

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC CASE NO. E002 OF 2024
(FORMERLY NAKURU ELC CASE NO. 28 OF 2016)

PHILIP KAMAU GACHUNU

**(Suing as a beneficiary and administrator of the Estate of
KAMAU GACHUNU (Deceased)).....**

.....PLAINTIFF

VERSUS

ALICE WANJIRU.....1ST
DEFENDANT

MARY KARANJA.....2ND
DEFENDANT

SAMMY NJUGUNA.....3RD
DEFENDANT

OCS-MUTAITA POLICE STATION.....4TH
DEFENDANT

LAND REGISTRAR NAKURU.....5TH
DEFENDANT

ATTORNEY GENERAL.....6TH
DEFENDANT

MUUNGANO WA WANAVIJIJI

AKIBA MASHINANI TRUST.....7TH
DEFENDANT

JUDGEMENT.

INTRODUCTION.

1. The Plaintiff commenced the present proceedings vide the Plaintiff dated 3rd February, 2016 which Plaintiff was amended on 21st February, 2018.
2. The Plaintiff avers that his deceased father one **Kamau Gachunu** was the registered owner of land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)**. He adds that his deceased father passed away on 30th March, 2005.
3. The Plaintiff also avers that succession proceedings in respect to his late father's estate were concluded in the year 2012 and that the estate was distributed as set out in the rectification of Certificate of Confirmation of Grant dated 17th September, 2015.
4. The Plaintiff further avers that the suit parcel is now registered in his name.
5. It is his averment that his family has been cultivating the suit parcel until February, 2015 when the 1st, 2nd and 3rd

Defendants invaded the suit parcel and began constructing semi-permanent structures on the land while alleging that they were members of the 7th Defendant who had allegedly purchased the land from undisclosed individuals in the year 2010.

- 6.** It is also his averment that the 7th Defendant allegedly purchased the suit parcel vide the agreement dated 23rd December, 2010 for purposes of settling its members.
- 7.** It is further his averment that the 1st, 2nd and 3rd Defendants assertions that the 7th Defendant acquired the suit property in the year 2010, which was after the death of the original owner and before conclusion of the succession proceedings, shows that the purported acquisition of the suit parcel is fraudulent, corrupt and illegal.
- 8.** The Plaintiff avers that his family has never entered into any agreement for sale of the suit parcel.
- 9.** The Plaintiff prays for judgement against the Defendants for;

- a. A declaration that the Plaintiff is the true and lawful owner of the parcel of land known as LR No. Kiambogo/Kiambogo Block 2/485 (Mwariki).**
- b. A declaration that the title document to the suit land purported to be held by the Defendants is illegal, null and void.**
- c. An order for cancellation/revocation of the title issued to the 7th Defendant, Muungano Wa Wanavijiji Akiba Mashinani Trust on 10th March, 2011 for LR No. Kiambogo/Kiambogo Block 2/485 (Mwariki).**
- d. Eviction orders directing that the 1st, 2nd and 3rd Defendants and their families do vacate from all that parcel of land known as LR No. Kiambogo /Kiambogo Block 2/485 (Mwariki) within 30 days from the date of judgement.**
- e. A permanent injunction restraining the 1st, 2nd and 3rd Defendants and their families by themselves or any of their agents, employees, nominees and/or servants from interfering with the Plaintiffs' use and possession of all that parcel of land known as LR No.**

**Kiambogo/Kiambogo Block 2/485
(Mwariki).**

- f. A permanent injunction restraining the 7th Defendant, its trustees and members by themselves or any of their agents, employees, nominees and/or servants from interfering with the Plaintiffs' use and possession of all that parcel of land known as LR No. Kiambogo /Kiambogo Block 2/485 (Mwariki).**
- g. General damages for trespass.**
- h. Compensation for loss of user since 1st April, 2011.**
- i. Interest on (f) and (g) above.**
- j. Cost of this suit to be borne by the 1st - 3rd and 7th Defendants.**

10. The 4th, 5th and 6th Defendants filed their Statement of Defence dated 2nd June, 2016 which was amended on 23rd April 2018. They deny the averments in the Plaint and state that as per the records at the Nakuru Lands Registry, **Kamau Gachunu** - deceased is the registered owner of land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki).**

They then pray that the Plaintiff's suit be dismissed with costs.

- 11.** The 1st, 2nd and 3rd Defendants filed their Statement of Defence dated 4th May, 2016. It was amended on 6th May, 2016 and Further Amended on 9th March, 2018.
- 12.** They deny the averments in the Amended Plaintiff and state that they are members of the 7th Defendant. They also state that vide the agreement dated 23rd December, 2010, the 7th Defendant purchased land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** for purposes of settling its members.
- 13.** They also state that the Plaintiff's suit does not disclose any cause of action against them and they pray that it be struck out with costs to them.

14. The 1st, 2nd, 3rd and 7th Defendants filed a Notice of Indemnity to Co-Defendants dated 13th November, 2018 where they seek the following orders;

a. Monetary compensation in the sum of Kshs. 2,585,000/= being the purchase price paid for the suit land.

b. General damages.

c. Costs of this suit.

15. The 7th Defendant filed its Statement of Defence dated 22nd March, 2018 where it denies the averments in the Plaint and seeks that the Plaint be dismissed with costs.

Plaintiff's Evidence.

16. Philip Kamau Gachunu testified as PW1.

17. It was his evidence that he filed the present suit as the administrator of the estate of his late father one **Kamau Gachunu.**

18. It was also his evidence that his late father died in the year 2005 and that the present suit relates to a parcel of land in Kiambogo and that the said parcel of land belonged to his deceased father. He produced a copy of the title deed of the suit parcel as **Exhibit P1**.

19. It was further his evidence that succession was done with respect to the estate of his deceased father and the suit parcel

transferred to his name. He produced a copy of a Certificate of Official Search that shows that the suit property is registered in his name. It was marked as **Exhibit P2**.

20. He testified that he had in his possession Letters of Administration with respect to the estate of his late father. The same were marked and produced as **Exhibit P3**.

21. He also produced a copy of his deceased sister's death certificate. It was marked and produced as **Exhibit P4**.

- 22.** It was his evidence that he had the Certificate of Confirmation of Grant which had the suit parcel listed among the properties of the deceased.
- 23.** It was also his evidence that the persons in occupation of the suit parcel are the Defendants in the present suit and added that they took possession of the suit parcel in the year 2015. He explained that he commenced the present proceedings in the year 2016.
- 24.** He testified that the Defendants stated that the suit parcel was sold to them. He added that he did not know who sold the suit parcel to the Defendants.
- 25.** It was further his evidence that when his deceased father was alive, he used to do farming on the suit parcel and that after his death, they continued farming it.
- 26.** He stated that he is seeking eviction orders against the Defendants.

- 27.** it was his testimony that they have suffered loss and damage of kshs. 300,000/= per year.
- 28.** He explained that the suit parcel measures eleven acres and that they used to grow maize and beans on the land. he further explained that they would harvest twenty to thirty bags of maize per acre and sell a bag of maize between kshs. 1800 to 2000.
- 29.** It was his evidence that they would harvest about five to six bags of beans and sell a bag of beans at Kshs. 5,000/= and that he wants the Defendants to compensate him for that loss.
- 30.** **PW1** stated that he had filed a witness statement dated 15th October, 2018 and prayed that the Court adopts the said statement as part of his evidence in chief, which prayer the Court acceded to.

31. PW1 referred to his list of documents dated 15th October, 2018 and produced the remaining documents as follows;

1. A copy of authority to act signed by the Plaintiff's siblings as Exhibit P6.

2. A copy of a Letter from the Chief Kaptembwo Location dated 3rd January, 2012 as Exhibit P7.

3. A copy of invitation to make objections to the proposed Grant of Letters of Administration dated 23rd January, 2012 as Exhibit P8.

4. Bundle of photographs showing invasion and development of the suit property as Exhibit P9.

5. A copy of an undated letter threatening the Plaintiff as Exhibit P10.

6. A copy of the Occurrence Book Report made on 11th April, 2011 as Exhibit P11.

7. Bundle of photographs showing a warning and caution sign alongside illegal developments and beacons as Exhibit P12.

8. A copy of a letter dated 31st March, 2016 written by the Senior Chief - Mitimingi Location as Exhibit P13.

- 32.** In his witness statement he states that he filed Nakuru High Court Succession Cause No. 17 of 2012; In the matter of the estate of the late **Kamau Gachunu**, that the succession proceedings were concluded in the year 2012 and the estate distributed as per the Rectification of Certificate of Confirmation of Grant dated 17th September, 2015.
- 33.** He also states that the suit parcel is now registered in his name as shown by the Certificate of Search issued on 27th October, 2015.
- 34.** He further states that they were cultivating the suit parcel until February, 2015 when the 1st, 2nd and 3rd Defendants invaded the land and begun putting up semi permanents structures.

- 35.** He states that they alleged that they were members of the 7th Defendant who had allegedly purchased the suit parcel.
- 36.** He also states that the alleged acquisition by the 7th Defendant was fraudulent as his father who was the registered owner of the suit parcel was deceased.
- 37.** He further states that no one had the capacity to sell the property as he is the sole administrator of the estate of the deceased.
- 38.** He states that he made several visits to the OCS-Mutaita Police Station which is the nearest police station and the 4th Defendant herein but he refused to act and evict the 1st, 2nd and 3rd Defendants from the suit parcel.
- 39.** He also states that the 4th Defendant's inaction allowed the 1st, 2nd and 3rd Defendants to threaten the Plaintiff, cultivate the suit parcel and construct mud shanties on the land.

