acres and added that by the time the survey was being done, he had already paid for two acres.
532. He also testified that at the time of the discussion, the said parcel of land did not have a title deed and he went on to explain that the land was located in Lanet, Nakuru.
533. He further testified that the parcel of land he purchased was later registered in his name. It was Nakuru/ Municipality Block 22/62.
534. He was referred to the letter dated 14th May, 1986 that was produced as Exhibit D3 (23) and he testified that in the said letter John Gatu (deceased) requested that Plot No. 21 Muguga Farmers Co-operative Society be transferred to John and Rahab.
535. He also testified that he knew the 1st Defendant and explained that he was his neighbour.
536. When DW3 was referred to the letter dated 18th June, 1986 that was written by John Gatu (deceased) and addressed to the Nakuru District Officer [produced as Exhibit D3 (22),] he testified that John Gatu stated at paragraph 2 that he (2nd Defendant) owned two acres of Plot No. 21.
537. He further testified that the said letter was written because they had seen John Gatu (deceased) take other people to the said parcel of land and they were afraid that he would sell their parcels of land and yet he [John Gatu(deceased)] had no other parcels of land to sell in that area.
538. He was then referred to the letter he wrote to the Provincial Commissioner that had been [Exhibit D3 (20)] and he testified that he wrote the letter because he had a dispute with the seller of the land.
539. He also testified that after he wrote that letter, John Gatu (deceased) wrote a letter to the District Officer and copied it to them where he (John Gatu (deceased) confirmed that he no longer had land to sell in that area.
540. He reiterated that when he purchased the said parcel of land it had no title deed.
541. It was his evidence that he purchased land parcel No. Nakuru/Municipality Block 22/61 from Gacheru Muiruri.
542. It was also his evidence that he never received any complaint from the family of John Gatu (deceased) about his occupation of land parcel No. Nakuru/Municipality Block 22/62 which he had been in occupation of from the year 1982.
543. It was further his evidence that he did not receive any complaint from Gacheru Muiruri or his family about his occupation of land parcel No. Nakuru/Municipality Block 22/61 which he took occupation of in the year 2000.
544. He testified that he had always been in occupation of the two parcels of land.
545. In his witness statement, he states that he paid Gacheru Muiruri the purchase price for land parcel No. Nakuru/Municipality Block 22/61 in installments which were as follows;
- a. On 10th February, 2000 he paid kshs.100,000/=



- b. On 15th February, 2000 he paid Kshs. 200,000/=
 - c. On 15th May, 2000 he paid kshs. 20,000/=
 - d. On 13th October, 2000 he paid kshs. 30,000/=.
546. He also states that at the time of purchase, land parcel No. Nakuru/Municipality Block 22/61 was registered in the name of Gacheru Muiruri.
547. He further states that he purchased the said parcel of land on a willing buyer and willing seller basis and there was no fraud on his part.
548. He states that he purchased land parcel No. Nakuru/Municipality Block 22/62 from Gatu (deceased) and they agreed that he was to pay for the subdivision.
549. He also states that he paid the said money to Kamere Advocate and was issued with receipts.
550. He further states that he paid Gatu (deceased) the purchase price and he acknowledged receipt through the various acknowledgements that he has filed in Court.
551. He states that Gatu (deceased) was aware of the sale of the said parcel of land as can be seen from the various letters he has filed in Court.
552. Upon cross examination by Counsel for the 1st and 4th Defendants, he reiterated that he knew the 1st Defendant.
553. He confirmed that he met him between the years 1981 and 1982 when he was shown the land.
554. He also confirmed that the 1st Defendant was living on the suit parcel of land with his family where he had built his house.
555. He further confirmed that the 1st Defendant was still in occupation of the suit parcel of land and had a school there.
556. He reiterated that he was shown his parcel of land by John Gatu (deceased).
557. He confirmed that John Gatu (deceased) did not sell him any other land apart from the land at Muguga.
558. He also confirmed that after he bought the said land he built a home on it and added that the home was now isolated. After his children grew up, he moved out but the home remained on the said parcels of land.
559. He was referred to the letter produced as Exhibit D3 (22) he confirmed that it was written by John Gatu (deceased) on 18th July, 1986.
560. He also confirmed that the said letter was addressed to the District Officer Nakuru Municipality and it confirmed that he (DW3) had purchased 2 acres of LR No. 4730/72 from John Gatu (deceased).
561. He reiterated that when he purchased the said parcel of land, it did not have a title deed.
562. He confirmed that he established the fact of ownership from the other neighbors who had also purchased the land from John Gatu (deceased).
563. He admitted that John Gatu (deceased) took him to his parcel of land while claiming that the land belonged to him.
564. He was then referred to the letter produced as Exhibit D3 (23) and he confirmed that it was a letter written by John Gatu Gichuhi (deceased).



565. He stated that the said land was referred to as Muguga because they came from Muguga in Kiambu County but the land was located in Lanet.
566. He also stated that the land was IR No. 4730/72. He confirmed that the contents of the said letter were correct as that was where he met the 1st Defendant.
567. He admitted that he was not aware if the 1st Defendant got the title deed to his parcel of land.
568. He also admitted that he did not know John Gatu's family except for one son who moved to Muguga.
569. He further admitted that he did not meet the rest of John Gatu's family until he was sued.
570. He confirmed that he had a title deed to the land he purchased which was land parcel No. Nakuru/Municipality Block 22/62 and it is the same parcel of land that was being referred to in the letter that produced as Exhibit D3 (22).
571. Upon cross examination by Counsel for the 5th, 6th, 7th and 8th Defendants he reiterated that he viewed the property he purchased from John Gatu (deceased) between the year 1981 and 1982.
572. He reiterated that while he was viewing the land he met three individuals that included Senior Thuku who was the father to the 5th, 6th, 7th and 8th Defendants and added that at the time, he was constructing a house.
573. Upon cross examination by Counsel for the Plaintiff, he admitted that his claim was with respect to land parcel No's Nakuru/Municipality Block 22/61 and 62.
574. He confirmed that he had purchased land parcel No. Nakuru/Municipality Block 22/62 from John Gatu (deceased) between the years 1981 and 1982.
575. He admitted that the parcel of land he purchased was one of the resultant subdivisions of land parcel No's Nakuru/Municipality Block 22/53.
576. He also admitted that land parcel No. Nakuru/Municipality Block 22/53 was one of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/4.
577. When he was referred to the mutation form for land parcel No. Nakuru/Municipality Block 22/4 produced as Exhibit P8, he
admitted that the mutation form was dated 23rd December, 1988 and it showed that the said parcel of land was to be subdivided into land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
578. He was then referred to the mutation form for land parcel No. Nakuru/Municipality Block 22/53 (Exhibit P9), he admitted that it was dated 30th June, 1989.
579. He confirmed that as per the said mutation form, land parcel No. Nakuru Municipality Block 22/53 was subdivided into land parcel No's Nakuru Municipality Block 22/60, 61 and 62.
580. He stated that the said parcels of land were in existence but they were registered on 30th June, 1989.
581. He admitted that in the years 1981 and 1982 he was not registered as the owner of the said parcels of land.
582. He was referred to the copy of acknowledgement produced as Exhibit D3 (17) and he admitted that the said document did not mention land parcel No. Nakuru/Municipality Block 22/62.
583. He confirmed that the said acknowledgement was for the payment of half an acre.



584. When he was referred to the hand-written letter by John Gatu produced as Exhibit D3 (18), he admitted that it was written in Kikuyu language.
585. When he was referred to the acknowledgement of payment documents produced as Exhibit D3(19) he confirmed that they did not describe the land the payments were made with respect of.
586. He confirmed that one of the acknowledgement documents stated that he had made payment of Kshs. 500 for one-acre of land.
587. He also confirmed that the said acknowledgement showed that he had paid for one and a half acres.
588. He further confirmed that the other acknowledgement document referred to one acre as it showed payment of Kshs. 500.
589. He stated that it referred to the same acre that was mentioned in the handwritten acknowledgement letter by John Gatu (deceased) dated 10th October, 1985 produced as Exhibit D3(18).
590. He was then referred to the letter he had written to the Provincial Commissioner that he produced as Exhibit D3 (20) and he confirmed that it did not refer to land parcel No. Nakuru Municipality Block 22/62 and it only mentioned the acreage.
591. He stated that his testimony was that John Gatu (deceased) took him to various parcels of land and one of the said parcels of land was land parcel No. Nakuru/ Municipality Block 22/62.
592. He confirmed that John Gatu (deceased) had parcels of land in various places and he also confirmed that he had rejected the land that was at Mbaruk.
593. He was then referred to the letter written by John Gatu Gichuhi (deceased) that was produced as Exhibit D3 (22) and he confirmed that it referred to LR No. 4730/72.
594. He also confirmed that in the said letter John Gatu Gichuhi (deceased) committed (sic) that he has sold to him (3rd Defendant) two acres of the said parcel of land.
595. He admitted that he had nothing to show that LR No. 4730/72 became land parcel No. Nakuru Municipality Block 22/62.
596. He was then referred to the letter dated 14th May, 1986 that was addressed to the Land Control Board Nakuru and produced as Exhibit D3 (23). He confirmed that the said letter referred to IR 4730/72.
597. He also confirmed that in the said letter John Gatu Gichuhi (deceased) committed (sic) to having sold portions of the said parcel of land to Rahab and the 1st Defendant.
598. He reiterated that he purchased land parcel No. Nakuru/Municipality Block 22/61 from Gacheru Muiruri and stated that he engaged Kimata Advocate to assist him in the transaction.
599. He admitted that he had neither the green card nor the Certificate of Official Search which showed that Gacheru Muiruri was ever the registered owner of the said parcel of land.
600. He also admitted that he had nothing to show that Gacheru Muiruri was ever the owner of the said parcel of land.
601. He also admitted that he only had the title deed for the said parcel of land that was in his name and the sale agreement.



602. He confirmed that land parcel No. Nakuru/Municipality Block 22/61 was one of the subdivisions of land parcel No. Nakuru/Municipality Block 22/53.
603. He also confirmed that for the parcel of land he purchased from John Gatu (deceased), it was John Gatu (deceased) who went to the Land Control Board.
604. He further confirmed that John Gatu (deceased) did not give him a copy of the consent to transfer and neither did he have a copy of the said consent in Court with him.
605. Upon re-examination, he reiterated that he purchased land parcel No. Nakuru/Municipality Block 22/62 from John Gatu (deceased). At the time he was purchasing the said parcel of land, subdivisions had already been done but the mutation forms were prepared later.
606. He stated that at the time of purchase, John Gatu (deceased) told them that the land was registered in his name but he did not show them the title.
607. He also stated that they trusted him and he showed him his parcel of land on the ground and added that he was in occupation of the land that he was shown.
608. He stated that they used to refer to the said land as Muguga Land in Lanet and he reiterated that he purchased two acres but he went to the ground and he found that it was one acre.
609. He was referred to the letter dated 25th April, 1986 (Exhibit D3 (20) and he confirmed that his plea in the said letter was to have the title deed come out in his name.
610. He also stated that John Gatu (deceased) also asked the District Officer vide the letter dated 18th July, 1986 (Exhibit D3 (22) that the title deed comes out in their names.
611. He further stated that land parcel No. Nakuru/Municipality Block 22/61 was registered in the name of Gacheru Muiruri and he had a title deed.
612. The 2nd Defendant's case was then closed.

The 5th, 6th, 7th and 8th Defendants Evidence.

613. Hermotimus Munene Thuku testified as DW4. He stated that the 6th, 7th and 8th Defendants are his siblings and further stated that he had filed a witness statement dated 20th June, 2022 and a list of documents dated 20th June, 2023.
614. He testified that he lives on land parcel No. Nakuru/Municipality Block 22/60 which was registered in the names of the 5th, 6th, 7th and 8th Defendants.
615. He also testified that the said parcel of land was initially registered in the name of their father Reuben Thuku.
616. He further testified that he did not know how he acquired the land because at the time of purchase they were young.
617. It was his evidence that he had in Court a Copy of an agreement dated 29th June, 1982 entered between John Gatu Gichuhi and Reuben Thuku Munene. He produced a copy of the said agreement as Exhibit D4 (1).
618. It was also his evidence that the land was subsequently registered in his father's name and produced a title deed for land parcel No. Nakuru/Municipality Block 22/60 registered in the name of Reuben Thuku Munene as Exhibit D4 (2).



619. It was further his evidence that after their father died, they went to Court and got orders that allowed them to transfer the land to their names.
620. He testified that he had in Court the Certificate of Confirmation of Grant of his late mother's estate even though she was never registered as the owner.
621. He also testified that he had in Court a copy of the title deed that showed that land parcel No. Nakuru/Municipality Block 22/60 was registered in the names of the 5th, 6th, 7th and 8th Defendants. He produced a copy of the said title deed as Exhibit D4(3).
622. He further testified that his deceased father built the family house on the said parcel of land and he (DW4) was the only one who was living on the said land.
623. It was his evidence that they have lived on the said parcel of land since the year 1997.
624. It was also his evidence that he did not hear any complaint about his father not having paid the purchase price.
625. It was further his evidence that he had a letter dated 18th July, 1986 that was written by Dominic Gitau Gichuhi and addressed to the District Officer, Nakuru Municipality.
626. He testified that the subject of the letter was "Land Complaint LR No. 4730/72". He read out the contents of the said letter as follows;
- "Please I also add Mr. Reuben Thuku Munene and Mr. Gacheru Muiruri each one has got two acres and the title deed is in processing. The matter is with the Commissioner of Lands in Nairobi."
627. He produced a copy of the said letter as Exhibit D4 (4).
628. He also testified that he had a receipt dated 21st July, 1989 that was issued to his father by Kamere Advocates upon payment of costs of disbursement for land parcel No. Nakuru/Municipality Block 22/60. He produced the said receipt as Exhibit D4 (5).
629. He also produced a copy of an Occupation Permit dated 12th June, 1995 as Exhibit D4 (6).
630. It was his evidence that they had also built a two-bedroom semi-permanent house and store on the land. He reiterated that during the time his father was alive, there was no complaint over their occupation and he therefore prayed that the Plaintiff's suit be dismissed with costs.
631. Upon cross examination by Counsel for the Plaintiff, he confirmed that land parcel No. Nakuru/Municipality Block 22/60 belonged to his deceased father who died in the year 2004.
632. He also confirmed that they commenced succession proceedings for their late father's estate.
633. He admitted that he had nothing in Court to show how the said property moved from his late father's name to their name.
634. He was then referred to the copy of the sale agreement produced as Exhibit D4 (1) and he confirmed that it was dated 29th June, 1982.
635. He also confirmed that it was for sale of LR No. 4730/72 and it did not mention land parcel No. Nakuru/Municipality Block 22/60.



636. When he was referred to the letter dated 18th July, 1986 that was produced as Exhibit D4 (4) he confirmed that the letter referred to LR No. 4730/72 and admitted that there was no mention of land parcel No. Nakuru/Municipality Block 22/60.
637. When he was referred to the copy of the Green Card for land parcel No. Nakuru/Municipality Block 22/53 (Exhibit P 6(a) he confirmed that Entry No. 2 that was dated 30th June, 1989 stated that the title was closed upon subdivision into land parcel No's Nakuru/Municipality Block 22/60 and 61.
638. He admitted that the said green card showed that the land was registered in the name of John Gatu Gichuhi.
639. He was then referred to the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/60 that was produced as Exhibit D4 (2) and he confirmed that it was in the name of Reuben Thuku Munene.
640. He also confirmed that the sale agreement he produced as Exhibit D4 (1) did not refer to Nakuru/Municipality Block 22/4.
641. He further confirmed that the letter dated 18th June, 1986 produced as Exhibit D4(4) did not refer to land parcel No. Nakuru/Municipality Block 22/4.
642. He confirmed that in the said letter John Gatu (deceased) stated as follows;
- “As soon as the title deed is ready before its registered the Registrar of Lands Nakuru will register the same in their names.”
643. He also confirmed that “their names” referred to Dominic Gitau, Reuben Thuku and Gacheru Muiruri.
644. He admitted that he knew Dominic Gitau as he was their neighbor since the year 1987.
645. He was then referred to the copy of the sale agreement he produced as Exhibit D4 (1) and he confirmed that clause 2 stated that possession was to be given upon execution of the agreement.
646. He confirmed that the said agreement was executed on 29th June, 1982. He then admitted that his father did not own a car.
647. Upon re-examination he stated that the said parcel of land was closed for subdivision on 30th June, 1989 while John Gatu (deceased) passed on 1st January, 1989.
648. He stated that John Gatu (deceased) must have executed the transfer before 30th June, 1989.
649. He also stated that he did not know if LR No. 4730/72 was the same as Nakuru Municipality Block 22/60.
650. The case of the 5th, 6th, 7th and 8th Defendants was then closed.
651. The case of the 9th, 10th and 11th Defendants was also marked as closed.

Issues For Determination.

652. The Plaintiffs filed their submissions on 13th November, 2024, the 1st and 4th Defendants filed their submissions on 11th February, 2025, the 2nd Defendant filed his submissions on 19th January, 2025 while the 5th, 6th, 7th and 8th Defendants filed their submissions on 17th February, 2025.



653. The Plaintiffs set out the facts of the case, rely on Section 26 of the [Land Registration Act](#), the judicial decision of *Pattni vs Ali & anor* (Isle of Mann (Staff of Government Division) [2006] UKPC 51 as was cited in *Abukar G Mohamed v Independent Electoral and Boundaries Commission* [2017]eKLR and the judicial decision of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others* [2015] eKLR before making their submissions.
654. The Plaintiffs submit that at paragraph 35 of their Amended Plaintiff they pleaded several particulars of illegality against the 1st Defendant.
655. The Plaintiffs submit that the title deed for land parcel No. Nakuru/Municipality Block 22/4 was issued on 29th January, 1987 but the registration was done on 23rd December, 1988.
656. The Plaintiffs also submit that the Land Registrar in his evidence stated that there was nothing unusual in the difference between the date of registration and the date of issuance of the title.
657. The Plaintiffs further submit that land parcel No. Nakuru/Municipality Block 22/4 was subdivided into land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
658. It is the Plaintiffs submissions that whenever land is subdivided, the original title deed is surrendered before titles of the resultant subdivisions are issued.
659. The Plaintiffs reiterate the evidence of the Land Registrar and submit that PW1 had in Court the original title deed which he showed to the Court and produced as Exhibit P1.
660. It is also the Plaintiffs submissions that the subdivision of land parcel No. Nakuru/Municipality Block 22/4 was therefore irregular.
661. It is further the Plaintiffs submissions that the deceased died on 1st January, 1989 after the alleged subdivision of land parcel No. Nakuru/Municipality Block 22/4.
662. The Plaintiffs submit that land parcel No. Nakuru/Municipality Block 22/53 one of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/4, was subdivided on 30th June, 1989 six months after the death of the deceased.
663. The Plaintiffs also submit that the said parcel of land was subdivided into land parcel No's Nakuru/Municipality Block 22/60, 61 and 62.
664. The Plaintiffs further submit that the subdivision of land parcel No. Nakuru/Municipality Block 22/53 was irregular as no consent of the land control board was obtained as the transferor was deceased.
665. It is the Plaintiffs submissions that subdivision and transfer of land is a sequential process.
666. It is also the Plaintiffs submissions that each of the resultant subdivisions of the suit parcel required its own consent of the Land Control Board.
667. It is further the Plaintiffs submissions that land parcel No. Nakuru/Municipality Block 22/54 was registered in the name of the deceased on 23rd December, 1988.
668. The Plaintiffs submit that on the same day, the land was transferred to the name of the 1st Defendant.
669. The Plaintiffs also submit that the process of subdivision and registration is an elaborate process. The Plaintiffs further submit that the deceased would have had to first apply for the consent of the Land Control Board. He would then be given a date when the application would be considered. Upon obtaining the consent, the deceased would have embarked on physical subdivision of the land. This



- would also include preparation of the mutation forms, amendment of the Registry Index Map and eventual issuance of the title documents.
670. It is the Plaintiffs submissions that upon issuance of the title deeds, the deceased would have had to apply for consent to transfer.
671. It is also the Plaintiffs submissions that the said process could not be done on the same day.
672. It is further the Plaintiffs submissions that it was not possible for the consent to subdivide and the consent to transfer land parcel No. Nakuru/Municipality Block 22/54 to be obtained the same day. It was also not possible that the titles would be issued the same day the consents were obtained.
673. The Plaintiffs submit that the process of acquisition of land parcel No. Nakuru/Municipality Block 22/54 by the 1st Defendant was irregular and therefore the said title should be revoked.
674. The Plaintiffs also submit that with regard to land parcel No. Nakuru/Municipality Block 22/55, it is evident that its registration was not procedurally done as it was stated that the said parcel of land was registered on 25th December, 1988 which was on a Sunday. The said parcel of land was registered in the name of Rahab Wamuhu.
675. The Plaintiffs further submit that the 1st Defendant upon cross examination admitted that he was the one who signed the transfer forms on behalf of Rahab Wamuhu and even attended the Land Control Board on her behalf.
676. The Plaintiffs submit that the 1st Defendant confirmed that the said parcel of land was transferred to the 4th Defendant and even though he was one of the 4th Defendant's directors, he could not explain how the said transfer was done.
677. The Plaintiffs also submit that the 1st Defendant alleges that he purchased land parcel No. Nakuru/Municipality Block 22/54 from the deceased vide the agreement for sale of land dated 24th February, 1979.
678. The Plaintiffs submit that the 1st Defendant also alleges that Rahab Wamuhu entered into a land sale agreement dated 19th April, 1982 with John Gatu (deceased). Further, the 1st Defendant contends that the suit is barred by the [Limitation of Actions Act](#).
679. The Plaintiffs also submit that both agreements were produced by the 1st Defendant and neither of them referred to land parcel No. Nakuru/Municipality Block 22/4.
680. The Plaintiffs further submit that they were only able to discover the alleged fraud in the year 2012 when they obtained the green cards for land parcel No's Nakuru/Municipality Block 22/53, 54 and 55. It is the Plaintiffs submissions that the said green cards were issued on 19th September, 2012.
681. The Plaintiffs further submit that they had to seek the intervention of the Minister of Lands in the year 2012 before they obtained the said documents.
682. The Plaintiffs rely on Section 26 of the [Limitation of Actions Act](#) and submit that the time for purposes of limitation of time begun to run from the said date and therefore the 1st Defendant's defence of limitation of time does not hold water and it should be dismissed.
683. It is the Plaintiffs submissions that land parcel No. Nakuru/Municipality Block 22/62 that was registered in the name of the 2nd Defendant was one of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/53.



684. It is also the Plaintiffs submissions that they have demonstrated that land parcel No. Nakuru/ Municipality Block 22/53 was irregularly subdivided as it was subdivided six months after the death of the registered owner.
685. It is the Plaintiffs submissions that the resultant subdivisions cannot therefore stand.
686. The 1st and 4th Defendants submit on the following issues;
- a. Whether the Plaintiff's suit against the 1st and 4th Defendants is statute barred.
 - b. Whether the Plaintiffs have proved fraud against the 1st and 4th Defendants to the required legal standard.
 - c. Whether the Plaintiffs are entitled to the reliefs sought.
 - d. Costs of the suit.
687. With regard to the first issue, the 1st and 4th Defendants submit that at paragraph 9 of their Amended Statement of Defence, they averred that the Plaintiffs suit was statute barred and they pleaded that they would file a preliminary Objection.
688. The 1st and 4th Defendants also submit that they subsequently filed a preliminary objection dated 17th February, 2015 and on 2nd August, 2018 this Court gave directions that the preliminary objection be addressed at the hearing of the suit.
689. The 1st and 4th Defendants rely on Sections 7 & 26 of the *Limitation of Actions Act*, the judicial decisions of *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR, *Gathoni vs Kenya Co-operative Creameries Ltd* [1982] eKLR 104 and *Margaret Wairimu Magugu vs Karura Investment Limited & 4 Others* [2019] eKLR and submit the 1st Defendant entered into a land sale agreement dated 24th February, 1979 with John Gatu Gichuhi (deceased) for the purchase of seven acres of the suit parcel of land.
690. The 1st and 4th Defendants also submit that the suit parcel of land was then known as Plot No. 21 and it had been allocated to John Gatu (deceased) by the Muguga Farmers' Co-operative Society.
691. The 1st and 4th Defendants further submit that the 1st Defendant took possession of the said portion of land in the year 1979 and therefore that is when the cause of action arose.
692. The 1st and 4th Defendants rely on the judicial decision of *Njenga vs Mugo* [2023] KECA 18 (KLR) in support of their submissions.
693. The 1st and 4th Defendants submit that the Plaintiffs filed the suit in the year 2015 after a period of about 36 years had lapsed. They also submit that if the Court begins to calculate the time from 23rd December, 1988 when the suit parcel was registered in the name of the 1st Defendant then the suit was filed twenty-seven years after the cause of action arose.
694. The 1st and 4th Defendants submit that as per Section 26(c) of the *Limitation of Actions Act*, time begins to run from the date when the Plaintiff discovered fraud.
695. The 1st and 4th Defendants also submit that PW1 gave four different versions as to when the alleged fraud was discovered. It is their submissions that PW1 firstly testified that in the year 1992, the initial administrators of the estate of his deceased father tried to have the land registered in their names but they were told that they had no land and their documents were thrown back at them.
696. It is the 1st and 4th Defendants submissions that PW1 secondly testified that the initial administrators of the estate of the deceased were aware that the 1st Defendant was squatting on a portion of the suit parcel



- and yet between the year 1991 when they were issued with the Grant of Letters of Administration and the year 2014 when the Plaintiffs were issued with the grant, they did not sue the 1st Defendant.
697. It is also the 1st and 4th Defendants submissions that thirdly, PW1 stated that he discovered the alleged fraud in 2012 and fourthly, he stated that he discovered the alleged fraud in the year 2013 after he sought the assistance of the Minister for Lands.
698. It is further the 1st and 4th Defendants submissions that from the above inconsistencies, it is not clear when the Plaintiffs discovered the alleged fraud and further, in the Amended Plaint it is not pleaded when the alleged fraud was discovered.
699. The 1st and 4th Defendants submit that the Plaintiffs could have discovered the alleged fraud in the year 1979 or 1992 because the 1st Defendant had been in occupation of a portion of the suit parcel since the year 1979 and the initial administrators of the estate of the deceased were informed in the year 1992 that they had no land.
700. The 1st and 4th Defendants further submit that PW1 conceded that there were many developments on the suit parcel and therefore it was unbelievable that the initial administrators failed to notice the said developments.
701. On the second issue, the 1st and 4th Defendants rely on the judicial decisions of Elizabeth Kamene Ndolo vs George Matata Ndolo [1996] eKLR, Emfil Limited vs Registrar of Titles Mombasa & 2 Others [2014] eKLR and submit that fraud must be specifically pleaded and its standard of proof must be above a balance of probabilities but not beyond reasonable doubt.
702. The 1st and 4th Defendants submit that John Gatu (deceased) was a shareholder and Chairman of Muguga Farmers' Co-operative Society Limited.
703. The 1st and 4th Defendants also submit that the said society was the owner of LR No. 4730 which parcel of land was surveyed and members given temporary parcel numbers.
704. The 1st and 4th Defendants further submit that John Gatu (deceased) was allocated plot No. 21 which measured 17 acres.
705. It is the 1st and 4th Defendants submissions that John Gatu (deceased) subdivided the said parcel of land and sold seven acres to the 1st Defendant.
706. It is also the 1st and 4th Defendants submissions that plot No. 21 was later registered as land parcel No. Nakuru/Municipality Block 22/4.
707. It is further the 1st and 4th Defendants submissions that in the mutation form produced as Exhibit P8, the surveyor stated that as at December, 1988 the deceased had already subdivided the land and what was remaining was setting out the boundaries.
708. The 1st and 4th Defendants reiterate that the 1st Defendant took possession of his parcel of land in the year 1979 and until his demise in the year 1989, the deceased never raised any issue as to his occupation.
709. The 1st and 4th Defendants submit that even though the Plaintiffs allege that there was forgery of documents and forgery of the signature of the deceased, no evidence of a handwriting expert was produced in support of the said allegations.
710. The 1st and 4th Defendants also submit that the Plaintiffs did not produce any of the alleged forged documents and the 1st Defendant's evidence that the deceased drove him in his car on 23rd December, 1988 was not controverted.