- 40.** He further states that the actions of the Defendants have denied him the use and occupation of the suit parcel and they should therefore pay him damages of Kshs. 800,000/= per year since 1st April, 2011.
- 41.** Upon cross examination by Counsel for the 1st, 2nd, 3rd and 7th Defendants, he reiterated that the entire parcel of land measures 11 acres.
- 42.** He confirmed that as per the search certificate, the suit parcel measures 4.71 Hectares.
- 43.** He admitted that there was a discrepancy between the size of the suit parcel in acres and in hectares. He stated that he would prefer to state that the suit parcel measures 4.71 Ha.
- 44.** He stated that it was not true that he did not know the size of the suit parcel and reiterated that it was 4.71 Ha.
- 45.** He confirmed that he had suffered loss because he was not able to grow maize and beans on the land.

- 46.** He also confirmed that he showed how he arrived at the figures sought.
- 47.** He admitted that he did not have any receipts or any evidence to support his claim for the loss of kshs. 300,000/=.
- 48.** He also admitted that he has been living in Mwariki since the year 1976. He stated that in the years 2010 and 2015 he was still living on the suit parcel.
- 49.** He further admitted that both in the year 2010 and 2015 the suit parcel was vacant and there was no building on it.
- 50.** He confirmed that he was suing on his own behalf and on behalf of others.
- 51. PW1** was referred to page 36 of his trial bundle (the Certificate of Confirmation of Grant) and he stated that it

had the name of five people and the suit parcel was included on it.

52. He confirmed that his name was last on the said list and that he has been given three acres of land.

53. He admitted that in the Plaint he did not state that the suit parcel is to be subdivided. Instead, he stated that he wanted the Defendants to be evicted.

54. He also admitted that **Lilian Nyambura** who is on the list on the Certificate of Confirmation of Grant is deceased.

55. He was referred to **Exhibit P4 (Lilian Nyambura's Death Certificate)** and he confirmed that it stated that she died on 8th December, 2014 which was before he filed the present suit.

56. He admitted that he did not disclose her death in his documents, Statement of Claim or his witness statement.

57. He confirmed that at the time he was doing the succession proceedings before the family Court, his late sister **Lilian** was alive. He also confirmed that at the time the Certificate of Confirmation of Grant was being issued, that is on 17th September, 2015, the said Lilian was still alive. He later clarified that she died on 8th December, 2014.

58. He acknowledged that he was not aware that he needed to file succession proceedings with respect to the estate of **Lilian**.

59. He admitted that he did not inform his advocates on record that **Lilian** was deceased. He also admitted that he did not have the death certificate of his late father **Kamau Gachunu**.

60. PW1 was referred to the green card appearing at page **10** of the 1st, 2nd, 3rd and 7th Defendants trial bundle and confirmed

that entry No. 4 stated that he was the registered owner of the suit parcel.

- 61.** He confirmed that the entry was made on 17th January, 2014. He also confirmed that he was issued with the grant in the year 2015 and in the year 2014 he did not have a grant.
- 62.** He clarified that the only document he had was a rectified grant that was dated 17th September, 2015.
- 63.** He confirmed that his name was on the green card because he was the administrator of his deceased father's estate and he intends to subsequently subdivide the land and gave everyone their share.
- 64.** He confirmed that he distributed the said parcel of land but admitted that he did not have any documents from the Lands Office.

- 65.** He also confirmed that he had in his possession a copy of his late father's death certificate and stated that he forgot to include it in his trial bundle.
- 66.** He then stated that it was not true that a family representative sold the suit parcel.
- 67.** Upon further cross examination by counsel for the 4th, 5th and 6th Defendants, **PW1** confirmed that the suit parcel belonged to his deceased father.
- 68.** He also confirmed that he had the title to the said property. He further confirmed that he went to the Lands Office and an entry was made on the green card.
- 69.** He further confirmed that he did not get any document apart from the search that shows that the suit parcel is registered in his name.

- 70.** He stated that the only issue he had with the Land Registrar was that they frustrated him when he tried to get the certificate of official search. He also stated that at the time he was giving evidence, he did not have a claim against them.
- 71.** He admitted that the Officer Commanding Police Station refused to evict the Defendants and admitted that he did not have an order from the Court for their eviction.
- 72.** He further admitted that the entry on the green card is based on the succession proceedings.
- 73.** Upon re-examination, **PW1** stated that in his supplementary bundle he has included the green card which green card has an entry that he is the registered owner of the suit parcel in his capacity as the administrator of the estate of his deceased father.

74. He also stated that the cause title of the present proceedings shows that he is suing as a beneficiary and administrator of the estate of **Kamau Gachunu**.

75. He further stated that **Lilian Nyambura** was one of the beneficiaries of the estate of his deceased father and added that when they commenced succession proceedings, **Lilian Nyambura** was alive.

76. He also stated that during confirmation of grant, **Lilian Nyambura** was alive and she appeared before the Judge during proceedings relating to distribution of his father's estate.

77. He denied that a family representative sold the suit parcel and added that the name of the said family representative was not disclosed.

78. He stated that he had in his possession a document that showed that his father died on 30th March, 2005. The said

document is at page 28 of his trial bundle i.e. Grant of Letters of Administration.

79. He also stated that it was not possible for his late father to sell the suit parcel in the year 2010 and yet he was already dead.

80. The Plaintiff then closed his case.

THE 4TH, 5TH AND 6TH DEFENDANTS EVIDENCE.

81. Liyai Collins Aliela testified as **DW1**.

82. He introduced himself as Advocate of the High Court of Kenya and a Land Registrar based at the Nakuru Land Registry and added that he had been a Land Registrar for two years.

83. It was his evidence that he had in his possession a certified copy

of the register for land parcel No. **Kiambogo/Kiambogo Block 2 (Mwariki) 485** and an excerpt of the member's register of the entire block.

- 84.** It was also his evidence that he had a copy of the green card and stated that the green card showed that the register in respect of the suit parcel was opened on 3rd December, 1988 and that the suit parcel measures 4.71 Ha.
- 85.** It was further his evidence that under the proprietorship section, the suit parcel was initially registered to the government of Kenya.
- 86.** He testified that the second entry is dated 13th February, 1990 and it shows that the suit land was registered in the name of **Kamau Gachunu** of ID No. 3639367/66 postal address 1034 Nakuru.
- 87.** He also testified that the third entry shows that the title deed

was issued and next to it is marked 'deceased'.

- 88.** He further testified that entry No. 4 is dated 17th January, 2014 and shows that the suit parcel was registered in the name of **Philip Kamau Gachunu** pursuant to succession cause No. 17 of 2012 after consideration of the application in form RL 19.
- 89.** It was his evidence that this meant that **Philip Kamau Gachunu** was registered as an administrator of the estate of the deceased.
- 90.** It was also his evidence that entry No. **5** is made and cancelled and/or expunged. The said entry is made in error. It stated that the title was surrendered.
- 91.** It was further his evidence that from the green card produced in Court, the last entry was made on 17th January, 2014 when **Philip Kamau Gachunu** was registered as the

owner of the suit parcel vide succession cause No. 17/2012 after considering the application in form RL 19.

92. He testified that this was the exact representation of the register. He produced a copy of the green card as **Exhibit D (4,5,6) 1.**

93. He also testified that he had a copy of a Members Register. Member No. 484 is **Kamau Gachunu** ID No. 363936/66 and he was allocated land parcel No. 485.

94. He further testified that this was the member who was registered as the owner of the suit parcel under Entry No. 2 on the green card.

95. It was his evidence that the Land Registrar had done all that was needed to be done and that they were waiting for **Philip Gachunu** to take the instrument for registration of the Certificate of Confirmation.

96. Upon cross examination by counsel for the Plaintiff, he confirmed that his evidence was that the suit property is

registered in the name of **Philip Gachunu** as an administrator.

97. He also confirmed that he did not have any evidence to show that the title was ever given to anyone else.

98. Upon cross examination by counsel for the 1st, 2nd, 3rd and 7th Defendants, he admitted that he gave the green card appearing at page 88 of the trial bundle for filing in Court.

99. He also confirmed that it was certified as a true copy of the original on 7th August, 2014.

100. He further confirmed that it was certified by **Mr. Sunguti** who was then serving in the Nakuru Land Registry and admitted that he was familiar with **Mr. Sunguti's** signature.

101. DW1 was stood down and later recalled on 29th June, 2022.

He reiterated his earlier evidence on the entries on the green card and produced another copy as **Exhibit D (4,5,6) 2**.

102. DW1 also reiterated his evidence with regard to the register of members and testified that the plot number was on the fourth column. He produced a copy of the register as **Exhibit D (4,5,6) 3**.

103. Upon further cross examination by Counsel for the Plaintiff, he confirmed that the difference between **Exhibit D (4,5,6) 1** and **Exhibit D (4,5,6) 2** was that **Entry No. 4** was in **Exhibit D (4,5,6) 2** and not on **Exhibit D (4,5,6) 1**.

104. He stated that all the four entries as they appear on **Exhibit D (4,5,6) 2** are correct and confirmed that there was no other entry.

105. Upon cross examination by counsel for the 1st, 2nd, 3rd and 7th Defendants, he confirmed that their list of documents stated at No. 3 'any other relevant documents'.

106. He also confirmed that he did not have any documents in Court and what he produced in Court was the correct record of the green card.

107. He further confirmed that **Exhibit D (4,5,6) 2** was certified on 2nd February, 2022 and denied being aware of any other versions of the green card.

108. He was referred to **Exhibit D (4,5,6) 1** and confirmed that the said document closed at No. 3 and that it was different from **Exhibit D (4,5,6) 2**.

109. When he was referred to a copy of a certified copy of the green card appearing at page 10 of the 1st, 2nd, 3rd and 7th Defendants bundle of documents filed on 25th January, 2022,

he stated that he was not able to confirm if the said document came from their registry.

110. He admitted that it was certified and it had a seal. He confirmed

that he could recognize the signature as belonging to a person from their office but could not tell whose signature it was. he confirmed that it was certified on 7th August, 2014.

111. He also admitted that there were now three versions of the green card. The copy of the green card at page 10 was marked as **MFID (1, 2, 3, 7)1**.

112. Upon clarification by the Court, he stated that the difference between **Exhibit D (4,5,6) 1** and **2** is the entries. **Exhibit D (4,5,6) 2** introduced entry No. 4.

113. He also stated that **Exhibit D (4,5,6) 1** and **2** are certified and dated. **Exhibit D (4,5,6) 1** was certified on 15th April,

2016 while **Exhibit D (4,5,6) 2** was certified on 2nd February, 2022.

114. He further stated that the difference between **Exhibit D (4,5,6) 1, 2** and the green card appearing at page 10, is that the green card appearing at page 10 was certified on 7th August, 2014.

115. He confirmed that **Exhibit D (4,5,6) 1** has three entries while the green card at page 10 has four entries.

116. He also confirmed that entries **1** to **3** were the same on all the three green cards.

117. He further confirmed that the entries on **Exhibit D (4,5,6) 2** and the green card at page **10** are the same.

118. He admitted that the three documents had been certified by three different land registrars who are officers of the government.

119. He stated that the three land registrars have a responsibility to give accurate and consistent information as contained in the Land Records.

120. He reiterated that **Exhibit D (4,5,6) 1** closes at entry No. **3** and it was certified on 15th April, 2016.

121. He also reiterated that **Exhibit D (4,5,6) 2** was certified on 2nd February, 2022 while **MFID (1, 2, 3, 7)1** was certified on 7th August, 2014.

122. He stated that the three documents were satisfactory despite the inconsistency.

123. Upon further clarification by the Court, he reiterated that **Exhibit D (4,5,6) 1** has three entries while the other two have four entries. The fourth entry is that an administrator was registered as the owner.

124. He also stated that the three green cards are not inconsistent but they are different.

125. He further stated that as at 15th April, 2016, there were three entries.

126. He acknowledged that the year 2014 comes before the year 2016 and therefore, the green card with the 2016 certification ought

to have had entries made in the year 2014.

127. He admitted that the green card that was certified in 2016 has less entries.

128. He reiterated that the said green card was not inconsistent but it was different.

129. He confirmed that the said green card ought to have the additional entries contained in the green card that was certified in 2014.

130. He stated that he could only take full responsibility for **Exhibit D (4,5,6) 2** and not the other two.

131. He confirmed that he had the current green card with him in Court and stated that all the three green cards have to be consistent.

132. He also confirmed that in **MFID (1, 2, 3, 7)1**, there is a difference between the numbering in first column and the fourth column.

133. He stated that under column No. 2, the name **Boniface Chege Mwangi** is deleted and there is no authentication on the cancellation.

134. He also stated that the plot number is not cancelled and instead it is highlighted. He added that he did not know who highlighted it.

135. He further stated that the Post Office Box Number appearing on **MFID (1, 2, 3, 7)1** is 304 Nakuru while on **Exhibit D (4,5,6) 2** the Post Office Box Number appearing is 10034 Nakuru. He added that the addresses were different.

136. He confirmed that there are two registers with respect to the said block. The original one was in safe custody at the Lands

Office while the one he produced in Court was a certified copy.

137. He admitted that the one he produced in Court was an extract from the members register.

138. He also admitted that he did not carry the original document to Court because other members of the public were using the said document to process titles. He added that this also applied to the green card.

139. He stated that it was not true that the list was fake. This is because they were the custodians of the said document and what he produced in Court was a certified copy.

140. He admitted that the said list did not show the scheme and/or block to which it belonged.

141. He also admitted that it did not have the signature of the office bearers of the organization.

142. He stated that the said register was submitted by the company owning the Land to the Land Registrar.

143. He admitted that there was no evidence of the owner of the document on the extract of members list.

144. He confirmed that they were the custodians of records that relate to land and stated that a parcel of land could not have more than one title deed.

145. He stated that he was not aware that there were two title deeds with respect to the suit parcel.

146. He stated that according to him, the only person issued with the title deed is **Kamau Gachunu**.

147. He confirmed that as per **Exhibit D (4,5,6) 2**, there was no title deed issued because Entry No. 4 stated that the land was registered in the name of **Philip Kamau Gachunu** vide RL 19 and as an administrator.

148. He was referred to a copy of a title deed appearing at page 73 of the 1st, 2nd, 3rd and 7th Defendants trial bundle and he confirmed that it was dated 10th March, 2011 and it had a signature.

149. He admitted that the signature looked familiar but he did not know whose signature it was.

150. When he was referred to a certificate of official search appearing at page 65 of the 1st, 2nd, 3rd and 7th Defendants

trial bundle, he confirmed that it was dated 10th March, 2011 and it stated that the registered owner of the land was the 7th Defendant.

151. He confirmed the Certificate of Official Search was signed and the signature was the same as the signature on the title deed. He reiterated that the signature was familiar to him.

152. He admitted that he had just become aware that there was a different name on the title. He added that it was not a satisfactory state of affairs.

153. He confirmed that he was not aware that the present suit related to two titles.

154. He admitted that he did not speak to his colleagues and/or predecessors about the differences in the documents.

155. He confirmed that he was in Court as a representative of the government of Kenya in so far as land records were

concerned and admitted that the state of affairs of the said suit caused him to worry.

156. Upon re-examination **DW1** was referred to **Exhibit D (4,5,6) 2** and he reiterated that it had four entries and it was certified on 2nd February, 2022.

157. He stated that the entries on **MFID (1, 2, 3, 7)1** were similar to the entries on **Exhibit D (4,5,6) 2** save for the date of certification.

158. He also stated that there was no indication of registration in the name of the 7th Defendant.

159. He further stated that the copy of title issued in the name of the 7th Defendant was issued in the year 2011.

160. He stated that the last entry as per their records is with respect to the registration of **Philip Kamau** through succession vide LR 19 in 2014.

161. The 4th, 5th and 6th Defendants case was then closed.

THE 1ST, 2ND, 3RD AND 7TH DEFENDANTS EVIDENCE.

162. Alice Wanjiru testified as **DW1**. She stated that she had filed a Statement of Defence and a witness statement. She also stated that the witness statement was translated to her and she signed it. She prayed that the Court adopts the said statement as part of her evidence-in- chief, which prayer the Court acceded to.

163. It was her evidence that in the present suit there was a Plaintiff and seven Defendants and that the government was to be blame for the dispute in this matter.

164. In her witness statement, she states that she is a member of the 7th Defendant who purchased the suit parcel in the year 2010.

165. She also states that the officials of the 7th Defendant subdivided the land between its members and they took possession and begun cultivation.

166. She further states that she does not live on the land but she cultivates it.

167. She states that the Plaintiff invaded the suit parcel in the year 2015 and begun claiming ownership while destroying her crops.

168. She also states that the matter was reported to the police who investigated and found that the 7th Defendant has a genuine title from the Lands Office.

169. She further states that it is not true that she threatened the Plaintiff and his family as they have never lived on the suit parcel.

170. Upon cross examination by Counsel for the Plaintiff, she confirmed that she was a member of the 7th Defendant.

171. She also confirmed that they had a document of registration of the trust together with a member's register.

172. She further confirmed that her name was on the register but admitted that she did not know the number.

173. She admitted that at the time of the purchase of the suit parcel in the year 2010, she was a director of the 7th Defendant.

174. She confirmed that she only saw the title deed and admitted that she did not know who sold the suit parcel to them.

175. She also confirmed that she contributed Kshs. 18,000/= towards the purchase of the suit parcel and her portion of land measures 50 by 50.

176. She further confirmed that she paid the said sum of money to one of the officials of the 7th Defendant one **Feliciter Mungai**.

177. She stated that she had a share certificate from the 7th Defendant and that the 7th Defendant subdivided the suit parcel amongst its members.

178. She confirmed that she was shown her portion of the suit parcel and added that she cultivated the said portion until the year 2015 when the crops were uprooted and beacons removed by unknown persons.

179. DW1 was then referred to her witness statement and she admitted that she only met Philip at the police station after they made a

complaint against him.

180. She stated that they were referred to the Criminal Investigation Department where they were advised that their dispute related to land and told to go to Court.

181. She confirmed that the Plaintiff alleged that they had trespassed and/or encroached onto the suit parcel and that he seeks an order of eviction.

182. She also confirmed that the Defendants case on the other hand was that they purchased the suit parcel and followed the correct procedure.

183. She further confirmed that the Defendants have not filed any suit against the Plaintiff and neither have they filed a Counterclaim.