711. The 1st and 4th Defendants further submit that even though the Plaintiffs allege that the deceased was in a coma on 23rd December, 1988, no medical evidence was produced in support of the said allegations.
712. It is the 1st and 4th Defendants submissions that the Plaintiffs only produced a death certificate which merely states that the deceased died on 1st January, 1989 and it does not state whether he was admitted in any hospital.
713. It is also the 1st and 4th Defendants submissions that the Plaintiffs are attempting to fraudulently obtain the 1st Defendant's parcel of land.
714. It is further the 1st and 4th Defendants submissions that the Land Registrar who testified as DW2 stated that the title deed for land parcel No. Nakuru/Municipality Block 22/4 produced by the Plaintiffs as Exhibit P2 was not genuine. This is because, the copy of title that was produced has missing pages. Pages 1 and 2 of the title deed were produced while pages 3 and 4 were not produced.
715. The 1st and 4th Defendants submit that page 3 of the said title deed was not signed by the Land Registrar.
716. The 1st and 4th Defendants also submit that the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit P2) shows that the land was registered in the name of the deceased on 28th January, 1987 and a title deed issued on 29th January, 1987.
717. The 1st and 4th Defendants further submit that the Land Registrar produced a copy of the green card for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit D15) which shows that the land was registered in the name of the deceased on 22nd December, 1988 and was issued with a title deed on the same date.
718. It is the 1st and 4th Defendants submissions that the Land Registrar's evidence was that it was not possible for a title deed to be issued two years before the entries are made on the green card.
719. It is also the 1st and 4th Defendants submissions that the Land Registrar's evidence was that the signature appearing on the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit P2) was not the same signature appearing on the copy of the green card for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit D15). This was an anomaly because at the time of registration, the Land Registrar who signs the title deed also signs the green card.
720. The 1st and 4th Defendants reiterate the evidence of the 1st Defendant and the Land Registrar on the process of surrender of the original title to the Land Registry upon subdivision of land and submit that the prayers sought in the Amended Plaintiff cannot be granted.
721. The 1st and 4th Defendants submit that land parcel No's Nakuru/Municipality Block 22/54 and 55 no longer exist as they have been subdivided into plots and some of the plots sold.
722. The 1st and 4th Defendants also submit that the third parties who purchased the said plots are not parties to the present suit.
723. The 1st and 4th Defendants further submit that the 1st Defendant is the registered owner of land parcel No. Nakuru/Municipality Block 22/4137 which parcel of land is not the subject matter of this suit.
724. It is the 1st and 4th Defendants submissions that the Plaintiffs did not adduce any evidence that prove that the 4th Defendant owns a portion of the suit parcel of land.
725. It is also the 1st and 4th Defendants submissions that the Plaintiffs did not plead when the 1st and 4th Defendants took possession of portions of land parcel No. Nakuru/Municipality Block 22/4 deliberately in order to defeat the defence of limitation of action.



726. It is further the 1st and 4th Defendants submissions that the prayer for eviction cannot be granted because the Plaintiffs did not prove that the 1st and 4th Defendants were in occupation of any of the parcels of land that were listed in the amended Plaint.
727. The 1st and 4th Defendants conclude their submissions by urging the Court to dismiss the Plaintiffs case with costs.
728. The 2nd Defendant submits on the following issues;
- a. Whether the suit is statute barred.
 - b. Whether the Plaintiffs have proved their case.
 - c. Whether the 2nd Defendant has a good root of title and if he purchased lawfully. (sic)
 - d. Whether the Court can infer constructive trust for the benefit of the Defendants.
 - e. What orders should the Court issue.
729. On the first issue, the 2nd Defendant relies on Section 7 of the *Limitation of Actions Act* and submits that he was registered as the owner of land parcel No. Nakuru/Municipality Block 22/61 on 17th July, 1989.
730. The 2nd Defendant also submits that he was registered as the owner of land parcel No. Nakuru/Municipality Block 22/62 on 7th September, 2001.
731. The 2nd Defendant further submits that this suit was filed after a period of close to twenty-six years had lapsed since he was registered as the owner of land parcel No. Nakuru/Municipality Block 22/61 and after a period of fourteen years had lapsed since he was registered as the owner of land parcel No. Nakuru/Municipality Block 22/62.
732. It is the 2nd Defendant's submissions that the present suit was filed on 2nd February, 2015 which was after more than twelve years had lapsed and therefore the suit is statute barred.
733. It is the 2nd Defendant's submissions that the claim for fraud is also time barred. The 2nd Defendant relies on Section 4 (2) of the *Limitation of Actions Act* and submits that even though the Plaintiffs allege that they discovered the alleged fraud in the year 2012, had they exercised due diligence they would have discovered the alleged fraud sooner.
734. It is further the 2nd Defendant's submissions that the Plaintiffs are relying on Section 26 of the *Limitation of Actions Act* to contend that their claim is sustainable.
735. The 2nd Defendant relies on the judicial decision of *Paragon Finance vs D B Thackerar & Co.* [1999] 1 All ER 400 as was cited in *Margaret Wairimu Magugu v Karura Investment Limited & 4 others* [2019] eKLR and submits that John Gatu (deceased) died on 1st January, 1989.
736. The 2nd Defendant also submits that after John Gatu's death, a petition for letters of administration with respect to his estate was filed on 2nd April, 1991 and land parcel No. Nakuru/Municipality Block 22/4 was not included as it did not form part of his estate.
737. The 2nd Defendant further submits that the letters of administration were issued on 24th June, 1991. On 23rd July, 1992 the certificate of confirmation of grant was issued and the suit parcel included.
738. It is the 2nd Defendant's submissions that the Plaintiffs did not lead any evidence that a search was done before the said property was included.



739. It is also the 2nd Defendant's submissions that by the year 1991, he was already in possession of land parcel No. Nakuru/Municipality Block 22/61 which land he had taken possession of before the title deeds were issued.
740. It is further the 2nd Defendant's submissions that he produced evidence which showed that he purchased the said parcel of land from John Gatu (deceased).
741. The 2nd Defendant submits that neither the deceased nor the initial administrators of his estate tried to remove him from the said parcels of land as they had knowledge of his possession.
742. The 2nd Defendant relies on the judicial decision of *Margaret Wairimu Magugu v Karura Investment Limited & 4 Others* [2019] eKLR and submits that the Plaintiffs claim is statute barred and the Court should down its tools as it does not have jurisdiction.
743. On the second issue, the 2nd Defendant relies on the judicial decision of *Kuria Kiarie & 2 Others vs Sammy Magera* [2018] eKLR and submits that even though the Plaintiffs contend that he (2nd Defendant) forged the consent, transfer, sale agreements and letters purportedly written by the deceased with respect to land parcel No. Nakuru/Municipality Block 22/62, no evidence was led to prove the said allegations.
744. The 2nd Defendant also submits that no document examiner or handwriting expert was called to prove the alleged forgeries including the alleged forgeries of the Land Control Board Consent that was issued on 9th June, 1988 and the mutation forms.
745. The 2nd Defendant further submits that even though the Plaintiffs allege that John Gatu (deceased) was in a coma at the time he is alleged to have signed the documents, no medical report was produced to show that he was in deed in a coma.
746. The 2nd Defendant relies on the judicial decision of *JRW (Suing through VWW) v MWW, Eva Nyawira Mukunya & Anne Murugi Mukunya* [2021] KEELC 4627 (KLR) in support of his submissions.
747. It is the 2nd Defendant's submissions that the Plaintiffs allege that he (2nd Defendant) forged the existence (sic) of Gacheru Muiruri and yet he was sued in the initial Plaint before it was amended.
748. It is also the 2nd Defendant's submissions that he produced a letter dated 18th July, 1986 (Exhibit D3 (22) which letter was written by John Gatu (deceased) and addressed to the District Officer. In the said letter Gacheru Muiruri was identified as one of the purchasers of the suit parcel of land.
749. The 2nd Defendant reiterates his evidence and the evidence of the Land Registrar and submits that he obtained the land control board consents prior to the demise of the deceased and the Plaintiffs do not dispute the fact that he paid the purchase price for his parcels of land.
750. The 2nd Defendant reiterates the evidence of the 1st Defendant and submits that the allegations of illegality and unlawfulness were not proved as they (Defendants) dealt with John Gatu (deceased) when he was alive.
751. On the third issue, the 2nd Defendant submits that the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 produced by the Plaintiffs was issued on 29th January, 1987 which date did not correspond with the entries on the green card.
752. The 2nd Defendant reiterates the evidence of the Land Registrar with respect to the said issue and submits that the said copy of title deed was of no evidential value.



753. The 2nd Defendant further reiterates his evidence and the evidence of the 1st Defendant and submits that the 1st Plaintiff in his evidence admitted that he did not know if his deceased father subdivided land parcel No. Nakuru/Municipality Block 22/4.
754. The 2nd Defendant also submits that the 1st Plaintiff admitted that he was not aware if his deceased father had any business transactions with Gacheru Muiruri and neither was he aware of plot No. 21.
755. The 2nd Defendant further submits that he is a lawful purchaser of his properties and that he paid consideration for each of his parcels of land.
756. On the fourth issue, the 2nd Defendant submits that this Court has jurisdiction to infer constructive trust for the benefit of the Defendants in order to defeat any unjust enrichment by the deceased and/or his estate.
757. The 2nd Defendant relies on the judicial decision of *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 Others* [2023] KESC 106 (KLR) and submits that the Court should infer constructive trust for the benefit of the Defendants.
758. The 2nd Defendant reiterates that he paid the purchase price and produced acknowledgements for payment, he took possession of the said parcel of land before issuance of titles and the deceased confirmed through various correspondences that he had sold the said parcel of land to him.
759. The 2nd Defendant also reiterates that the deceased did not take any steps to evict him from the said parcel of land and the relevant land control board consents were obtained.
760. The 2nd Defendant submits that John Gatu (deceased) therefore held the suit parcels in trust for the Defendants pending the issuance of the title deeds.
761. The 2nd Defendant relies on Section 28 of the *Land Registration Act*, the judicial decisions of *Willy Kimutai Kitilit v Michael Kibet* [2018] KECA 573 (KLR), *Alianza v Saul* [2022] KECA 583 (KLR) and submits that the estate of the deceased will not suffer any prejudice because the deceased had already received the purchase price which fact was not controverted by the Plaintiffs.
762. It is the 2nd Defendant's submissions that the Defendants will be prejudiced because they have already paid the purchase price and taken possession of the said parcel of land with the blessings of John Gatu (deceased).
763. The 2nd Defendant relies on the judicial decision of *Oganga & another v Orangi & 3 others* [2003] KEELC 16348 (KLR) and urges the Court to dismiss the Plaintiffs case with costs.
764. The 5th, 6th, 7th and 8th Defendants submit on the following issues;
- a. Whether this suit is time barred. (sic)
 - b. Whether the 5th to 8th Defendants are the lawful owners of Nakuru/Municipality Block 22/60.
 - c. Whether the Plaintiffs have proven their case to the required standard.
 - d. Costs.
765. On the first issue the 5th, 6th, 7th and 8th Defendants submit that the present suit seeks to recover land parcel No. Nakuru/Municipality Block 22/4 on the allegations that it was fraudulently subdivided.
766. The 5th, 6th, 7th and 8th Defendants rely on Sections 4(2) and 7 of the *Limitation of Actions Act*, the judicial decisions of *Margaret Wairimu Magugu (suing as the Administratrix (sic) of the estate of the late Arthur K. Magugu) v Karura Investments Limited & 4 others* [2017] KEHC 1614 (KLR), *Margaret*



- Wairimu Magugu v Karura Investment Limited & 4 others [2019] KECA 653 (KLR) and submit that their deceased father purchased his parcel of land in the year 1982 and immediately took possession.
767. The 5th, 6th, 7th and 8th Defendants also submit that their deceased father was given an occupation permit dated 12th June, 1995 after being issued with the title deed in the year 1989. The Plaintiffs suit is therefore statute barred since it was filed in the year 2015.
768. The 5th, 6th, 7th and 8th Defendants further submit that John Gatu (deceased) did not interfere with their possession of the said parcel of land during his lifetime.
769. It is the 5th, 6th, 7th and 8th Defendants submissions that the Plaintiffs allege that they discovered the said fraud in the year 2012 upon obtaining the Certificate of Official Search dated 10th August, 2012.
770. It is the 5th, 6th, 7th and 8th Defendants submissions that however, upon cross examination, the 1st Plaintiff admitted that they were aware of the Defendants occupation of the suit parcel of land and they made no efforts to evict them.
771. It is also the 5th, 6th, 7th and 8th Defendants submissions that there is a school on the said parcel of land and that their father built a house on the land and therefore, had the Plaintiffs conducted due diligence, they would have discovered that the said parcel of land had been subdivided.
772. On the second issue, the 5th, 6th, 7th and 8th Defendants submit that their deceased father purchased land from John Gatu (deceased) vide the land sale agreement dated 29th June, 1989.
773. The 5th, 6th, 7th and 8th Defendants also submit that John Gatu (deceased) confirmed in his letter dated 18th July, 1986 that he had sold land to their deceased father one Reuben Thuku Munene.
774. The 5th, 6th, 7th and 8th Defendants reiterate that their father immediately took possession of the said parcel of land and upon his death, the land was transferred to Serah Nyambura Thuku who later transferred it to their names.
775. It is their submissions that the mere fact that their deceased father was issued with a title deed after the death of John Gatu does not mean that the transfer also occurred after his death.
776. It is also their submissions that at the time of John Gatu's death, the transfer process was already in motion and while he was alive he wrote a letter addressed to the District Officer stating that the said parcels of land be registered in the names of the Defendants.
777. It is further their submissions that as per the Mutation Form for land parcel No. Nakuru/Municipality Block 22/53, the survey was done on 21st October, 1988 which was before the death of John Gatu.
778. The 5th, 6th, 7th and 8th Defendants submit that they have been in occupation of the said parcel of land for more than thirty-three years and they submit that they are the lawful owners of land parcel No. Nakuru/ Municipality Block 22/60.
779. The 5th, 6th, 7th and 8th Defendants rely on the judicial decision of Margaret Wairimu Magugu (Suing as the Administratrix (sic) of the estate of the late Arthur K. Magugu) v Karura Investments Limited & 4 Others [2017] KEHC 1614 (KLR) in support of their submissions.
780. On the third issue, the 5th, 6th, 7th and 8th Defendants rely on Section 80(2) of the [Land Registration Act](#), the judicial decision of Kinyajui Kamau v George Kamau Njoroge [2015] eKLR and submit that the Plaintiffs have failed to prove their case and the suit should therefore be dismissed.
781. The 5th, 6th, 7th and 8th Defendants rely on Section 27 of the [Civil Procedure Act](#) and urge the Court to award them costs.



Analysis And Determination.

782. After considering the pleadings, the evidence adduced by the Plaintiffs, Defendants and the submissions filed, it is my view that the following issues arise for determination;
- a. Whether the suit against the Defendants is statute barred.
 - b. Whether the subdivision of land parcel No. Nakuru/Municipality Block 22/4 was fraudulent.
 - c. Whether the prayers sought in the Amended Plaint should be granted.
 - d. Who should bear costs of the suit.

Summary Of Evidence And Documents.