184. She admitted that the beacons were removed but they are still farming the land.

185. Upon cross examination by Counsel for the 4th, 5th and 6th Defendants, she stated that she blamed the government.

186. She stated that she blamed the government because they followed all the processes in purchasing the suit parcel.

187. She also stated that they did a search before they purchased the land and admitted that she saw the Certificate of Official Search which showed that the owner was one **Kamau Gachuno** and after they purchased the said land, it was registered in the name of the 7th Defendant.

188. Upon re-examination, she stated that she does not know how to read.

189. She also stated that the people who read the search to her, told her that the registered owner of the land was one **Kamau Gachunu.**

190. She further stated that she filed a Statement of Defence in the present matter which disclosed her status and membership.

191. She stated that she has a share certificate which is evidence of her membership of the 7th Defendant and that the Share Certificate is at page 80 of her trial bundle.

192. She reiterated that after the destruction of crops and removal of beacons, she continued to cultivate her portion of the suit parcel. That was from the year 2010 to date.

193. She stated that they had never seen anyone else on the suit parcel and that there was no order of the Court for their eviction.

194. Mary Karanja testified as **DW2**. She introduced herself as the 2nd Defendant in the present suit. She stated that she filed her witness statement dated 5th November, 2018 and

prayed that the Court adopts the said statement as part of her evidence in

Chief, which prayer the Court acceded to.

195. She stated that she was aware of the Plaintiff's claim and stated that she denied his allegations.

196. She testified that she was a member of the 7th Defendant even though the share certificate that is in her possession has the name of her son.

197. She further testified that a copy of the said Share Certificate is at page 81 of their trial bundle and added that she is the one who is cultivating the suit parcel.

198. In her witness statement, she states that she is a member of the 7th Defendant who purchased the suit parcel in the year 2010.

199. She also states that she was shown a copy of the 7th Defendant's title deed and was among the members of the 7th Defendant who were resettled on the suit parcel.

200. She further states that she does not live on the land and she instead cultivates it and adds that she does not visit the suit parcel often.

201. She states that at some point someone interfered with the crops she had planted and she reported the issue to the Criminal Investigations Department and they verified their occupation of the suit parcel by stating that the 7th Defendant's title is genuine.

202. She also states that she has never met the Plaintiff and that she has peacefully cultivated the suit parcel since the year 2011 to date.

203. She further states that no one has ever showed up on the suit parcel claiming ownership.

204. Upon cross examination by Counsel for the Plaintiff she confirmed that her son does not live on the suit parcel.

205. She reiterated that she was a member of the 7th Defendant and confirmed that she was not involved in the purchase of the suit parcel.

206. She also confirmed that the suit parcel was purchased from one **Kamau Gachunu** in the year 2010 before it was registered in the name of the 7th Defendant.

207. She admitted that she has never met the said **Kamau Gachunu**.

208. She stated that even if the said **Kamau Gachunu** was deceased in 2010, the title documents were in his name and they were used to sell his land.

209. She admitted that she did not know how the transfer was effected if it was true that **Kamau Gachunu** was deceased.

210. She stated that their leaders, **Jacinter** and **Paul Muthama** should be able to explain what happened.

211. She confirmed that she went to the Criminal Investigations Department because her crops were destroyed and reiterated that they were advised to go to Court.

212. She stated that the said **Kamau Gachunu** also went to Court.

213. Upon re-examination, she reiterated that she did not know **Kamau Gachunu** and neither did she know that he was deceased.

214. She also stated that when the leaders of the 7th Defendant purchased the suit parcel, they showed them the title deed and they were satisfied that the 7th Defendant was the registered owner of the suit parcel.

215. She also reiterated that before they purchased the suit parcel, they conducted a search which confirmed that the land was registered in the name of **Kamau Gachunu**.

216. She stated that after they purchased the suit parcel, they conducted another search which showed that the suit parcel was registered in the name of the 7th Defendant.

217. She also stated that they did not file a suit because they are on their land and when they were sued, they filed a Statement of Defence where they denied the Plaintiff's claim.

218. She further stated that her prayer was that the Court investigates all the documents and dismisses the Plaintiff's claim.

219. She also stated that she wanted the government to compensate the Plaintiff and/or resolve his dispute with him as a parcel of land cannot have two titles.

220. Sammy Njuguna testified as **DW3**. He introduced himself as the 3rd Defendant and denied the Plaintiff's Claim.

221. He also testified if at all there was an omission in the present proceedings, then the blame should be on the Lands Office.

222. He further testified that all their documents were in order and that they did a search before purchasing the suit parcel.

223. It was his evidence that a transfer was effected and that they did another search which confirmed that the suit parcel was now registered in the name of the 7th Defendant.

224. He stated that he filed a witness statement dated 5th November, 2018 and prayed that the Court adopts the said statement as part of his evidence in Chief, which prayer the Court acceded to.

225. He testified that he had a share certificate issued by the 7th Defendant which certificate was at page 79 of their trial bundle.

226. He also testified that the said share certificate had the seal of

Muongano at the bottom and had the name of **Muongano** printed at the top.

227. In his witness statement, he states that the officials of the 7th Defendant called the 7th Defendant's members for a meeting whose agenda was the suit parcel and added that over 178 members showed up.

228. He also states that they were informed that the 7th Defendant had purchased the suit parcel and each member was given a small portion of the land.

229. He further states that even though he has never taken possession of the suit parcel or cultivated it, no person has ever challenged the ownership of the land.

230. He states that he is aware that in the year 2015, the Plaintiff went to the suit parcel and begun to destroy the crops and beacons claiming that the land belonged to him.

231. Upon cross examination by counsel for the Plaintiff, he confirmed that he does not live on the suit parcel and has never used it.

232. He also confirmed that the 7th Defendant is an umbrella of several self-help groups that came together.

233. He admitted that the 7th Defendant comprised of people living in informal settlements across Nakuru County. He explained that he comes from Ronda in Nakuru.

234. He also admitted that he represented Shikamou Self Help Group in the purchase of the suit parcel.

235. He confirmed that he met **Kamau Gachunu** and they entered into a sale agreement for the purchase of the suit parcel.

236. He also confirmed that the said sale agreement was at page 78 of their trial bundle and that it was incomplete but confirmed that they had filed another copy of the agreement and that it was at page 1 of their Supplementary trial bundle.

237. He confirmed that the said agreement was drawn by **Munene** Advocate. He also admitted that the said agreement did not have the words 'drawn by' and further admitted that he did not know how drafting was usually done.

238. He confirmed that **Munene** stamped and signed the said document to show that he witnessed the execution.

239. He also confirmed that after they purchased the suit parcel, they left everything to the advocate to handle on their behalf.

240. He further confirmed that the transfer was done and they were represented by members of the 7th Defendant.

241. He admitted that the 7th Defendant's officials might have the transfer documents.

242. He confirmed that they gave out their passport photos and copies of their identity cards but had not brought them to Court.

243. He confirmed knowledge of the fact that **Kamau Gachunu**'s son testified that **Kamau Gachunu** was dead.

244. He also admitted that he did not know the deceased **Kamau Gachunu** but the **Kamau Gachunu** who sold the suit parcel was alive.

245. He confirmed that the person who took them to Court was not the one who sold the land to them.

246. He also confirmed that he did not know where the person who sold them the suit property was. He denied the said seller was deceased and confirmed that they had a copy of his title deed, a copy of his identity card and that some of the money was paid by cheque.

247. When he was referred to clause 3 of the agreement for the sale of the suit land, he admitted that the said clause did not state how the balance of the purchase price was to be paid.

248. He also admitted that he did not have a copy of the said cheque as it was in possession of the 7th Defendant.

249. He further admitted that they reported the matter to the Criminal Investigations Department and confirmed that he did not have information on **Kamau Gachunu's** bank account and added that the 7th Defendant might be aware of the said bank account.

250. He reiterated that he denies the Plaintiff's allegations that his father was deceased and that he could not have sold the suit parcel to them.

251. He stated that they do not blame the Plaintiff because they did all that they could to transfer the suit parcel but were blaming the government because there were two title deeds with respect to one parcel of land.

252. He confirmed that he had knowledge that the Land Registrar stated that the suit parcel has always been in the name of the deceased and added that the Land Registrar never stated that the Defendants' documents were forged.

253. He confirmed that **Munene** Advocate was not called as a witness because he had stamped some documents for the Plaintiff and according to them, he could not be able to give evidence on their behalf.

254. When he was referred to the Amended Complaint, he confirmed that the Complaint was initially drawn by **Philip Kamau Gachunu** and not by **Munene**.

255. He also confirmed that he had not seen any of the Plaintiff's documents that were signed by the said **Munene**.

256. He claimed that he had seen some document filed by the Plaintiff and signed by **Munene** but he could not remember which document it was. He also admitted that the said documents he allegedly saw were not in the Plaintiff's bundle.

257. Upon further cross examination by Counsel for the 4th, 5th and 6th Defendants, he reiterated that he blamed the government for the two sets of documents in respect of the same parcel of land.

258. He stated that the Land Registrar should authenticate the title documents and admitted that he was not aware that it is not the Land Registrar who does the authentication.

259. He reiterated that the person who sold the suit parcel to the 7th Defendant was one **Kamau Gachunu** and that the said **Kamau Gachunu** did not have a third name.

260. He denied that there was any fraud in the 7th Defendant's purchase of the suit parcel as the search showed that the suit parcel belonged to one **Kamau Gachunu** whom they paid the purchase price to.

261. He confirmed that they did not pay the purchase price to the Plaintiff.

262. Upon re-examination he stated that according to him, all transactions relating to purchase of land are done at the Lands Office.

263. He also stated that he had never heard the words 'drawn by' before and he only heard about them that day in Court.

264. When he was referred to the sale agreement, he confirmed that he was present when the agreement was being executed by all the parties.

265. He stated that he witnessed one **Munene** sign the agreement and he also witnessed the signing and stamping of the first page of the said agreement. He also stated that that was all **Munene** needed to do with respect to the said agreement.

266. He reiterated that all the transactions in respect to the suit parcel were done by the advocate as he was the one advising them and, in the end, he brought them a title deed in the name of the 7th Defendant.

267. He also reiterated that if there are two titles with respect to one parcel of land, then the 4th Defendant (sic) should be held liable. He referred to the Notice of Indemnity to co-Defendants that was at page 45 of his trial bundle.

268. He reiterated that he denied the Plaintiff's allegations and sought that the Plaintiff's case be dismissed with costs.

269. Paul Muthama Kiambu testified as **DW4**. he stated that his Identity Card No. is 2275150.

270. It was also his evidence that in the year 2010 he was the treasurer and committee member of the 7th Defendant and that in that year they were looking for land to buy for purposes of settling their members.

271. He stated that he filed a witness statement dated 14th January, 2022. He prayed that the Court adopts the said statement as part of his evidence in Chief, which prayer the Court acceded to.

272. He testified that he paid and conducted a search on the suit parcel. He produced a copy of the search certificate and receipt as **Exhibit D (1, 2, 3 & 7) (7) (a) and (b)**.

273.He also testified that the search showed the registered owner of the suit parcel was the 7th Defendant.

274.In his witness statement, he states that the suit parcel was being offered for sale by both **Muigai Commercial Agencies Ltd**

and one **Josphat Kangara Maina**.

275.He also states that they opted to purchase the suit parcel from **Josphat Kangara Maina** because he was offering to sell the suit parcel at a fairer price.

276.He further states that they visited **Josphat Kangara Maina's** office at Gibcon House and he organized for them to visit the suit parcel in the company of a surveyor who showed them the beacons.

277.He states they went back to **Josphat Kangara Maina's** office and he took them to see an Advocate by the name

Simiyu who told them that the owner entrusted him with the title deed of the suit parcel.

278. He also states that the 7th Defendant through its board instructed the firm of Munene & Munene Associates Advocates to act for it in the purchase of the suit parcel.

279. He further states that **Mr. Munene** completed the transaction and one of the 7th Defendant's members one **Moses Mwangi Gatura** who is also the local group's coordinator and board member collected the title deed on 10th March, 2011.

280. He states that the 7th Defendant instructed him to conduct a search at the Lands Registry which he did on 11th March, 2011 and it confirmed that the suit parcel was now registered in the name of the 7th Defendant.

281. Upon cross examination by Counsel for the Plaintiff, he confirmed that he obtained the search [**Exhibit D (1, 2, 3 & 7) (7)(a)**] from the Lands Office after filing certain forms.

282. He stated that the said search is authentic because he obtained it from the Lands Office and it was signed and sealed.

283. He admitted that **Simiyu** confirmed that he had the original title of the suit parcel and the 7th Defendant's board asked Munene & Munene Advocates to act for them and complete the purchase.

284. He reiterated that **Munene** Advocate represented the 7th Defendant and after the purchase, the said **Munene** gave them a title deed.

285. He also reiterated that he conducted a search which confirmed that the suit parcel belonged to the 7th Defendant.

286. He further reiterated that he had in his possession the title deed and a copy of the search certificate he acquired after the 7th Defendant's registration as the owner of the suit parcel.

287. Upon cross examination by Counsel for the 4th, 5th and 6th Defendants, he reiterated that his case against the 4th, 5th and 6th Defendants is that the Land Registrar produced documents that showed that the suit parcel belonged to them.

288. He also reiterated that the search certificate that they got from the Land Registrar showed that the 7th Defendant was the owner of the suit parcel.

289. He confirmed that **Moses Mwangi Gatura** was the one who got the title deed from **Mr. Munene** after he (**Mr. Munene**) completed the transaction.

290. He reiterated that all he knows is that **Munene** gave them the title deed but he could not confirm that he (**Munene**) got the title from the Lands Office.

291. He stated that the only documents he produced were copies of the title deed and search certificate while other documents have been produced by the other parties.

292. Upon re-examination he stated that he got the search certificate dated 10th March, 2011 from the Lands office.

293. He explained that he did the search the same day they got the title.

294. He further stated that as an ordinary citizen, the only place he would get confirmation on the face of registration is from the Lands Office.

295. He reiterated that **Mr. Munene** was the Advocate representing the 7th Defendant.

296. He also reiterated that **Moses Gatura** was a coordinator of the 7th Defendant and stated that no other outsider engaged in the transaction other than **Munene** Advocate and **Moses Getura**.

297. He further reiterated that they have a claim against the 4th, 5th and 6th Defendants because they conducted due diligence at the Lands Office.

298. He reiterated that if there was a problem with their title deed,

he would blame the Land Registrar and the Lands Office.

299. He then stated that he did not know if **Mr. Munene** would be coming in as a witness.

300. Jacinta Mwelu testified as **DW5**. She introduced herself as the Regional manager of Akiba Mashinani Trust – Nakuru

County and stated that she filed a witness statement dated 5th November, 2018.

301. She prayed that the Court adopts the said statement as part of her evidence in Chief, which prayer the Court acceded to.

302. It was her evidence that the 7th Defendant supports the **Muongano Wa Wanakijiji Group** technically and financially.

303. It was also her evidence that the technical assistance means giving them a lawyer if they have matters in Court or if they are purchasing land and then cover the legal fees.

304. It was further her evidence that the 7th Defendant purchased the suit parcel for the purpose of settling its members who live in slums in Nakuru and added that were supposed to build houses for the said members.

305. She testified that they conducted due diligence before purchasing the suit parcel by doing a search at the Lands Registry which search confirmed that the suit parcel was registered in the name of **Kamau Gachunu**. She produced a copy of the Certificate of Search as **Exhibit D (1, 2, 3, 7) 8**.

306. She also testified that they appointed **Munene** Advocate who was based in Nakuru to act for **Akiba Mashinani** and explained that he was to identify the parcel and carry out all the activities pertaining to the registration of the suit parcel from **Kamau** to the 7th Defendant.

307. She further testified that the said advocate prepared a sale agreement dated 23rd December, 2010 which is in their Supplementary trial bundle. She produced a copy of the agreement as **Exhibit D (1, 2, 3 & 7) 9**.

308. It was her evidence that the purchase price for the suit parcel was Kshs. 2,585,000/= and added that the money was paid through cheques.

309. It was also her evidence that they initially paid a ten percent deposit and paid the rest in three installments and issued three cheques in respect of those instalments. It was further her evidence that the three cheques were paid after the deposit and they therefore issued four cheques in total.

310. She testified that the particulars of the said cheque were as follows;

a. Cheque No. 501034 was drawn by EcoBank. It was dated 23rd December, 2010 and was for Kshs. 258,500/=.

b. Cheque No. 208298 was drawn by NIC Bank. It was dated 28th February, 2011 and was for kshs. 775,500/=.

c. Cheque No. 208299 was drawn by NIC Bank. It was dated 28th February, 2011 and was for Kshs. 775,500/=.

d. Cheque No. 208300 was drawn by NIC Bank. It was dated 28th February, 2011 and was for Kshs. 775,500/=.

311. She produced copies of the said cheques as **Exhibit D (1, 2, 3, 7) 10 (a), (b), (c) and (d).**

312. She testified that **Munene** Advocate wrote the letter dated 10th March, 2011 informing them that the transaction was concluded and they were to collect the title deed. She produced a copy of the said letter as **Exhibit D (1, 2, 3, 7) 11.**

313. She also testified that one **Moses Mwangi Getura** who was one of the members and beneficiaries of the land picked the title deed from **Munene** Advocate on 10th March, 2011. She produced a copy of the acknowledgement from **Munene** Advocate stating that Moses had picked up the title as **Exhibit D (1, 2, 3, 7) 12.**

314. She produced a copy of the title deed for **Kiambogo/Kiambogo Block 2/485 Mwariki** as **Exhibit D (1, 2, 3, 7) 13** and added that it was issued to the 7th Defendant on 10th March, 2011.

315. She further testified that after receiving the title, they sent a member to do a search to confirm that the name of the 7th Defendant was in the register and added that the Certificate of Search was dated 10th March, 2011.

316. It was her evidence that after receiving the said documents, the 7th Defendant handed over the land to its members who started farming the land in the year 2011.

317. It was also her evidence that the 7th Defendant issued certificates to their members after demarcation was done. The 7th Defendant subdivided the suit parcel in the year 2014 and each member was issued with a share certificate.

318. It was further her evidence that the 7th Defendant has 176

members who are occupying the suit parcel.

319. She testified that she knows the 1st, 2nd and 3rd Defendants as they issued them with Share Certificates.

320. She also testified that the members have not enjoyed occupation of the suit parcel as someone invaded the land and removed the beacons.

321. She further testified that they did not know the name of the person who removed the beacons.

322. It was her evidence that the matter was reported to Mwariki Police Station and the Criminal Investigations Department was supposed to go to the Lands Office to establish what the problem was.