783. I shall start by briefly summarizing the evidence of the parties herein and the documents produced either in support of the claim or in opposition to it. This is in acknowledgement of the fact that the preceding paragraphs constitute a massive volume of evidence and documents; no doubt mind boggling but certainly useful in determining the questions whether this suit is statute barred and whether the suit land was fraudulently sub-divided.
784. It is the Plaintiffs case that their father John Gatu (deceased) was the registered owner of land parcel No. Nakuru/Municipality Block 22/4.
785. It is also the Plaintiffs case that their father died on 1st January, 1989. Upon his death they conducted succession proceedings and upon obtaining the Certificate of Confirmation of Grant in the year 1991, they tried to have the said parcel of land transferred to the names of the administrators of his estate.
786. It is further the Plaintiffs case that the initial administrators of his estate who were Esther Muciku Gatu and Peter Njogu Gatu were not able to transfer the land to their names.
787. It is the Plaintiffs case that they were later substituted as administrators of the estate of John Gatu (deceased) and it was not until the year 2012 when they were able to get the green cards for land parcel No's Nakuru/Municipality Block 22/53, 54 and 55 which were the alleged subdivisions of land parcel No. Nakuru/Municipality Block 22/4.
788. It is also the Plaintiffs case that the green cards for land parcel No's Nakuru/Municipality Block 22/53, 54 and 55 were opened on 23rd December, 1988 when John Gatu (deceased) was in a coma.
789. It is further the Plaintiffs case that land parcel No. Nakuru/Municipality Block 22/53 was subdivided into land parcel No's Nakuru/Municipality Block 22/60, 61 and 62.
790. Land parcel no. Nakuru/Municipality Block 22/60 was registered in the name of Reuben Thuku Munene (deceased) the father to the 5th, 6th, 7th and 8th Defendants while land parcel No's Nakuru/Municipality Block 22/61 and 62 were registered in the name of the 2nd Defendant.
791. It is the Plaintiffs case that land parcel No. Nakuru/Municipality Block 22/54 was registered in the name of the 1st Defendant on 23rd December, 1988 and was closed upon subdivision on 10th June, 1994. It was subdivided into land parcel No's Nakuru/Municipality Block 22/372 to 413.
792. It is also the Plaintiffs case that land parcel No. Nakuru/Municipality Block 22/55 was registered in the name of Rahab Wamuhu and later transferred to the 4th Defendant before it was closed on subdivision into land parcel No's Nakuru Municipality Block 22/3940 to 3956.



793. The Plaintiffs contend that the subdivision of land parcel No. Nakuru/Municipality Block 22/4 was fraudulent as it was done when the deceased was in a coma.
794. The Plaintiffs also contend that the Defendants forged various documents that include mutation forms and Land Control Board consents.
795. The Plaintiffs produced a copy of Death Certificate No. 36774 as Exhibit P1. The Death Certificate was for John Gatu Gichuhi who died on 1st January, 1989 in Nairobi, Kenya. The cause of death is hypoglycemics coma, diabetes mellitus. The death certificate was issued on 18th January, 1989.
796. The Plaintiffs also produced a copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 as Exhibit P2. It was issued to John Gatu Gichuhi ID No. 362xxxx/xx P.O Box 220, Kikuyu. It was issued on 29th January, 1987.
797. On page 2 under part A- Property Section it states that it was opened on 14th November, 1986. Under Part B – Proprietorship Section, entry No. 2 is dated 28th January, 1987 when the land was registered in the name of John Gatu Gichuhi. The produced copy of the said title deed does not have pages 3 and 4.
798. The Plaintiffs produced a copy of a Grant of Letters of Administration issued in Nairobi HC Succession Cause No. 380 of 1991 in the matter of the estate of John Gatu Gichuhi also known as John Gatu Gichuhi to Esther Muciku Gatu and Peter Njogu Gatu on 24th June, 1991 as Exhibit P3(a).
799. A copy of the Certificate of Confirmation of Grant issued in Nairobi HC Succession Cause No. 380 of 1991 in the matter of the estate of John Gatu Gichuhi was produced as Exhibit P3(b). It was issued to Esther Muciku Gatu and Peter Njogu Gatu upon confirmation on 17th July, 1992. The Certificate of Confirmation of Grant was issued on 23rd July, 1992 and land parcel No. Nakuru/Municipality Block 22/4 is listed at No. 5 of its schedule.
800. A copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 issued to Esther Muciku Gatu P.O Box 376 Kikuyu was produced as Exhibit P4. It was issued on 12th January, 1994 and it is not signed by the Land Registrar.
801. On page 2 under Part A – Property Section, it states that the said parcel of land measures 6.493 Ha. Under Part B- Proprietorship Section, there is no entry number indicated. Instead, there is a date, 12th January, 1994 when Esther Muciku Gatu P.O Box 376 Kikuyu was registered as the owner. The said entry is also not signed by the Land Registrar.
802. On page 3 under Part C – Encumbrance Section, there are no entries while on Page 4, there is a seal of the Republic of Kenya, the headings ‘Republic of Kenya’, ‘Title Deed’ and the ‘Registered Land Act (Chapter 300)’.
803. A copy of a Rectified Certificate of Confirmation of Grant dated 20th May, 2014 was produced as Exhibit P5. It was issued in Nairobi HC Succession Cause No. 380 of 1991 in the matter of the estate of John Gatu Gichuhi alias John Gatu Gichuhi (deceased) to Erastus Gathage Gatu and Serah Njeri Mwangi. Land parcel No. Nakuru/Municipality Block 22/4 appears on the schedule at No. 5.
804. A copy of the green card for land parcel No. Nakuru/Municipality Block 22/53 was produced as Exhibit P6 (a). It was opened on 23rd December, 1988. Entry No. 1 is dated 23rd December, 1988 when John Gatu Gichuhi of P.O Box 1242 Nakuru was registered as the owner. Entry No. 2 is dated 30th June, 1989 when the title was closed on subdivision. The new parcel numbers are 60 to 61. It is certified as a true copy of the original by the Land Registrar Nakuru on 19th September, 2012.



805. A copy of the green card for land parcel No. Nakuru/Municipality Block 22/54 was produced as Exhibit P6(b). It was opened on 23rd December, 1988. Entry No. 1 is dated 23rd December, 1988 when John Gatui Gichuhi ID No. 362xxxx/xx of P.O Box No. 220 Nakuru was registered as the owner. Entry No. 2 is also dated 23rd December, 1988 when John Kairu Kibubu ID No. 383xxxx/xx of P.O Box 2693 Nakuru was registered as the owner. Entry No. 3 is dated 23rd December, 1988 when the title deed was issued while Entry No. 4 is dated 10th June, 1994 when the title deed was closed for subdivision into No's 372 to 413. It is certified as the true copy of the original by the Land Registrar, Nakuru on 19th September, 2012.
806. A copy of the green card for land parcel No. Nakuru/Municipality Block 22/55 was produced as Exhibit P6(c). It was opened on 23rd December, 1988. Entry No. 1 is dated 25th December, 1988 when John Gatui Gichuhi ID No. 362xxxx P.O Box 220 Nakuru was registered as the owner. Entry No. 2 is dated 23rd December, 1988 when Rahab Wamuhu Kamau ID No. 6006235/xx of P.O Box 393 Kericho was registered as the owner. Entry No. 3 is dated 23rd December, 1988 when the title deed was issued. Entry No. 4 is dated 2nd March, 2011 when Lewa Center for Excellence Limited was registered as the owner. Under entry No. 5 the title deed was issued while Entry No. 6 is dated 23rd May, 2011 when the title was closed on subdivision into land parcel No's 3940 to 3956. It is certified as the true copy of the original by the Land Registrar, Nakuru on 19th September, 2012.
807. A copy of a letter of consent was produced as Exhibit P7. It is issued by the Bahati Land Control Board to John Gatui Gichuhi and it is dated 28th May, 1987. It states that subject to a meeting held on 28th May, 1988, a consent was issued to subdivide land parcel No. Nakuru/Municipality Block/22 (sic).
808. A copy of a Mutation Form was produced as Exhibit P8. It is for land parcel No. Nakuru/Municipality Block 22/4 which measures 6.45 Ha and is under Registry Map Sheet No. Block 22. It was presented for registration on 23rd December, 1988 under presentation book No. 623/1988. The new parcel No's are 53, 54 and 55 and the Applicant is said to be John Gatui Gichuhi. It is signed by the said John Gatui Gichuhi on a date that is not legible.
809. A copy of a sketch map was produced as Exhibit P9. It shows that parcel No. 53 will measure 2.20 Ha, Parcel No. 54 will measure 1.66 Ha while parcel No. 55 will measure 2.86 Ha. It is signed by Olweny land surveyor on 29th November, 1988.
810. A copy of a mutation form for land parcel No. Nakuru/Municipality Block 22/53 was produced as Exhibit P10. It was presented for registration on 30th June, 1989 under presentation book No. 514 of 1989. The said parcel of land was to be subdivided into land parcel No's 60, 61 and 62. The Applicant is said to be John Gatui Gichuhi. It is signed by the said John Gatui Gichuhi on 21st October, 1988.
811. A copy of the Certificate of Official search for land parcel No. Nakuru/Municipality Block 22/4 dated 10th August, 2012 was produced as Exhibit P11(a). It shows that on 22nd December, 1988 John Gatui Gichuhi was registered as the owner of the said parcel of land and on 23rd December, 1988 the title was closed for subdivision into land parcel No's 53, 54 and 55.
812. A Copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/53 dated 10th August, 2012 was produced as Exhibit P11(b). It shows that on 23rd December, 1988 the land was registered in John Gatui Gichuhi's name and on 30th June, 1989 the title was closed on subdivision into land parcel No's 60 and 61.
813. A copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/54 dated 10th August, 2012 was produced as Exhibit P11(b). It shows that on 23rd December, 1988



- John Kairu Kibubu was registered as the owner and on 10th June, 1994 the title deed was closed for subdivision into land parcel No's 372 to 413.
814. A copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/55 dated 15th August, 2012 was produced as Exhibit P11(c). It shows that on 2nd March, 2011 Lerwa Center for Excellence Limited was registered as the owner and on 23rd May, 2011 the title was closed upon subdivision into land parcel No's 3940 to 3956.
815. A copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/60 dated 15th August, 2012 was produced as Exhibit P11(d). It shows that on 30th April, 2008 Hermotimus Munene Thuku, Pherecydes Wachira Thuku, Parthendu Wandia Thuku and Prometheus Njuguna Thuku were registered as owners. On the same date they were issued with a title deed.
816. A Copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/61 dated 15th August, 2012 was produced as Exhibit P11(e). It shows that on 6th September, 2001 Dominic M. Gitau was registered as the owner of the said parcel of land and was issued with a title deed on the same date.
817. A copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/62 dated 15th August, 2012 was produced as Exhibit P11(f). It shows that on 17th July, 1989 Dominic Muhuha Gitau was registered as the owner and was issued with a title deed on the same day.
818. The 1st and 4th Defendants case on the other hand is that the 1st Defendant vide the agreement dated 24th February, 1979 purchased 7 acres of plot No. 21 from John Gatu Gichuhi (deceased).
819. It is also the 1st and 4th Defendants case that the 1st Defendant took possession of the said portion of land in the year 1979.
820. It is further the 1st and 4th Defendants case that on 23rd December, 1988, John Gatu Gichuhi who was in good health took him to the Lands Registry and he was issued with a title deed for land parcel No. Nakuru/Municipality Block 22/54 after obtaining all the relevant consents.
821. It is the 1st and 4th Defendants case that the 1st Defendant later subdivided land parcel No. Nakuru/Municipality Block 22/54 into plots. He sold some of the plots and amalgamated the rest into land parcel No. Nakuru/Municipality Block 22/4137 (Muguga).
822. It is also the 1st and 4th Defendants case that the 4th Defendant was gifted land parcel No. Nakuru/Municipality Block 22/55 by the administrators of the estate of Rahab Wamuhu Kamau. It is further the 1st and 4th Defendants case that the 4th Defendant subdivided land parcel No. Nakuru/Municipality Block 22/55 into plots and sold them to third parties.
823. It is the 1st and 4th Defendants case that even though the 1st Defendant purchased land parcel No. Nakuru/Municipality Block 22/54, he was physically in occupation of land parcel No. Nakuru/Municipality Block 22/55.
824. It is also the 1st and 4th Defendants case that even though Rahab Wamuhu Kamau was registered as the owner of land parcel No. Nakuru/Municipality Block 22/55, she was in occupation of land parcel No. Nakuru/Municipality Block 22/54.
825. In support of their case, the 1st and 4th Defendants produced a copy of a land sale agreement dated 24th February, 1979 as Exhibit D1. It was entered into between John Gatu Gichuhi (vendor) and John Kairu Kibubu the purchaser. The agreement was for sale of seven acres of plot No. 21 that had been



- allocated to the vendor by Muguga Farmers' Co-operative Society Limited by virtue of him being a shareholder. The purchase price is indicated to be Kshs. 1,000/=. One of the terms of the agreement is that the purchaser is to take possession immediately upon signing of the agreement. The agreement is signed by both John Gatu Gichuhi and John Kairu Kibubu.
826. A copy of an agreement dated 18th February, 1979 was produced as Exhibit D2. It is written in Kikuyu language. There is an English translation of the said document attached. It states that John Gatu Gichuhi had received Kshs. 30,000/= from John Kairu Kibubu as part of the purchase price of seven acres of Plot No. 21 at Lanet. The balance of kshs. 10,000/= was to be paid later. The agreement is witnessed by Daniel Kairu and signed by both John Gatu Gichuhi and John Kairu Kibubu. The said translation was done by Lucy Wanjiru Murigah on 15th March, 2022.
827. Colored photographs were produced as Exhibit D 3 (a) and (b). The photographs are of houses on a parcel of land.
828. A copy of a receipt issued by the Department of Lands was produced as Exhibit D4. It was issued to John Gatu Gichuhi on 23rd December, 1988 upon payment of Kshs. 500/= for transfer of land parcel No. Nakuru/Municipality Block 22/54.
829. A copy of a title deed for land parcel No. Nakuru/Municipality Block 22/54 was produced as Exhibit D5. It was issued to John Kairu Kibubu ID No. 383xxxx/xx of P.O Box 2693 Nakuru on 23rd December, 1988. On page 2 under Part A – Property Section, the date it was opened is not legible and neither is the approximate area. Under Part B – Proprietorship Section, John Kairu Kibubu of P. O Box 2693 is stated to be registered as the owner on 23rd December, 1988 under Entry No. 2. That section is signed by the Land Registrar. On page 3 there is Part C- Encumbrances Section. There are no encumbrances listed and the said page is signed by the Land Registrar. On page 4 there is the seal of the Republic of Kenya and the headings, 'Republic of Kenya', 'The Registered *Land Act* (Chapter 300)' and 'Title Deed'.
830. A copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4137 (Muguga) was produced as Exhibit D6. It is issued to John Kairu Kibubu ID No. 383xxxx P.O Box 10053 Nakuru on 1st August, 2023. It states that the said parcel of land measures 1.983 Ha. On page 2 Under Part A – Proprietorship Section it states that it was opened on 30th July, 2013 and it was a subdivision of land parcel No. 3995. Under Part B – Proprietorship Section, Entry No. 1 is dated 30th July, 2013 when John Kairu Kibubu of P.O Box 10053 Nakuru was registered as the owner. Entry No. 2 states that on 1st August, 2013 a title deed was issued. Entry No. 3 is dated 9th July, 2014 and it states that Rights are reserved under Section 87. There is a signature at the end of each entry. On page three there is Part C – Encumbrances Section. Entry No. 1 is dated 9th July, 2014 when the property was charged to Equity Bank Limited to secure the sum of kshs. 10,000,000/=. Entry No. 2 is dated 9th July, 2014 when rights were reserved under Section 82 and 83. Each entry has a signature at the end and at the bottom of page three there is a signature of the Land Registrar. On page 4 there is a seal of the Republic of Kenya and the headings 'Republic of Kenya', 'Title Deed' and the 'Registered *Land Act* (Chapter 300)'. The said page has two serial numbers; "MLS/TD/02/A2/02" and 'No. 0007892'.
831. A copy of a letter of Offer by Equity Bank dated 23rd May, 2014 addressed to The Directors, Lerwa Center For Excellence Limited was produced as Exhibit D7. It issues a loan facility of Kshs. 10,000,000/= to be paid in eighteen termly installments of Kshs. 931,020/=. The security of the said loan is the personal guarantee of John Kairu Kibubu which is supported by a charge registered over land parcel No. Nakuru/Municipality Block 22 (Muguga)/4137 registered in favor of Equity Bank Ltd for Kshs. 10,000,000/= together with the joint registration and specific debenture over motor vehicle Registration No. KBV 599L and the Directors personal guarantee and indemnity of Kshs. 10,000,000.



It is signed by Michael Ndungu and Elijah Muhoro on behalf of Equity Bank Limited and a Director of Lerwa Center for Excellence Limited.

832. A copy of a Charge dated 8th July, 2014 was produced as Exhibit D8. It states that the Chargor is John Kairu Kibubu, the borrower is Lerwa Centre for Excellence Limited and the chargee is Equity Bank. The charge is to be registered over land parcel No. Nakuru/Municipality Block 22/4137 (Muguga). The charge is to secure the sum of kshs. 10,000,000/=.
833. A copy of a Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/4137 (Muguga) dated 27th October, 2014 was produced as Exhibit D9. It states that on 30th July, 2013 John Kairu Kibubu was registered as the owner, on 1st August, 2013 he was issued a title deed and on 9th July, 2014 rights were reserved under Section 87. Under the encumbrance section, a charge was registered to Equity Bank Limited on 9th July, 2014 to secure a sum of Kshs. 10,000,000/= and on the same date, rights were reserved under Sections 82 and 83.
834. A copy of an agreement dated 19th April, 1982 between John Gatu Gichuhi (vendor) and Rahab Wamuhu (purchaser) was produced as Exhibit D10. The agreement states that the vendor is the registered owner of LR No. 4730/72 which measures 17 acres that was allocated to him by Muguga Farmers Company Limited. The vendor was selling two acres of the said parcel of land for a consideration of kshs. 20,000/=. The sum of kshs. 10,000/= was payable upon the signing of the said agreement which agreement was drafted by Kamere & Company Advocates.
835. A copy of the title deed for land parcel No. Nakuru/Municipality Block 22/55 was produced as Exhibit D11. It was issued to Rahab Wamuhu Kamau ID No. 600xxxx/xx of P.O Box 393 Kericho on 23rd December, 1988. On page 2 Part A – Property Section it shows that it was opened on 23rd December, 2012 and it measured 2.86 Ha. Under Part B – Proprietorship Section it states that under Entry No. 2 Rahab Wamuhu Kamau of P.O Box 393 Kericho was registered as the owner on 23rd December, 1988. The said entry is signed at the end by the Land Registrar. On page 3 there is Part C – Encumbrance Section. There are no entries on the said page and there is a signature of the Land Registrar at the bottom. On page 4 there is a seal of the Republic of Kenya and the headings ‘Republic of Kenya’, ‘Title Deed’ and the ‘Registered Land Act (Chapter 300)’.
836. A copy of the Certificate of Incorporation for Lerwa Center for Excellence Limited, the 4th Defendant, was produced as Exhibit D12. It is No. CPR/2010/33686 and dated 15th October, 2010.
837. A copy of the CR 12 for the 4th Defendant was produced as Exhibit D13. It is dated 18th July, 2014 and it states that as at 18th July, 2014 the names of the shareholders and directors of Lerwa Centre For Excellence Limited were Margaret Wanja Wambugu and John Kairu Kibubu with 35 shares each. The nominal capital of the company is Kshs.100,000 divided into 1000 shares of kshs.100 each and the company was registered on 15th October, 2010.
838. Colored photographs were produced as Exhibit D14 (a), (b) and (c). Exhibit D14(a) and (c) are photographs of buildings painted, “Lerwa Center for Excellence” while Exhibit D 14 (b) is of a school bus.
839. Certified copies of green cards for land parcel No’s Nakuru/Municipality Block 22/4, 54 and 55 were produced as Exhibits D15, 16 and 17 respectively. The entries on the said green cards were set out in great detail by the Land Registrar who testified as DW2.
840. The 2nd Defendant’s case is that he is the registered owner of land parcel No’s Nakuru/Municipality Block 22/61 and 62.



841. It is also the 2nd Defendant's case that he purchased land parcel No. Nakuru/Municipality Block 22/61 from one Gacheru Muiruri and land parcel No. Nakuru/Municipality Block 22/62 from John Gatu (deceased).
842. It is further the 2nd Defendant's case that the two parcels of land were resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/53.
843. It is his case that he paid John Gatu (deceased) the purchase price for land parcel No. Nakuru/Municipality Block 22/62 before he died.
844. It is also his case that John Gatu (deceased) wrote various letters stating that he had sold portions of the suit parcel to the Defendants and all the relevant consents were obtained before the said parcels of land were registered in their names.
845. In support of his case, the 2nd Defendant produced a copy of the title deed for land parcel No. Nakuru/Municipality Block 22/62 as Exhibit D3 (1). It was issued to Dominic Muhuha Gitau ID No. 047xxxx/xxP.O Box 1148 Nakuru on 17th July, 1989. It is signed by the Land Registrar. The copy of the title deed that has been produced does not have page No's 2 and 4. Page 3 has Part C- Encumbrances Section which has no entries and it is signed by the Land Registrar.
846. A copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/62 dated 15th August, 2012 was produced as Exhibit D3 (2). It states that on 17th July, 1989 Dominic Muhuha Gitau was registered as the owner of the said parcel of land and on the same date he was issued with a title deed.
847. A copy of the title deed for land parcel No. Nakuru/Municipality Block 22/61 was produced as Exhibit D3 (3). It was issued to Dominic M. Gitau ID No. 047xxxx P.O Box 1148 Nakuru on 7th September, 2001. It is signed by the Land Registrar. Pages 2 and 4 of the said title deed have not been produced. At page 3 there is Part C – Encumbrances Section that has no entries but it is signed by the Land Registrar.
848. A copy of the Certificate of Official Search for land parcel No. Nakuru/Municipality Block 22/61 dated 15th August, 2012 was produced as Exhibit D3 (4). It states that on 6th September, 2001 Dominic M. Gitau was registered as the owner and on the same date he was issued with a title deed.
849. A copy of the death Certificate of John Gatu Gichuhi dated 18th January, 1989 was produced as Exhibit D3 (5). The entries on the said death certificate have already been set out in the preceding paragraphs as it was also produced as Exhibit P1.
850. A copy of a handwritten agreement between Gacheru Muiruri and Dominic Gitau was produced as Exhibit D3 (6). It is for the sale of land parcel No. Nakuru/Municipality Block 22/61 at the purchase price of Kshs. 350,000/=.
851. A copy of a typed agreement dated 15th February, 2000 was produced as Exhibit D3 (7). The agreement is between Gacheru Muiruri and Dominic Gitau for the sale of land parcel No. Nakuru/Municipality Block 22/61 for a consideration of Kshs. 350,000/=.
852. A copy of a handwritten acknowledgment of payment dated 13th October, 2000 was produced as Exhibit D3 (8). It states that on 13th October, 2000 Gacheru Muiruri was paid the final installment of Kshs. 30,000/= for the purchase of one acre of land in Lanet, Nakuru. It is signed by Gacheru Muiruri and a witness one G. W Ngure.
853. A copy of a handwritten acknowledgement of payment dated 15th May, 2000 was produced as Exhibit D3 (9). It states that Gacheru Muiruri was paid Kshs. 20,000/= as part of the payment of the purchase



- price for one acre of land at Lanet. The balance of the purchase price is stated to be Kshs. 80,000/=. It is signed by Gacheru Muiruri and a witness one G. W Ngure.
854. A copy of a handwritten acknowledgement of payment dated 4th May, 2001 was produced as Exhibit D3 (10). It states that Dominic M. Gitau paid Gacheru Muiruri kshs. 300,000/= as part of the purchase price for one-acre parcel of land in Lanet. The balance is stated to be Kshs. 140,000/=. It is signed by Gacheru Muiruri and Dominic M. Gitau.
855. A copy of a typed acknowledgement of payment dated 7th June, 2001 was produced as Exhibit D3 (11). It states that Gacheru Muiruri received kshs. 70,000/= from Dominic M. Gitau as part of the purchase price for a plot measuring two acres that was at Lanet, Nakuru. It states that the balance of kshs. 70,000/= is to be paid after the board has endorsed the transfer of land. It is signed by Gacheru Muiruri, Dominic M. Gitau and a witness one G.W Ngure.
856. A copy of a receipt dated 15th July issued by Kamere & Co. Advocates was produced as Exhibit D3 (12) (a). It is issued to Dominic upon payment of ksh.400 for legal fees.
857. A copy of a receipt issued by Kamere & Company Advocates was produced as Exhibit D3 (12)(b). The other contents of the said receipt are illegible.
858. A copy of a receipt dated 15th July issued by Kamere & Co. Advocates to Dominic upon payment of kshs. 400/= for survey fees was produced as Exhibit D3 (12) (c).
859. A copy of an application for consent of Land Control Board was produced as Exhibit D3 (13). It states that the registered proprietor is John Gatu Gichuhi and the parcel of land is Nakuru Municipality/Block 22/4.
860. This Court notes that land parcel No. Nakuru Municipality/Block 22/21 is written and No. 21 is crossed off and its place No. 4 is written. The area is stated to be 19 acres and 19 is crossed off and 17 written in its place. It states that the said parcel of land is to be subdivided into three portions. One portion is to measure 4 acres, the other 7 acres and the last portion is to measure 6 acres. Some sections of the said application are illegible and it is signed by the owner.
861. A copy of a Mutation Form for land parcel No. Nakuru/Municipality Block 22/53 was produced as Exhibit D3 (14). It was presented for registration on 11th June, 1989 under presentation book No. 514 of 1989. It is dated 28th June, 1989 and the said parcel of land is to be divided into land parcel No's 60, 61 and 62. The Applicant is stated to be John Gatu Gichuhi and it is signed on 21st October, 1988.
862. A copy of a receipt issued by the Department of Lands dated 9th June, 1989 was produced as Exhibit D3 (15). It is issued to John Gatu Gichuhi for payment of kshs. 150/= for the Certificate of Title and Opening of the new Register for land parcel No. Nakuru/Municipality Block 22/53. It is certified as a true copy of the original on 5th November, 2013.
863. A copy of a Certificate of Official Search dated 10th August, 2012 was produced as Exhibit D3 (16). It is for land parcel No. Nakuru/Municipality Block 22/4 it states that on 22nd December, 1988 John Gatu Gichuhi was registered as the owner and on 23rd December, 1988 the title was closed upon subdivision into land parcel No's 53 and 54.
864. A copy of a handwritten acknowledgement dated 22nd July, 1982 was produced as Exhibit D3 (17). It states that John Gatu received Kshs. 800/= from Dominick Gitau for half an acre of one-acre Plot from Muguga farm (sic). It also states that the balance of seven thousand two hundred would be paid at the end of July, 1982. It further states that an agreement will be drawn by Kamere Advocate. Some sections of the said acknowledgment are not legible.



865. A copy of a handwritten letter by John Gatu dated 10th October, 1985 was produced as Exhibit D3 (18). The said letter is in Kikuyu language and there is no translation attached.
866. A copy of a handwritten acknowledgement dated 4th November, 1985 was produced as Exhibit D3 (19)(a). It states that John Gatu was paid kshs. 500 towards payment of one share of one acre of land at Lanet- Muguga Farm. It is signed by John Gatu.
867. A copy of a handwritten acknowledgement dated 30th September, 1985 was produced as Exhibit D3 (19)(b). It states that John Gatu received Kshs. 500/= as part payment of one share of one acre of land at Lanet – Muguga Farm. It is signed by John Gatu.
868. A copy of a handwritten acknowledgment dated 19th September, 1985 was produced as Exhibit D3 (19)(c). It states that John Gatu received money towards payment of one acre of Muguga Farm in Lanet (sic). It is signed by John Gatu.
869. A copy of a handwritten acknowledgement dated 11th September, 1985 was produced as Exhibit D3 (19)(e). Apart from the said date, the rest of the contents of the said document are not legible. It is signed by John Gatu.
870. A copy of a handwritten acknowledgement dated 16th October, 1985 was produced as Exhibit D3 (19) (f). It states that John Gatu was paid Kshs. 500 as part of the purchase price of one acre of land at Muguga. It is signed by John Gatu.
871. A copy of a handwritten acknowledgement dated 29th October, 1985 was produced as Exhibit D3 (19) (g). It states that John Gatu received Kshs. 500 as part of the purchase price of one acre of land at Muguga, Lanet. It is signed by John Gatu.
872. A copy of a letter written by Dominic K. Gitau to the Provincial Administration (sic) was produced as Exhibit D3 (20). The subject of the letter is a complaint over land by Dominic M. Gitau against John Gatu Gichuhi. It states that Dominic M. Gitau entered into two land sale agreements in the year 1982 with John Gatu Gichuhi for the sale of two acres of John Gatu Gichuhi’s parcel of land measuring 17 acres that was at Lanet. The letter states that Dominic M. Gitau paid the entire purchase price and he requested that the title deeds be issued in his name. The letter also states that John Gatu Gichuhi had no more land to sell. The letter is copied to the District Commissioner, Nakuru.
873. A copy of a letter dated 25th June, 1986 written by K. Kasombo District Officer and addressed to Dominic M. Gitau was produced as Exhibit D3(21). The reference number on the said letter is LND. 16/1 Vol.11/101 and it informs him that he is to report to the District Commissioner’s office Nakuru over his land dispute with John Gatu Gichuhi.
874. A copy of a letter written by John Gatu Gichuhi on 18th July, 1986 and addressed to The District Officer Nakuru was produced as Exhibit D3(22). The subject of the said letter is “LR No. 4730/72 – Land Complaint Dominic M. Gitau.” The contents of the said letter were set out in great detail by the 2nd Defendant when he gave his evidence as DW3. The letter is copied to the District Land Registrar, Nakuru, Dominic M. Gitau and Olweny the surveyor.
875. A copy of a letter written by John Gatu Gichuhi on 14th March, 1986 and addressed to the Chairman, Land Control Board Nakuru Municipality was produced as Exhibit D3(23). The subject of the said letter is “Transfere (sic) of Plot No. 21 Muguga Farmers Co-operative Society (I.R 4730/2). The letter stated that John Kairu Kibubu purchased 7 acres and Rahab Wamuhu purchased 4 acres of his parcel of land measuring 17 acres. He requested that at the time of registration, title deeds be issued



in their names. The letter is copied to the District Land Registrar, Nakuru, Olweny & Associates, the Chairman Muguga Farmers Co-operative Society and the Chief Nakuru Municipality.