323. It was also her evidence that they gave the Criminal Investigations Department a copy of the 7th Defendant's title

and they also took the beacons to them.

324. It was further her evidence that she did not know the Plaintiff as they purchased the suit parcel from **Kamau Gachunu** and not **Philip Kamau Gachunu**.

325. She testified that if the Plaintiff has a title deed, then they seek compensation from the Attorney General and the Land Registrar. That is the 5th and 6th Defendants.

326. In her witness statement, she states that one of the 7th Defendant's members **Paul Muthama** came to learn that the suit parcel was being offered for sale by one **Josphat Maina Kangara**.

327. She also states that **Mr. Kangara** introduced them to the lawyer holding the original title deed known as **Mr. Simiyu**.

328. She further states that they instructed **Mr. Munene** of
Munene

and Associates Advocates to act for them in the purchase of
the suit parcel.

329. Upon cross examination by Counsel for the Plaintiff, she
confirmed that in her witness statement she stated that she
was the regional manager of the 7th Defendant.

330. She also confirmed that she was not directly involved in the
purchase of the suit parcel.

331. She further confirmed that **Jane Weru** was the Executive
Director of the 7th Defendant and she was directly involved in
the purchase of the suit parcel. She confirmed that she (**Jane
Weru**) was not a witness in the present proceedings.

332. She admitted that one **Paul Muthama** was a witness and he
had already testified.

333. She also admitted that at paragraph **5** of her witness statement, she referred to **Josphat Kangara** who was not a witness in the present matter and neither had she ever met him.

334. She confirmed that she has been based in Nakuru since the year 2013.

335. She also confirmed that she met **Munene Muiyoro** the 7th Defendant's advocates and that he was a witness in the present matter even though she had not seen his statement in their trial bundle.

336. She further confirmed that the suit was filed the day the beacons were removed.

337. She admitted that they spoke with **Munene** Advocate after the problems arose.

338. She stated that the 7th Defendant's members are in proper occupation of the suit parcel.

339. She confirmed that her evidence and testimony is that **Munene** transacted on their behalf and reiterated that they collected the title deed from him.

340. She also reiterated that **Munene** acted for the 7th Defendant and stated that the vendor did not disclose his advocate and neither did she know whether he was represented.

341. She admitted that she did not know who attended the Land Control Board to obtain the consent.

342. She also admitted that they did not have the transfer documents in their records.

343. She further admitted that the cheques that the 7th Defendant issued were cashed in.

344. She confirmed that the Criminal Investigations Department dealt with the removal of the beacons and the issue of invasion but did not deal with the issue of payment.

345. She also confirmed that they later took the cheques to the Police for investigations but they did not go back to the police after that.

346. She further confirmed that they carried out their own investigations and found out that the money had been withdrawn by one **Kamau Gachunu**.

347. She admitted that she did not have the investigation report of the investigations they carried out and neither did she have the documents that were used to open their bank account.

348. She stated that all the information they had was that their money went to Family Bank.

349. She confirmed that she was not aware if **Munene** Advocate went to the Criminal Investigations Department to tell his story.

350. She admitted that the Plaintiff's evidence was that at the time of the alleged purchase, his father who was the registered owner of the suit parcel was deceased.

351. She confirmed that they purchased the suit parcel from **Kamau Gachunu** whom they paid the purchase price and that she could not therefore speak on whether he was alive or dead.

352. She also confirmed that the cheques were handed over to their advocate and she also knew that **Kamau Gachunu** cashed out the cheques and admitted that she did not know the details of the person who presented the cheques and cashed them.

353. She acknowledged that they have no case against **Kamau Gachunu** and that they are in occupation of the suit parcel.

354. She reiterated that 176 members of the 7th Defendant are in occupation of the suit parcel.

355. She also reiterated that they were to build houses for their members but they did not because of the present suit.

356. She stated that they continued doing agricultural activities on the suit parcel and maintained the *status quo*.

357. She also stated that some of the 7th Defendant's members were not in occupation but they had share certificates.

358. Upon cross examination by counsel for the 4th, 5th and 6th Defendants she confirmed that she had seen the Notice of Indemnity dated 13th November, 2018 that they had filed.

359. She also confirmed that they were seeking compensation of kshs. 2,585,000/=, general damages and costs of the suit.

360. She further confirmed that the 7th Defendant got its title deed from their advocate and it was picked by **Moses Mwangi Getura.**

361. She admitted that they saw the name of **Philip Kamau Gachunu** in a copy of a green card that was in the lawyers file.

362. She also admitted that she was not curious as to why the 7th Defendant's name was not on the green card.

363. She reiterated that the title deed was issued on 10th March, 2011 and when referred to the last paragraph of page 2 of her statement she confirmed that they did another search on 10th March, 2011 which shows that the suit parcel was registered in their name.

364. She stated that it was possible to have the title deed issued, collected and a search done on the same day.

365. She admitted that they engaged a surveyor to do a sub-division of the suit parcel but confirmed that she had not seen a registered map of the sub-division and added that subdivision was an activity left for the members.

366. She also confirmed that she was present for the subdivision but did not know whether the subdivision was registered.

367. She further confirmed that she had never filed any complaint against the Lands Office.

368. She admitted that she did not know the status of investigations by the Criminal Investigations Department.

369. When she was referred to paragraph 6 of the Notice of Indemnity, she confirmed that the report stated that the 7th

Defendant's title was genuine and admitted that they did not file the said report in Court.

370. She also admitted that paragraph **7** of the Notice of Indemnity referred to an affidavit which affidavit she had not seen.

371. When she was referred to the Certificate of search produced as **Exhibit D (1, 2, 3, 7)** she confirmed that it does not show the 7th Defendant's name.

372. She admitted that they never asked their advocate why their name did not appear on green card that was produced as **Exhibit D (4,5,6)**1.

373. She confirmed that they never sought the said clarification from their advocate because they already had a title deed that showed that the 7th Defendant was the registered owner of the suit parcel.

374. She stated that the Land Registrar confirmed that the title deed in their possession came from their office.

375. She also stated that in the year 2016, the Land Registrar asked them to go to his office with the title but she did not have any communication from the Land Registrar that the title deed in their possession was genuine.

376. She further stated that she did not agree with the evidence of the Land Registrar that the 7th Defendant's title deed did not come from the Lands Office.

377. She confirmed that they filed the Notice of Indemnity against the Lands Office because they are the ones who gave them a title deed.

378. She admitted that they were not claiming from the person who sold the suit parcel to them because he gave them his

title and they conducted a search which confirmed that he was the registered owner of the suit parcel.

379. She stated that they completed their transactions with the

vendor and they produced a copy of the search and receipt as **Exhibits D (1, 2, 3, 7) 7 (a) and (b)** respectively.

380. Upon re-examination, she stated that at the time of the purchase she was working as an employee of the 7th Defendant at the Coastal region.

381. She also stated that she was aware of the transactions leading to the acquisition of the suit parcel.

382. She reiterated that one **Paul Muthama** was involved in the sale transaction and he testified.

383. She stated that at the time of filing of the suit, she was already in Nakuru.

384. She reiterated that the Police were shown copies of the cheques that were given to **Kamau Gachunu** and added that to her knowledge, **Kamau Gachunu** must have been alive because he

cashed the cheques.

385. She reiterated that the members of the 7th Defendant are in occupation of the suit parcel.

386. She also reiterated that the Notice of Indemnity is seeking compensation, general damages and costs of the suit and added that if the 5th and 6th Defendants were disputing that the title deed of the suit parcel came from them, then they ought to give an explanation.

387. She reiterated that the 7th Defendant had a title in its name and there was a certificate of search that showed that the suit parcel was registered in the name of the 7th Defendant.

388. She stated that if someone else claimed the suit parcel, then the Attorney General Office was to blame together with the Lands Office.

389. The 1st, 2nd, 3rd and 7th Defendants case was then closed.

ISSUES FOR DETERMINATION.

390. The Plaintiff filed his submissions on 12th February, 2025, the 1st, 2nd, 3rd and 7th Defendants filed their submissions on 28th February, 2025 while the 4th, 5th and 6th Defendants filed their submissions on 23rd January, 2025.

391. The Plaintiff submits on the following issues;

a. Whether the purported transfer and the issuance of a certificate of title over land parcel known as LR No. Kiambogo/Kiambogo Block 2/485 (Mwariki) from Kamau Gachuhu (sic) to

the 7th Defendant in 2010 was fraudulent, corrupt and illegal.

b. Whether the Plaintiff is the lawful proprietor of the parcel of land known as LR No. Kiambogo/Kiambogo Block 2/485 (Mwariki).

c. What orders should issue.

392. On the first issue, the Plaintiff submits that the transfer of the suit parcel to the name of the 7th Defendant was fraudulent, corrupt and illegal as it occurred in the year 2010 at which time the registered owner of the suit parcel was deceased.

393. The Plaintiff also submits that during the hearing, he produced a copy of a death certificate which showed that his late father, who was the registered owner of the suit parcel died on 30th March, 2005.

394. The Plaintiff further submits that they commenced succession proceedings with respect to the estate of his deceased father i.e. Nakuru HC Succession Cause No. 17 of

2012 in the matter of the estate of the late **Kamau Gachunu**.

395. It is the Plaintiff's submissions that the estate was distributed pursuant to a Rectification of Certificate of Confirmation of Grant dated 17th September, 2015.

396. It is also the Plaintiff's submissions that up to and until the said document was issued, the estate of the deceased inclusive of the suit parcel could not have been dealt with in any manner as it would have amounted to intermeddling with the estate of the deceased.