876. A copy of a mutation form for land parcel No. Nakuru/Municipality Block 22/4 was produced as Exhibit D3 (24). It was presented for registration on 23rd December, 1988. It is presented by John Gatu Gichuhi and the said parcel of land is to be subdivided into land parcel No's 53, 54 and 55. A sketch is attached to the said Mutation Form which is dated 29th November, 1988 and signed by Olweny Surveyor. The said Olweny states that the owner has already subdivided the land and what is remaining is picking (sic) the boundaries. The mutation form was presented for registration on 23rd December, 1988.
877. A copy of a Land Control Board Consent dated 28th May, 1987 was produced as Exhibit D3 (25). The contents of the said letter are not legible.
878. Copies of pleadings filed in Succession Cause No. 380 of 1991 in the matter of the estate of John Gatuu Gachuhi alias John Gatu Gichuhi were produced as Exhibit D3 (26).
879. A copy of a Chamber Summons application dated 27th March, 2014 filed in the said suit is among the pleadings produced. It is filed by Esther Muciku Gatu and it seeks that Erastus Gathage Gatu and Serah Njeri Mwangi be substituted as administrators of the said estate.
880. Attached to the said application is a supporting affidavit sworn by Esther Muciku Gatu and a consent sworn by Esther Muciku Gatu, Henry Kiaraho Gatu, Margaret Wambui Gatu, Samuel Gatonye Gatu, Rahab Wanjiku Gatu, Francis Gaitho Gatu and Peter Njogu Gatu. The consent states that Erastus Gathage Gatu and Serah Njeri Mwangi can be substituted as administrators.
881. Also attached to the said application is a copy of a 'Letter of Appointment' signed by the above listed persons stating that Erastus Gathage Gatu and Serah Njeri Mwangi can be substituted as administrators of the said estate.
882. A copy of Petition of Letters of Administration Intestate filed in Nairobi High Court Succession Cause No. 380 of 1991 in the matter of the estate of John Gatu Gichuhi alias John Gatu Gichuhi filed by Esther Muciku Gatu and Peter Njogu Gatu is also attached.
883. A copy of Guarantee by Personal Sureties sworn by Stephen Njoroge and Gideon Njuguna Numa on 8th March, 1991 is also attached. It has a schedule of assets of John Gatu deceased and land parcel No. Nakuru/Municipality Block 22/4 is not included.
884. Copies of affidavits of Justification of Proposed Administrators and proposed sureties are attached. They are signed by Esther Muciku Gatu, Peter Njogu Gatu and the above-mentioned sureties on 2nd April, 1991.
885. A copy of the death certificate of John Gatu Gichuhi is also attached. Its contents have already been set out in the preceding paragraphs. A copy of a letter of consent is attached which states that Henry Kiaraho Gatu, Margaret Wambui Gatu, Samuel Gatonye Gatu, Rahab Wanjiku Gatu, Francis Gaitho Gatu, Erastus Gathage Gatu and Serah Njeri Mwangi have agreed that Esther Muciku Gatu and Peter Njogu Gatu apply for letters of administration. It is also sworn on 2nd April, 1991.
886. A copy of the calendar of the year 1987 was produced as Exhibit D3(27).
887. A copy of a Further Affidavit sworn by Dominic Muhuha Gitau on 19th October, 2015 was produced together with a Replying Affidavit also sworn by Dominic Muhuha Gitau on 3rd March, 2015 as Exhibit D3 (28).



888. The Replying Affidavit is filed in response to the Plaintiffs application dated 2nd February, 2015 and the Further Affidavit is filed in response to an affidavit filed by Erastus Gathage Gatu in support of the application dated 2nd February, 2015.
889. The averments in the said affidavits are simply a replication of the contents of the 2nd Defendant's Statement of Defence, the evidence he adduced during the hearing, his witness statement and written submissions.
890. The 2nd Defendant avers that he is an innocent purchaser for value of land parcel No. Nakuru/Municipality Block 22/62.
891. The 5th, 6th, 7th and 8th Defendants case is that their deceased father one Reuben Thuku Munene purchased two acres of LR No. 4730/72 from John Gatu Gichuhi (deceased).
892. It is also the 5th, 6th, 7th and 8th Defendants case that the said parcel of land was later registered as land parcel No. Nakuru/Municipality Block 22/4.
893. It is further the 5th, 6th, 7th and 8th Defendant's case that the said parcel of land was later subdivided and their deceased father registered as the owner of land parcel No. Nakuru/Municipality Block 22/60.
894. It is the 5th, 6th, 7th and 8th Defendant's case that after the death of their father, land parcel No. Nakuru Municipality Block 22/60 was registered in their names.
895. It is also their case that they have lived on the said parcel of land since the year 1997 to date.
896. In support of their case they produced a copy of a land sale agreement dated 29th June, 1982 between John Gatu Gichuhi (vendor) and Reuben Thuku Munene (purchaser) (Exhibit D4 (1)). It states that the vendor is one of the registered owners of LR no. 4730/72 and the owner of a seventeen-acre portion of the said parcel of land.
897. The agreement also states that the vendor was selling a two-acre portion of the seventeen acres for Kshs. 20,000/=. The agreement is signed by the vendor and thumb printed by the Purchaser. It is drawn by Kamere & Co. Advocates.
898. A copy of the title deed for land parcel No. Nakuru/Municipality Block 22/60 registered in the name of Reuben Thuku Munene was produced as Exhibit D4 (2). It states that he was registered as the owner on 30th June, 1989. The copy of title deed produced in Court does not have pages 2 and 4. On page 3 Part C- Encumbrances Section there are no entries but there is a signature of the Land Registrar at the bottom.
899. A copy of the title deed for land parcel No. Nakuru/Municipality Block 22/60 was produced as Exhibit D4 (3). It states that it measures 0.8398 Ha and was issued to Hermotimus Munene Thuku, Pherecydes Wachira Thuku, Parsthenis Wandia Thuku and Prometheus Njuguna Thuku on 30th April, 2008. On page 2 Part A – Property Section it states that it was opened on 29th June, 1989. On page 2 Part B – Proprietorship Section, Entry No. 4 is dated 30th April, 2008 when the above listed persons were registered as owners. Entry No. 5 is also dated 30th April, 2008 when the title deed was issued. There is a signature against the two entries. On page 3 Part C – Encumbrances Section there are no entries and at the bottom there is a signature by the Land Registrar. On page 4, there is a seal of the Republic of Kenya and the headings 'Republic of Kenya', 'Title Deed' and the 'Registered Land Act (Chapter 300)'.



900. A copy of a letter dated 18th July, 1986 was produced as Exhibit D4 (4). It is written by Gatu Gichuhi and addressed to the District Officer Nakuru Municipality and the subject of the letter is;
- “LR No. 4730/72 – Land Complaint Dominic M. Gitau”
901. The letter states that Richard Thuku Munene purchased two acres of the said parcel of land and the title is still being processed. The letter is copied to The District Land Registrar Nakuru, Dominic M. Gitau and Olweny Surveyor.
902. A copy of a receipt dated 21st July, 1989 was produced as Exhibit D4 (5). It is issued by Kamere & Co. Advocates to Reuben Thuku on 21st July, 1989 upon payment of Kshs. 5,000/= for costs and disbursements for Block 22/60.
903. A copy of an Occupation Permit was produced as Exhibit D4 (6). It is issued by the Municipal Council of Nakuru to R. Thuku Munene of P.O Box 2390 Nakuru on 12th June, 1985. It states that the new residential home on plot No. 22/60 has been examined and found to be in compliance with the plans that were approved by the Municipal Council and is fit for occupation. It is signed by the Town Engineer.
904. It should not be forgotten that it is not disputed that John Gatu Gichuhi was the registered owner of land parcel No. Nakuru/Municipality Block 22/4. What is in dispute is whether land parcel No. Nakuru/Municipality Block 22/4 was fraudulently subdivided.

A. Whether the suit against the Defendants is statute barred.

905. The 1st and 4th Defendants in their Amended Statement of Defence dated 11th May, 2016 at paragraph 9 state that the suit against the 1st Defendant is statute barred as the cause of action arose in the year 1979.
906. On 2nd October, 2018, Counsel for the Plaintiffs brought to the attention of the Court that a preliminary objection dated 17th February, 2015 had been filed by the 1st and 4th Defendants.
907. The said preliminary objection is on the following grounds;
- “ This suit is statute barred for the following reasons; -
- i. The 1st Defendant bought his portion of the suitland (sic) on 24th February, 1979.
 - ii. The 1st Defendant was issued with a title deed on 23rd December, 1988.
 - iii. The 1st Defendant has been in possession and occupation of the suitland (sic) since 1979.”
908. The 2nd Defendant at paragraph 17 of his Statement of Defence states that the Plaintiffs suit is barred by the statute of limitations.
909. The Court issued directions that the preliminary objection be raised during the hearing. This is in line with the decision of Sichuan Huashi Enterprises Corp. Limited v Micheal Misiko Muhindi [2019] eKLR wherein it was held as follows;

- “ 13. The law as I understand it is that the defence of limitation of time is a matter for determination at the trial; it cannot be dealt with in a summary manner or at preliminary stage or as a preliminary objection. The Court should formulate



limitation as one of the issues for determination and decide it on evidence adduced at the trial. (Emphasis mine)

On this see the case of Oruta & Another vs. Nyamato [1998] KLR 590, where the Court held that limitation of action:-

“...could only be queried at the trial but not by...a preliminary objection...The appellant could raise the objection at the trial and the trial judge would have to deal with the matter on the evidence to be adduced at the trial” (Emphasis mine)

14. See also the case of Divecon Ltd vs Shirinkhanu S. Samani Civil Appeal No. 142 of 1997, where the Court quoted with approval the words of Gachuhi, J.A., the leading judge in the Oruta case (ibid) that:

“It will be up to the judge presiding at the trial to decide the issue of limitation as one of the issues but not as a preliminary point. The raising of the preliminary issue that would cause the suit for the plaintiff to be struck out is not encouraged by the *Limitation of Actions Act.*” (Emphasis mine)

910. The 1st & 4th Defendants and the 2nd, 5th, 6th, 7th & 8th Defendants have, in their submissions, listed the issue of whether this suit is statute barred as one of the questions for determination.
911. I have noted that the 5th, 6th, 7th and 8th Defendants have not raised the issue that the suit is statute barred in their statements of defence but instead they have raised the said issue in their submissions.
912. In the judicial decision of Bosire Ogero v Royal Media Services [2015] KEHC 4728 (KLR) the Court held as follows;
- “The law of limitation of actions is intended to bar the plaintiffs from instituting claims that are stale and aimed at protecting defendants against unreasonable delay in the bringing of suits against them. The issue of limitation goes to the jurisdiction of Court to entertain claims and therefore if a Matter is statute barred, the Court has no jurisdiction to entertain the same. And even if the issue of limitation is not raised by a party to the proceedings, since it is a jurisdictional issue, the Court cannot entertain a suit which it has no jurisdiction over.”
913. It is evident that some parties raised the question of limitation in their pleadings while others did so in their submissions. In my view, it matters not that the question of limitation was raised by some parties in pleadings and by some other parties in submissions. Limitation touches on the jurisdiction of this court. It is trite law that jurisdiction can be addressed at whatever stage of the trial and even on appeal.
914. It is upon this background that I shall proceed to address the question of limitation.
915. This suit is founded on allegations of fraud in respect of subdivision of the suit parcel i.e. Nakuru/Municipality Block 22/4 which culminated to the transfer of ownership to the Defendants.
916. The 1st and 4th Defendants submit that the cause of action arose in the year 1979 when the 1st Defendant took possession of a portion of land parcel No. Nakuru/Municipality Block 22/4 upon purchase.
917. The 1st and 4th Defendants also submit that the suit was filed in the year 2015 after a period of over thirty-five years had lapsed since the 1st Defendant took possession and twenty-seven years after he was issued with a title deed.



918. The 1st and 4th Defendants further submit that the Plaintiffs gave contradictory evidence on when the cause of action arose.
919. It is their submissions that in examination-in-chief, the 1st Plaintiff testified that the initial administrators of the estate of his deceased father tried to transfer the said parcel of land in the year 1992 but they were told that they had no land.
920. It is also their submissions that upon cross examination, the 1st Plaintiff admitted that the initial administrators were aware of the 1st Defendant's occupation from the time they were appointed as administrators in the year 1991.
921. It is their submissions that upon further cross examination, the 1st Plaintiff stated that he discovered fraud in the year 2012 and later stated that it was in the year 2013.
922. The Plaintiffs submit that the initial administrators of the estate of their deceased father tried to transfer land parcel No. Nakuru/Municipality Block 22/4 to their names but they were not successful.
923. The Plaintiffs also submit that it was after they sought the intervention of the Minister for Lands that they were able to obtain the green cards for land parcel No's Nakuru/Municipality Block 22/53, 54 and 55 and that it is upon getting the said documents in the year 2012 that they discovered the fraudulent and illegal subdivision of land parcel No. Nakuru/Municipality Block 22/4.
924. The Plaintiffs therefore contend that the cause of action arose in the year 2012 and that is when the time begun to run. This suit was filed in the year 2015.
925. Section 7 of the *Limitation of Actions Act* provides as follows;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

926. Section 26 of the *Limitation of Actions Act* provides as follows;

“Where, in the case of an action for which a period of limitation is prescribed, either—

- a. the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
- b. the right of action is concealed by the fraud of any such person as aforesaid; or
- c. the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:

Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or



- (ii) in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.”

927. The Court of Appeal in *Njenga v Mugo & 3 others* [2023] KECA 18 (KLR) held as follows;

“ 24. From the provisions of section 26, it is apparent that the time for limitation is set in motion at the time when an aggrieved party has discovered the fraud or mistake or when it is deemed that he ought to have reasonably and diligently discovered the fraud or mistake.” [Emphasis Mine]

928. Section 26 of the *Limitation of Actions Act* provides that the time of limitation begins to run when fraud has been discovered or when it is deemed that a party ought to have reasonably discovered the fraud.

929. In order to answer whether this suit is statute barred, I shall need to determine when the cause of action arose and/or when the alleged fraud was discovered.

930. At paragraph 13 of the Amended Plaintiff, the Plaintiffs aver that the initial administrators of the estate of the late John Gatu Gichuhi presented transfer forms together with the original title deed for land parcel No. Nakuru/Municipality Block 22/4 at the Nakuru Lands Registry but the said documents were rejected without a valid reason.