397. It is further the Plaintiff's submissions that during the hearing, none of the witnesses were able to point out the person who sold the suit parcel to the 7th Defendant.

398. The Plaintiff submits that in his amended Plaint he set out particulars of fraud and reiterated that at the time the suit parcel was allegedly being sold, the registered owner was

dead and he could not have entered into any land sale agreement.

399. The Plaintiff relies on **Section 26(1)** of the Land Registration Act, the judicial decisions of **Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & another Eldoret ELC Case No. 609 B of 2012, Alice Chemutai Too (Suing in her capacity as the personal representative of Kipkoech Tele (Deceased) v Nickson Kipkurui Korir, Attorney General (Sued on behalf of the Chief Land Registrar) & Consolidated Bank of Kenya [2015] KEELC 151 (KLR)** in support of his submissions.

400. The Plaintiff also relies on **Sections 45 and 82 (b)(ii)** of the Law of Succession Act and submits that even where a grant of representation has been obtained, the administrator has no power to sell any immovable asset before confirmation of the grant.

401.The Plaintiff submits that the Defendants did not lead evidence on who purported to be the **Kamau Gachunu** who signed the agreement and neither did they call their advocate **Mr. Munene** to testify as to who executed the agreement for sale of land thereby failing to discharge the burden of proof that had shifted to them.

402.The Plaintiff relies on the judicial decision of **In the matter of**

the estate of Veronica Njoki Wakagoto (Deceased)
[2013]

KEHC 1930 (KLR) in support of his submissions.

403.On the second issue, the Plaintiff reiterates the evidence adduced during the hearing and submits that the 7th Defendant's Regional Manager admitted that before purchasing the suit parcel, they conducted a search which showed that the suit parcel was registered in the name of the late **Kamau Gachunu.**

404. The Plaintiff then reiterates that it was the 7th Defendant's Regional Manager's evidence that the 7th Defendant entered into a land sale agreement dated 23rd December, 2010 and was issued with a title deed dated 10th March, 2011.

405. It is the Plaintiff's submissions, that the witnesses of the Defendants admitted that they later did a search which confirmed that the suit parcel was now registered in the Plaintiff's name and not in the name of the 7th Defendant.

406. It is also the Plaintiff's submissions that the 7th Defendant's Regional Manager testified that they did not execute any transfer documents and neither did they have the records of the late **Kamau Gachunu**.

407. It is further the Plaintiff's submissions that the 7th Defendant did not adduce any evidence to show that the issued cheques were cashed by **Kamau Gachunu**.

408. The Plaintiff relies on **Section 26** of the Land Registration Act, the judicial decisions of **Alice Chemutai Too (Suing in her capacity as the personal representative of Kipkoech Tele (Deceased) v Nickson Kipkurui Korir, Attorney General (Sued on behalf of the Chief Land Registrar) & Consolidated Bank of Kenya [2015] KEELC 151 (KLR), Alberta Mae Gacii v Attorney General & 4 Others [2006] eKLR, Iqbal Singh Rai vs Mark Lecchini and the Registrar of Titles, Civil Case No. 1054 of 2001, Athi Highway Developers Limited vs West End Butchery Limited & 6 Others [2015]eKLR** and submits that the suit parcel was fraudulently transferred to the 7th Defendant and therefore the 7th Defendant lacks the capacity to transfer the said parcel of land to its members.

409. On the third issue, the Plaintiff relies on **Section 80** of the Land Registration Act and submits that the Court should cancel the 7th Defendant's title document and order for the rectification of the register. The Plaintiff relies on the judicial

decision of **Alice Chemutai Too (Suing in her capacity as the personal representative of Kipkoech Tele (Deceased) v Nickson Kipkurui Korir, Attorney General (Sued on behalf of the Chief Land Registrar) & Consolidated Bank of Kenya [2015] KEELC 151 (KLR)** in support of his submissions.

410. The Plaintiff submits that the Court should issue an order of permanent injunction restraining the Defendants and/or their agents from interfering with his possession of the suit parcel.

411. The Plaintiff also submits that the illegal use and possession of the suit parcel by the Defendants has caused him (Plaintiff) massive losses and he therefore deserves to be compensated.

412. The Plaintiff further submits that the Court should award him general damages of kshs. 6,000,000/= and he relies on the judicial decisions of **Christine Nyanchama Oanda vs Catholic Diocese of Homa Bay Registered Trustees**

[2020] eKLR, Duncun Ndegwa v Kenya Pipeline Limited HCC No. 2577 of 1990 and Attorney General vs Zinj Ltd (Petition 1 of 2020) [2021] KESC 23 (KLR) (3RD December, 2021) (Judgement) in support of his submissions.

413. He also seeks that the Court issues an order of eviction against the Defendants and concludes his submissions by urging the Court to enter judgement against the Defendants.

414. The 1st, 2nd, 3rd and 7th Defendants submit on the following issues;

a. Whether the 7th Defendant's acquisition of the suit parcel was fraudulent, corrupt and illegal.

b. Whether the 1st, 2nd, 3rd and 7th Defendants were bona fide purchasers for value.

c. Whether the Co-Defendants (sic) should indemnify the 1st, 2nd, 3rd and 7th Defendants.

d. Whether the Plaintiffs are entitled to the prayers sought.

415. On the first issue, they submit that the suit parcel was offered for sale by **Muigai Commercial Agencies** and **Josphat Kangara** an agent.

416. They also submit that they conducted a search at the Nakuru Lands Registry on 21st December, 2010 which confirmed that the suit parcel was registered in the name of **Kamau Gachunu**.

417. They further submit that on behalf of its members, the 7th Defendant entered into a land sale agreement with the said **Kamau Gachunu** and purchased the suit parcel for kshs. 2,585,000/=. The transaction occurred at the office of Munene & Associates Advocates.

418. It is their submissions that it a requirement of the law that any transactions touching on land be reduced in writing.

They rely on **Section 3(3)** of the Law of Contract Act.

419. They submit that they produced a copy of a Sale Agreement and upon payment of the purchase price, which payment they made through various cheques, they were issued with a title deed.

420. They also submit that they were invited by their advocate one **Mr. Munene** to collect the title deed and once they collected it, they conducted a search at the Lands office which confirmed that the suit parcel was registered in the 7th Defendant's name.

421. They rely on **Sections 24, 25 & 26** of the Land Registration Act and submit that the 7th Defendant's registration as the owner of the suit parcel vested in it inalienable rights.

422. It is their submissions that the burden of proof is on the Plaintiff to prove fraud. The 1st, 2nd, 3rd and 7th Defendants rely on **Sections 107 to 109** of the Evidence Act, the judicial decisions of **Emfil Limited v Registrar of Titles Mombasa & 2 Others [2014] eKLR, John Kamunya & another v John Nginyi Muchiri & 3 Others [2015] eKLR** and submit that even though the Plaintiff alleged that **Kamau Gachunu** died on 30th March, 2005, he (Plaintiff) failed to produce a death certificate as evidence that he was deceased.

423. It is also their submissions that it is therefore not apparent that **Kamau Gachunu** was deceased at that time of purchase of the suit parcel and on that accounts, he has not proved fraud.

424. On the second issue, the 1st, 2nd, 3rd and 7th Defendants submit that they are innocent purchasers for value. They rely on the Ugandan judicial decision of **Katende v Haridar & Company Limited [2008] 2 EA 173** as was cited in

Weston Gitonga & 10 Others v Peter Rugu Gikanga & another [2017] eKLR and submit that they carried out due diligence before they purchased the suit parcel.

425. It is the 1st, 2nd, 3rd and 7th Defendants submissions that they produced various documents that include search certificates, copies of cheques and a copy of the title deed in support of their case and to demonstrate that they are innocent purchasers.

426. The 1st, 2nd, 3rd and 7th Defendants also submit that they hold a valid certificate of title which validity was confirmed by the Criminal Investigations Department, Nakuru upon investigating the matter at the Nakuru Lands Registry.

427. The 1st, 2nd, 3rd and 7th Defendants further submit that they purchased the suit parcel in good faith and that they had no knowledge of any fraud.

428. It is the 1st, 2nd, 3rd and 7th Defendants submissions that they purchased the suit parcel for valuable consideration and that the vendor had apparent title.

429. It is also their submissions that they purchased the suit parcel without notice of fraud and they were not a party to any fraud.

430. It is further their submissions that if at all there was any fraud, it was perpetrated by the Plaintiff in collusion with the Land Registry Officials upon them (1st, 2nd, 3rd and 7th Defendants).

431. On the third issue, the 1st, 2nd, 3rd and 7th Defendants rely on **Order 1 Rule 24(1)** of the Civil Procedure Rules and submit that they are entitled to full indemnity from the 5th and 6th Defendants.

432. They submit that they purchased the suit parcel on the strength of the Certificate of Official Search they obtained from the 5th Defendant on 21st December, 2010 which

confirmed that the suit parcel belonged to **Kamau Gachunu**.

433.They reiterate that they paid kshs. 2,585,000/= as the purchase price and the 5th Defendant registered a transfer before issuing them with a Certificate of Title.

434.They also reiterate that they conducted a search after they got the title deed which confirmed that the suit parcel belonged to the 7th Defendant.

435.They submit that the 5th Defendant's records revealed serious discrepancies with no transaction involving the 7th Defendant reflecting.