931. The Plaintiffs do not state which year this was. They, however, produced a copy of the Certificate of Confirmation of Grant issued in Nairobi HC Succession Cause No. 380 of 1991 in the matter of the estate of John Gatu Gichuhi (Exhibit P3(b)). It was issued to Esther Muciku Gatu and Peter Njogu Gatu upon confirmation on 17th July, 1992. The Certificate of Confirmation of Grant was issued on 23rd July, 1992.

932. It is therefore logical to deduce that the said documents were presented to the Nakuru Lands Registry sometime after 23rd July, 1992 which was the date the Certificate of Confirmation of Grant was issued to Esther Muciku Gatu and Peter Njogu Gatu the initial administrators of the estate of the late John Gatu Gichuhi.

933. The 1st and 4th Defendants contend that the Plaintiffs were aware of their possession of the said parcel of land from as early as the year 1991.

934. It is not disputed that John Gatu Gichuhi died on 1st January, 1989. It is also not disputed that grant of letters of administration were issued to Esther Muciku Gatu and Peter Njogu Gatu on 24th June, 1991.

935. Upon cross examination PW1 admitted that he was aware that the Defendants were in occupation of the said parcel of land. He also admitted that the initial administrators were also aware of the occupation by the Defendants but they did not take any steps to try and remove them from the land.

936. It is therefore evident that even before this suit was filed, the Plaintiffs were aware that the Defendants were in occupation of land parcel No. Nakuru/Municipality Block 22/4 and were in occupation as at 1991.

937. This Court takes cognizance of the fact that the Plaintiffs being aware of the Defendants occupation is different from the fact of discovery of fraud. The question that follows is whether the Defendants occupation ought to have led to the discovery of the alleged fraud on or before the year 2012.



938. This Court answers this question in the affirmative. The Plaintiffs ought to have, with exercise of diligence, discovered the alleged fraud as at 1991 when grant of letters of administration were issued to Esther Muciku Gatu and Peter Njogu Gatu. See *Njenga v Mugo & 3 others* (2023) *Supra*.
939. Even though the Plaintiffs contend that they made several visits to the Lands Registry from the year 1991, no evidence of such visits have been availed. The Plaintiffs have not produced any documents to show that they requested for any documents from the Lands Registry.
940. Whereas it is evident from the copies of green cards that were produced during the hearing that they (the green cards) were issued in the year 2012, there is no evidence that the Plaintiffs sought any documents from the Lands Registry prior to the year 2012.
941. That being the case, my view is that had the Plaintiffs exercised reasonable diligence, they would have discovered the alleged fraud before the limitation period lapsed.
942. The Land Registrar who testified as DW2 produced a certified copy of the green card for land parcel No. Nakuru/Municipality Block 22/4. (Exhibit D15) Entry No. 4 shows that on 23rd December, 1988, the title was closed upon subdivision into land parcel No's Nakuru/Municipality Block 22/53, 54 and 55.
943. The Plaintiffs are alleging that this initial subdivision of land parcel No. Nakuru/Municipality Block 22/4 was fraudulent.
944. It is therefore my view that the cause of action arose on 23rd December, 1988 when land parcel No. Nakuru/Municipality Block 22/4 was subdivided into land parcel No's Nakuru/Municipality Block 22/53, 54 and 55 and sometime in 1991 which is the year that succession proceedings were commenced and during which time fraud could have reasonably been discovered.
945. This suit was filed in the year 2015 which was twenty-seven years after the cause of action arose and twenty-four years when the alleged fraud could have, with reasonable diligence, been discovered.
946. In the judicial decision of *Joshua Ngatu v Jane Mpinda & 3 others* [2019] KEELC 4603 (KLR) the Court held as follows;
- “ 33. The rationale of the statute of limitation was aptly captured in the East African Court of Justice appeal case No. 2 of 2012, *Attorney General of Uganda & Another Vs. Omar Awadh & 6 Others* (2013) Eklr where it was stated as follows;
- “Both justice and equity abhor a claimant's indolence or sloth. Stale claims prejudice and negatively impact the efficacy and efficiency of the administration of justice. The overarching rationale for statutes of limitations, such as the time limit of Article 30 (2) of the EAC Treaty, is to protect the system from the prejudice of stale claims and their salutary effect on the twin principles of legal certainty and of repose (namely: affording peace of mind, avoiding the disruption of settled expectations, and reducing uncertainty about the future)”. [Emphasis Mine]
947. In the judicial decision of *Bosire Ogero v Royal Media Services* (*supra*) cited above, the Court held that if a suit is statute barred, then the Court has no jurisdiction to entertain it.



948. In the judicial decision of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1 the Court held as follows;

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

949. I find that this suit contravenes both Section 7 and Section 26 of the Limitation of Actions Act as it is statute barred. Therefore, this Court lacks jurisdiction to entertain it.

B. Whether the subdivision of land parcel No. Nakuru/Municipality Block 22/4 was fraudulent.

950. Given my finding on issue (a) above, it would not have been necessary to address this question but I shall, for what it is worth, make a merit determination of it.

951. As stated in the preceding paragraphs, the Plaintiffs contend that land parcel No. Nakuru/Municipality Block 22/4 was fraudulently subdivided.

952. The Plaintiffs’ allegation of fraud is hinged on the fact that at the time of the alleged subdivision, their father John Gatu (deceased) was in a coma.

953. Their allegation of fraud is also on the ground that they (Plaintiffs) still have in their possession the original title deed for land parcel No. Nakuru/Municipality Block 22/4.

954. The 1st and 4th Defendants on the other hand contend that on 23rd December, 1988, when land parcel No. Nakuru/Municipality Block 22/4 was subdivided, John Gatu (deceased) was alive. They also contend that John Gatu (deceased) drove the 1st Defendant in his car to the Nakuru Lands Registry and he (The 1st Defendant) was issued with the title deed for land parcel No. Nakuru/Municipality Block 22/54 which is one of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/4.

955. The 1st and 4th Defendant contend that the 1st Defendant purchased a portion of Plot No. 21 measuring seven acres from John Gatu (deceased) which portion of land was later registered as land parcel No. Nakuru/Municipality Block 22/54.

956. It is the 1st and 4th Defendants contention that the 1st Defendant assisted his aunt one Rahab Wamuhu Kamau to purchase a portion of LR No. 4730/72 measuring four acres from the deceased and that she was subsequently issued with a title deed for land parcel No. Nakuru/Municipality Block 22/55.

957. It is further the 1st and 4th Defendant’s case that upon Rahab Wamuhu’s demise, the administrators of her estate transferred the said parcel of land to the 4th Defendant on 2nd March, 2011. On 23rd May, 2011, the title for land parcel No. Nakuru/Municipality Block 22/55 was closed upon subdivision into land parcel No’s Nakuru/Municipality Block 22/3940 to 3956. The resultant subdivisions were later sold to third parties.

958. The 2nd Defendant on the other hand contends that he purchased a portion of Plot No. 21 measuring two acres. The said parcel of land was later registered as land parcel No. Nakuru/Municipality Block 22/62. It was one of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/53.

959. The 2nd Defendant further contends that he purchased land parcel No. Nakuru/Municipality Block 22/61 from Gacheru Muiruri who was one of his neighbors and who had also purchased the said parcel of land from John Gatu (deceased).



960. The 5th, 6th, 7th and 8th Defendants on the other hand contend that their deceased father one Reuben Thuku Munene purchased a portion of LR No. 4730/72 measuring two acres.
961. They also contend that the said parcel of land was later registered as land parcel No. Nakuru/Municipality Block 22/ 60 on 30th June, 1989.
962. Fraud has been defined in Black’s Law Dictionary 11th Edition as;
- “A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”
963. The Court of Appeal in Vijay Morjaria vs Nansingh, Madhusingh Darbar & another [2000] eKLR held that:
- “It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.” (Emphasis mine)
964. The Plaintiffs have set out particulars of fraud against the Defendants in the Amended Plaintiff.
965. The particulars of fraud against the 1st Defendant are as follows;
- a. Altering documents to transfer the deceased’s property into their names without his consent.
 - b. Presenting forged documents for the subdivisions and subsequent transfers of Nakuru/Municipality Block 22/4 to the Ministry of Lands, Nakuru County for registration.
 - c. Transacting without the consent of the deceased proprietor and having full knowledge of his death.
 - d. Transferring property into their (sic) names without letters of consent.
 - e. Presenting Nakuru/Municipality Block 22/4 for subdivision into 3 parcels of land without the consent of the deceased.
 - f. Transferring into his names and acquisition of Nakuru/Municipality Block 22/54 by alteration of documents/forging of consent and or (sic) transfer forms.
 - g. Forging the deceased’s signature in all application forms for subdivision, application for consent to transfer and subsequent transfers of the mother title from Nakuru/Municipality Block 22/4 to subsequent parcels Nakuru/Municipality Block 22/53, Nakuru/Municipality Block 22/54 and Nakuru/Municipality Block 22/55.
 - h. Presenting forged documents to the Ministry of Lands for approval and registration.
 - i. Forging documents with regards to Nakuru/Municipality Block 22/55 and transferring the same to his aunt Rahab Wamuhu Kamau forging/altering sale agreements allege that the 1st Defendant and his late aunt Rahab Wamuhu Kamau. (sic)
 - j. Proceeding to subsequently transfer the parcel of land Nakuru/Municipality Block 22/55 to the 4th Defendant without filing a succession to the estate of Rahab Wamuhu Kamau (deceased). (sic)



- k. Proceeding to obtain consents to transfer the land from Bahati Land Control Board instead of Nakuru Land Control Board where the land is situated.
 - l. Transacting without the deceased proprietors (sic) and having full knowledge of his sickness and resultant death.
966. The particulars of fraud against the 2nd Defendant are as follows;
- a. Proceeding to transfer Nakuru/Municipality Block 22/62 from the names of the deceased registered owner into his names despite being aware that its register was opened on the 30th of June 1989 in the names of the registered owner who had passed on, on the 1st January 1989.
 - b. Obtaining a forged consent/forged transfer to indicate that the deceased had consented to have Nakuru/Municipality Block 22/62 transferred into his names yet he was already dead.
 - c. Alleging to have purchased Nakuru/Municipality Block 22/62 from the deceased and forging sale agreements to indicate the deceased sold the land to him and forging his signature on the alleged sale agreements.
 - d. Forging letters purportedly written by the deceased to the Chairman Land Control Board and Provisional Administration by alleging by alleging (sic) that he had agreed to transfer portions of a non-existent land to the 2nd Defendant forging the signatures of the deceased. (sic)
 - e. Forging consent forms and obtaining them from Bahati Land Control Board which has no jurisdiction over land.
 - f. Forging the existence of a one (sic) Gacheru Mururi who purportedly sold land to the 2nd Defendant.
967. The particulars of fraud against the 9th Defendant are as follows;
- a. Closing register (sic) for Nakuru Municipality Block 22/4 without receipt of original title deed from the deceased proprietor.
 - b. Approval and registration of mutations for the subdivision of Nakuru/Municipality Block 22/4 and subsequently opening of the new registers of Nakuru/Municipality Block 22/53, Nakuru/Municipality Block 22/54 and Nakuru/Municipality Block 22/55.
 - c. Opening new registers for Nakuru/Municipality Block 22/60, Nakuru/Municipality Block 22/61 and Nakuru/Municipality Block 22/62 as subsequent subdivisions of Nakuru/Municipality Block 22/53 by registering its mutation form dated 21st October 1988 despite the mother title Nakuru/Municipality Block 22/4 that bore the said Nakuru/Municipality Block 22/53 being closed for subdivision on 23rd December, 1988 and the said Nakuru/Municipality Block 22/53 not being in existence to aid for the further subdivisions of Nakuru/Municipality Block 22/60, Nakuru/Municipality Block 22/61 and Nakuru/Municipality Block 22/62. (sic)
 - d. Opening of new registers for the subsequent subdivisions of the title Nakuru/Municipality Block 22/53 despite it not being in existence as at 21st October 1988 when the mutation was drawn transferring Nakuru/Municipality Block 22/53, Nakuru/Municipality Block 22/54, Nakuru/Municipality Block 22/55, Nakuru/Municipality Block 22/60, Nakuru/Municipality Block 22/61 and Nakuru/Municipality Block 22/63 without consent to transfer from the deceased.
 - e. Transacting without due diligence of verifying the authenticity of the signature of the deceased.



968. The particulars of fraud against the 10th Defendant are as follows;
- a. Issuing a letter of consent for subdivision of Nakuru/Municipality Block 22/4 dated 28th May 1987 vides (sic) a meeting held on 28th May 1988 without the deceased being present.
 - b. Issuing a letter of consent for the subdivision of Nakuru/Municipality Block 22/4 despite the portions of acreage being indicated as alterations on the application forms. (sic)
 - c. Issuing a letter of consent for the subdivision of Nakuru/Municipality Block 22/4 despite the application from having irregularities indicating a total acreage of 9 acres yet the said parcel of land were (sic) 17 acres in total.
 - d. Issuing a letter of consent for subdivision of Nakuru/Municipality Block 22/53 dated 9th June 1988 vide a meeting held 9th June 1988 (sic) despite the parcel of land not being in existence as at 9th June 1988 since the mother title was closed for subdivision on 23rd December 1988.
 - e. Transacting without due diligence of verifying the authenticity of the signature of the deceased.
969. Essentially, the particulars of fraud against the 1st Defendant are that he allegedly forged various documents that include letters of consent, transfer forms and the signature of the deceased. The Plaintiffs also contend that the 1st Defendant subdivided land parcel No. Nakuru/Municipality Block 22/4 without the consent of John Gatu (deceased).
970. The Particulars of fraud against the 2nd Defendant are that he forged letters of consent, transfer documents, sale agreements and letters that he alleged were written by John Gatu (deceased).
971. The particulars of fraud against the 9th Defendant, that is the Land Registrar Nakuru County are fundamentally that the register for land parcel No. Nakuru/Municipality Block 22/4 was closed without the original title being surrendered and that the registers for land parcel No's Nakuru/Municipality Block 22/60, 61 and 62 were opened before land parcel No. Nakuru/Municipality Block 22/53 was created. The former parcels of land are the resultant subdivisions of the latter.
972. The particulars of fraud against the 10th Defendant, that is the Chairman, Land Control Board Bahati Division are that he issued the letter of consent for land parcel No. Nakuru/Municipality Block 22/4 in the absence of John Gatu Gichuhi (deceased), the said letter of consent had alterations on the acreage and that he issued the consent to subdivide land parcel No. Nakuru/Municipality Block 22/53 before it existed.
973. During the hearing, PW1 testified that the 2nd Defendant did not produce any transfer documents despite alleging that it was the deceased who subdivided land parcel No. Nakuru/Municipality Block 22/53 into land parcel No's Nakuru/Municipality Block 22/60, 61 & 62. The 2nd Defendant was eventually registered as the owner of land parcel No. Nakuru/Municipality Block 22/62.
974. It was the evidence of PW1 that the Land Registrar allowed the subdivision of land parcel No. Nakuru/Municipality Block 22/4 without the original title deed for the said parcel of land being surrendered.
975. During the hearing of the 1st and 4th Defendants case, the 1st Defendant testified that he purchased seven acres of Plot No. 21 from John Gatu Gichuhi (deceased) vide the land sale agreement dated 24th February, 1979.
976. It was his evidence that on 23rd December, 1988, John Gatu Gichuhi (deceased) was in good health and he drove him (1st Defendant) to the Nakuru Lands Registry to pick his title deed. It was also his



- evidence that even though he purchased land parcel No. Nakuru/Municipality Block 22/55 he was issued with a title deed for land parcel No. Nakuru/Municipality Block 22/54.
977. During the hearing of the 2nd Defendant's case, the 2nd Defendant who gave his evidence as DW3 denied the allegations of fraud and gave evidence that he purchased a portion of plot No. 21 measuring two acres which was later registered as land parcel No. Nakuru/Municipality Block 22/62. It was also his evidence that he later purchased land parcel No. Nakuru/Municipality Block 22/61 from Gacheru Muiruri.
978. Generally, the Plaintiffs allegations of fraud are based on the contention that at the time of subdivision of land parcel No. Nakuru/Municipality Block 22/4 i.e. 23rd December, 1988, John Gatu Gichuhi (deceased) was in a coma, that there was forgery of various documents and that the original title deed for land parcel No. Nakuru/Municipality Block 22/4 was not surrendered to the land registry before the said parcel of land was subdivided.
979. It is important to note that despite the said allegations no documents were produced in Court to show that indeed John Gichuhi (deceased) was in a coma on 23rd December, 1988. PW1 admitted during cross examination that he did not produce any medical records to show that his deceased father was in a coma at the time of subdivision of land parcel No. Nakuru/Municipality Block 22/4.
980. In their particulars of fraud against the 1st, 2nd, 9th and 10th Defendants, the Plaintiffs allege forgery of the signature of the deceased in all the documents that sought for subdivision of land parcel No. Nakuru/Municipality Block 22/4 including the applications for consent.
981. They also allege forgery of the various consents, transfer documents and letters that are alleged to have been written by John Gatu Gichuhi (deceased).
982. In the judicial decision of in re Estate of Samuel Ngugi Mbugua (Deceased) [2017] KEHC 4259 (KLR) the Court held as follows;
- “...The burden of proving forgery lies with the person alleging it. In Elizabeth Kamene Ndolo vs George Matata Ndolo Nairobi Court of Appeal civil appeal number 128 of 1995 it was stated that the charge of forgery or fraud is a serious one, and the standard of proof required of the alleger is higher than that required in ordinary civil cases.
27. It is my finding that the applicant has not discharged the burden of proving forgery or fraud in light of the fact that no expert proof was presented.” (Emphasis mine)
983. In the present case, the burden of proving the alleged forgery lies with the Plaintiffs and they did not discharge the said burden as no expert evidence in support of the allegations of forgery was produced.
984. The other ground upon which the Plaintiffs are alleging fraud is that they still have in their possession the original title deed for land parcel No. Nakuru/Municipality Block 22/4.
985. It is worth noting that during the hearing, the 1st Plaintiff who testified as PW1 produced a copy of what he alleged to be the original title deed for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit P2).
986. The Defendants contend that the original title deed for land parcel No. Nakuru/Municipality Block 22/4 was surrendered to the Lands Registry before it was subdivided.
987. The evidence of the Land Registrar (who testified as DW2) is important on this issue. It was that before a parcel of land is subdivided, the original title is surrendered to the Lands Registry.



988. It was also his evidence that in the event the original title deed is not returned, the Land Registrar would not issue the new titles for the resultant subdivisions. Further, a restriction is registered on the green card to prevent any further dealings until the original title is surrendered.
989. It was his evidence that no such restriction was registered on the green card for land parcel No. Nakuru/Municipality Block 22/4.
990. It was also his evidence that John Gatu (deceased) surrendered his title upon subdivision.
991. The Land Registrar in his evidence also addressed the anomalies that were on the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 which was produced as Exhibit P2.
992. He confirmed that Exhibit P2 stated that John Gatu Gichuhi (deceased) was registered as the owner of land parcel No. Nakuru/Municipality Block 22/4 on 28th January, 1987 and was issued with a title deed on 29th January, 1987.
993. Upon cross examination, the Land Registrar (DW2) stated that there was nothing unusual about the registration of title to John Gatu (deceased) in the green card reading 22nd December, 1988 and the title deed (Exhibit P2) reading 29th January, 1987 as the date it was issued.
994. Upon further cross examination, DW2 clarified that it would not have been possible for John Gatu (deceased) to be issued with a title deed on 29th January, 1987 and the entry be made on the register on 22nd December, 1988 which was two years later.
995. He also stated that the dates on the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit P2) and the copy of the green card for the same parcel of land produced as Exhibit D15 did not correspond.
996. He then stated that the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 produced as Exhibit P2 was not the title that was issued to John Gatu as per the register and it was therefore not genuine.
997. The persons charged with the process of receiving, approving and registration of documents in the land registries are the Land Registrars. They are the ones also who are given the mandate to issue instruments of ownership of land such as title deeds and certificate of leases.
998. Essentially, the Land Registrar in his evidence renounced the copy of the title deed for land parcel No. Nakuru/Municipality Block 22/4 produced as Exhibit P2 which the Plaintiffs allege is the original title deed.
999. Section 107 of the *Evidence Act* provides as follows;
- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
1000. In the judicial decision of *Gichinga Kibutha v Caroline Nduku* [2018] KEELC 3981 (KLR) the Court held as follows;
- 20... It is, therefore, settled law that in civil cases, a party who wishes the Court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts.



The party must present to the Court all the evidence reasonably available on a litigated factual issue...

22. The allegations of fraud in particular called for detailed evidence to reach the threshold of proof. I am well alive to the case of Koinange and 13 others – Vs - Koinange [1986] KLR 23 where the Court restated the cardinal precept of the law of evidence that he who alleges must prove it. In the cases of Ratilal Gordhanbhai Patel V. Lalji Makanji [1957] EA 314 and Ulmila Mahindra Shah v. Barclays Bank International and Anor [1979] KLR the Courts have stated that Fraud has everything to do with one's state of mind and intentions, and not the outcome of actions and that the standard of proof for fraud is very high beyond the usual standard of balance of probabilities in civil cases approaching but below proof beyond reasonable doubt." (Emphasis mine)
1001. The Plaintiffs contend that land parcel No. Nakuru/Municipality Block 22/53 was subdivided after the death of John Gatu Gachuhi.
1002. It is not disputed that John Gatu Gichuhi died on 1st January, 1989.
1003. The Plaintiffs produced a copy of the green card for land parcel No. Nakuru/Municipality Block 22/53 as Exhibit P6(a). Entry No. 4 states that on 30th June, 1989 the title was closed upon subdivision into land parcel No's 60 to 61.
1004. A copy of a mutation form for land parcel No. Nakuru/Municipality Block 22/53 was produced as Exhibit P10. It was presented for registration on 30th June, 1989. Land parcel No. Nakuru/Municipality Block 22/53 was to be subdivided into land parcel No's Nakuru/Municipality Block 22/60, 61 and 62. It states that the Applicant is John Gatu Gichuhi and he signed the Mutation Form on 21st October, 1988.
1005. I find that even though land parcel No. Nakuru/Municipality Block 22/53 was subdivided on 30th June, 1989 after the death of John Gatu (deceased) it is evident that the process of subdivision was commenced before his death and he participated in it.
1006. The Plaintiffs also submit that the registration of land parcel No. Nakuru/Municipality Block 22/55 was unprocedural as the green card stated at Entry No. 1 that the land was registered on 25th December, 1988 which was on a Sunday.
1007. The Land Registrar in his evidence confirmed that Entry No. 1 on the green card for land parcel No. Nakuru/Municipality Block 22/55 was dated 25th December, 1988.
1008. He explained that this was an error and entry No. 1 ought to have been dated 23rd December, 1988 which was the date the mother title, that is land parcel No. Nakuru/Municipality Block 22/4 was closed upon subdivision.
1009. It is therefore my view that the Land Registrar gave sufficient explanation for the said error on entry No. 1 of the green card for land parcel No. Nakuru/Municipality Block 22/55.
1010. The Plaintiffs submit that the registration of land parcel No. Nakuru/Municipality Block 22/54 in the name of the 1st Defendant was irregular because it was allegedly done the same day the consents to subdivide and transfer were issued. The Plaintiffs, essentially, contend that it was not possible for the said processes to take place on the same day.
1011. The 1st Defendant on the other hand relies on the evidence of the Land Registrar who testified that it was possible to obtain consents for more than one transaction in a single day and it was also possible to register several transactions in one day.



1012. The Land Registrar (DW2) in his evidence did indeed testify that it was possible to register several transactions on a single day and it was also possible for the Land Control Board to issue more than one consent for a parcel of land in respect of different transactions.
1013. The upshot of the foregoing is that the Plaintiffs have failed to prove that land parcel No. Nakuru/Municipality Block 22/4 was fraudulently subdivided.
1014. Before penning off it is important to note that during the hearing of this suit, the issue whether or not Plot No. 21 Muguga farm, LR No. 4730/72 and land parcel No. Nakuru/Municipality Block 22/4 referred to the same parcel of land came up.
1015. As afore stated, it is the 1st Defendant's evidence that he purchased a portion of Plot No. 21 measuring seven acres from John Gatu Gachuhi (deceased) vide the sale agreement dated 24th February, 1979.
1016. It is also the 1st Defendant's evidence that the said parcel of land was later registered as land parcel No. Nakuru/Municipality Block 22/54.
1017. It is further the 1st Defendant's evidence that his aunt Rahab Wamuhu purchased a portion of LR No. 4730/72 measuring two acres vide the land sale agreement dated 19th April, 1982. The said parcel of land was later registered as land parcel No. Nakuru/Municipality Block 22/55.
1018. The 2nd Defendant's evidence is that he purchased a portion of Plot No. 21 measuring two acres which parcel of land was later registered as land parcel No. Nakuru/Municipality Block 22/62 while the 5th, 6th, 7th and 8th Defendants evidence is that their father Reuben Thuku Munene (deceased) purchased a portion LR No. 4730/72 which was later registered as land parcel No. Nakuru/Municipality Block 22/60.
1019. Upon cross examination, the 1st, 2nd and 5th Defendants admit that they had nothing to show that Plot No. 21 was the same as LR No. 4730/72 which was also alleged to be the same as land parcel No. Nakuru/Municipality Block 22/4.
1020. The Land Registrar in his evidence states that if anyone alleged that LR No. 4730/72 was the same as land parcel No. Nakuru/Municipality Block 22/4, then they needed to show the conversion documents.
1021. The Plaintiffs rely on this evidence by the Land Registrar and submit that neither of the agreements produced by the Defendants refer to land parcel No. Nakuru/Municipality Block 22/4.
1022. As afore stated, the Defendants have all produced various land sale agreements that state that they either purchased a portion of Plot No. 21 or a portion of LR No. 4730/72.
1023. The Plaintiffs admit that they were aware of the Defendants possession of the suit parcel of land and from the mutation form for land parcel No. Nakuru/Municipality Block 22/4 (Exhibit D3 (24), it is evident that John Gatu Gichuhi (deceased) commenced the subdivision of land parcel No. Nakuru/Municipality Block 22/4 before his demise.
1024. The 2nd Defendant produced various letters wherein John Gatu Gichuhi (deceased) admit that the Defendants own portions of Plot No. 21 and LR No. 4730/72. For instance, the 2nd Defendant produced a letter dated 18th June, 1986 as Exhibit D3(22). The subject of the letter is "LR No. 4730/72 – Land Complaint Dominic M. Gitau". The letter is written by Gatu Gichuhi and addressed to the District Officer Nakuru Municipality. The contents of the said letter are as follows;

"Thank you for your letter which I received on 17th July 1986.



Sir, I would like to confirm that Mr. Dominic M. Gitau is the owner of 2 acres of land from plot No. 21 which belongs to I (sic) Mr. John Gatu Gichuhi.

Please I also add Mr. Reuben Thuku Munene and Mr. Gacheru Muiruri each one has got 2 acres and the title deed is in procession.(sic) The matter is with the Commissioner of Lands Nairobi.

As soon as the title deed is ready before it is registered the Registrar of Lands Nakuru will register the same in their names.

Your good co-operation will be highly appreciated.”

1025. The letter is copied to the District Land Registrar Nakuru, Dominic Gitau and Olweny the Surveyor.
1026. From this letter, it is evident that LR No. 4730/72 and Plot No. 21 referred to one and the same parcel of land.
1027. In the letter dated 14th March, 1986 (Exhibit D3(23)), John Gatu (deceased) states that the 1st Defendant and Rahab Wamuhu purchased portions of Plot No. 21 measuring 7 acres and 4 acres respectively.
1028. The 2nd Defendant also produced hand written acknowledgements (Exhibits D3 (19) (a) – (g) that state that John Gatu (deceased) received various sums of money as part of the purchase price for a portion of land at Muguga Farm in Lanet.
1029. It is not disputed that the Defendants are in occupation of the resultant subdivisions of land parcel No. Nakuru/Municipality Block 22/4 which parcels of land the Plaintiffs are seeking that they (Defendants) be evicted from.
1030. The standard of proof in civil cases is balance of probabilities. it is more probable than not that Plot No. 21, LR No. 4730/72 and land parcel No. Nakuru/Municipality Block 22/4 refer to one and the same parcel of land.

C. Whether the prayers sought in the Amended Plaint should be granted.

1031. The other prayers sought by the Plaintiffs have their basis in a probable declaration that the sub-division of the suit parcel was fraudulent. They are that:
 - a. A mandatory injunction do issue restraining the Defendants from charging, selling, transferring, dealing and or interfering with the suit parcel and sub-divisions resulting therefrom.
 - b. The Defendants be evicted from the suit parcel and sub-divisions resulting therefrom.
 - c. The Plaintiffs be awarded general damages for loss of uses, occupation and enjoyment of the suit parcel and sub-divisions resulting therefrom.
1032. Given my finding on issue (a) and (b) above, these prayers cannot be granted.

D. Who should bear costs of this suit?

1033. The general rule is that costs shall follow the event. This is in accordance with the Provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.



DISPOSITION.

1034. In the result, I find that the Plaintiffs' suit lacks merit and it is hereby dismissed with costs.

1035. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 9TH DAY OF OCTOBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Machoka for Mr. Githui for the Plaintiff.

Mr. Mutonyi for the 1st and 4th Defendant.

Mr. Muriithi for the 2nd Defendant.

Mr. Karuga for the 5th, 6th, 7th and 8th Defendant.

Court Assistant; Mr. Joseph Makori.