436.They also submit that the 5th Defendant as a government employee is charged with the duty of exercising a high level of integrity and maintaining proper and credible land records and they should therefore bear responsibility of any loss suffered by the 1st, 2nd, 3rd and 7th Defendants.

437. They rely on **Sections 9** and **10** of the Land Registration Act and while reiterating the evidence of the Land Registrar with regard to the three green cards, submit that they are innocent purchasers for value and in the event the Court finds in favour of the Plaintiff, then they demand indemnity from the 5th and 6th Defendants.

438. On the fourth issue, the 1st, 2nd, 3rd and 7th Defendants submit that the Plaintiff has failed to disclose a cause of action against them and they rely on the judicial decision of **Caliph Properties Limited vs Barbel Sharma & another [2015] eKLR** in support of their submissions.

439. They reiterate that the Plaintiff failed to prove his claim of fraud and that he concealed material facts in the succession Court.

440. It is their submissions that they acquired the suit land in 2010 and they have been in peaceful possession of the suit

parcel until 2015 when the Plaintiff went to the suit parcel and removed beacons.

441. It is also their submissions that the Plaintiff has not given any explanation as to where he was during that period and that the Court did not give any injunctive orders because the Plaintiff did not have a *prima facie* case.

442. The 1st, 2nd, 3rd and 7th Defendants conclude their submissions by urging the Court to dismiss the Plaintiff's suit with costs.

443. The 4th, 5th and 6th Defendants submit on whether there is a claim against them.

444. They submit that the Plaintiff has not sought any prayers against them and that they produced documents that showed that the suit property belonged to the late **Kamau Gachunu**.

445. The 4th, 5th and 6th Defendants reiterate the evidence of the Land Registrar and submit that neither of the parties produced any evidence that contradicted his evidence.

446. They therefore submit that no reasonable cause of action has been established against them and they seek that the Plaintiff's suit be dismissed with costs.

447. The 4th, 5th and 6th Defendants also submit that the 1st, 2nd, 3rd and 7th Defendants have no right to claim indemnity from them. This is because there is no evidence that the 7th Defendant was ever registered as the proprietor of the suit parcel.

448. The 4th, 5th and 6th Defendants further submit that there are no records at the Lands Registry that show that the 5th Defendant ever issued the 7th Defendant with a title deed.

449. It is their submissions that the 7th Defendant claims to have purchased the suit parcel from **Kamau Gachunu** (deceased) which is a contractual issue that should be addressed with

the administrators of his estate. As far as registration is concerned, the suit property is registered in the name of the Plaintiff.

450. The 4th, 5th and 6th Defendants rely on **Section 27** of the Civil Procedure Rules, **Order 2 Rule 6** of the Civil Procedure Rules, the judicial decisions of **Joshua Mungai Mulango & another vs Jeremiah Kiarie Mukoma [2015] eKLR, IEBC & another vs. Stephen Mutinda Mule & 3 Others [2014] eKLR** and urge the Court to dismiss the suit with costs.

ANALYSIS AND DETERMINATION.

451. After considering the pleadings, evidence adduced by the Plaintiff & the Defendants and the submissions filed, it is my view that the following issues arise for determination;

- a. *Whether the 7th Defendant acquired land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki) fraudulently***

- b. Whether the prayers sought in the Amended Plaintiff should be granted.**
- c. Whether the 1st, 2nd, 3rd and 7th Defendants have established any claim against the 5th and 6th Defendants.**
- d. Whether the defence of innocent purchaser for value is available to the 1st, 2nd, 3rd and 7th Defendants.**
- e. Who should bear costs of the suit.**

A. Whether the 7th Defendant acquired land parcel No. Kaimbogo/Kiambogo Block 2/485 (Mwariki) fraudulently.

452. It is the Plaintiff's case that he is the legal representative of the estate of **Kamau Gachunu** his deceased father.

453. It is also the Plaintiff's case that his deceased father was the registered owner of land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki).

454. It is further the Plaintiff's case that his deceased father died on 30th March, 2005.

455. It is the Plaintiff's case that he commenced succession proceedings with respect to his estate vide Nakuru High Court Succession Cause No. 17 of 2012 which were concluded in the year 2015.

456. It is also the Plaintiff's case that the suit parcel was distributed as per the Rectification of Certificate of Confirmation of Grant dated 17th September, 2015.

457. It is further his case that the suit parcel is now registered in his name.

458. It is the Plaintiff's case that the 1st, 2nd and 3rd Defendants invaded the suit parcel while alleging that they were members of the 7th Defendant.

459. It is also the Plaintiff's case that the 1st, 2nd and 3rd Defendants alleged that the 7th Defendant had purchased the suit parcel in the year 2010 from undisclosed individuals.

460. It is further the Plaintiff's case that the 7th Defendant acquired the suit property fraudulently because at the time of the purchase of the land, his father who was the registered owner of the suit parcel was deceased.

461. In support of his case, the Plaintiff produced a copy of the title deed for land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki) (**Exhibit P1**). It shows that the suit parcel was registered in the name of **Kamau Gachunu** on 13th February, 1990 and it measures 4.71 Ha.

462. The Plaintiff also produced a copy of a Certificate of Official Search for land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki) dated 27th October, 2015. (**Exhibit P2**) It shows that **Philip Kamau Gachunu** was registered as the owner of the suit parcel on 17th January, 2014.

463. A copy of a Grant of Letters of Administration issued in Nakuru HC Succession Cause No. 17 of 2012 on 12th April, 2012 was produced. (**Exhibit P3**). It is in the matter of the estate of the late **Kamau Gachunu** who died on 30th March, 2005 and it is issued to **Philip Kamau Gachunu**.

464. A copy of Death Certificate No. 0549282 was produced as **Exhibit P4**. It is issued on 16th July, 2015. The name of the deceased is **Lilian Nyambura Maina** and she died on 8th December, 2014.

465. A copy of a Rectification of Certificate of Confirmation of Grant was produced as **Exhibit P5**. It was issued in Nakuru HC Succession Cause No. 17 of 2012 on 17th September, 2015. It states that the grant of representation for the estate of **Kamau Gachunu** is issued to **Philip Kamau Gachunu**. Among the properties in the schedule on the face of the said document is the suit parcel, Kiambogo/Kiambogo Block 2/485 (Mwariki) which is to be shared among **Lilian**

Nyambura, Wambui Maina, Benson Kimani, John Maina Kamau and Philip Kamau Gachunu.

466. A copy of an illegible Authority to Act was produced as **Exhibit P6**. The details on the said document are not clear including the case number of the Court it was filed. The names of the persons giving authority are also not clear but the authority to

act was given to **Philip Kamau Gachunu**.

467. A copy of a letter from **S.K Koech** the Chief Kaptembwo Location was produced as **Exhibit P7**. It is dated 3rd January, 2012 and addressed to the Deputy Registrar, Nakuru High Court. It states that **Kamau Gachunu** (deceased) lived within his jurisdiction and he was survived by five children and he had three parcels of land.

468. The children's names are as follows;

- a. Lilian Nyambura**
- b. Wambui Kimani**
- c. Benson Kimani**
- d. John Maina Kamau**
- e. Philip Kamau Gachunu**

469. The properties are as follows;

- a. Nakuru Municipality Block 27/425.**
- b. Kiambogo/Kiambogo Block 2/485 (Mwariki).**
- c. A parcel of land at Lions Hill Trading Center/6.**

470. A copy of a document issued in Nakuru HC Succession Cause No. 17 of 2012 was produced as **Exhibit P8**. It is dated 23rd January, 2012 and states that **Kamau Gachunu** died on 30th March, 2005 and his son one **Philip Kamau Gachunu** has commenced succession proceedings in his capacity as his son.

471. It states that any person objecting to the issuance of the grant should lodge an objection within thirty days.

472. A bundle of black and white photographs was produced as **Exhibit P9**. The said photographs are not clear.

473. A copy of an undated letter was produced as **Exhibit P10**. It is written by **Muungano Wa Wanavijiji** and addressed to one **Philip Thuo**. It informs the addressee that they (Muungano Wa Wanavijiji) are the registered owners of the land which particulars of land it does not give. It states that the said **Thuo** uprooted beacons placed on the land and it warns him from interfering in any way with the said land.

474. A copy of OB No. 29/11/4/2011 was produced as **Exhibit P11**. The OB was recorded at Central Police Station Nakuru.

475. A bundle of black and white photographs were produced as **Exhibit P12**. Some of the photographs show a group of people standing around a warning sign which says that the property belongs to **Muungano wa Wanavijiji Nakuru**. Other Photographs are of men standing in an open field and next to a structure constructed with mud.

476. A copy of a letter written by **J.K Ngige** the Chief Miti Mingi Location dated 31st March, 2016 was produced as **Exhibit P13**. It is addressed to the Deputy County Commissioner Nakuru Sub County and the reference of the letter is **Kiambogo/Kiambogo Block 2/485**. The Chief states that he visited the above-mentioned parcel of land and observed that there was a structure built with mud walls on the land. He also observed that the said parcel of land was subdivided into small plots with beacons and that there is a plaque on the suit parcel that states, '*trespass at your own risk*'.

477. The 1st, 2nd, 3rd and 7th Defendants case on the other hand is that the 7th Defendant purchased the suit parcel of land through the assistance of their advocate one **Mr. Munene**.

478. It is also their case that before purchasing the suit parcel, they conducted a search which confirmed that the land was registered in the name of **Kamau Gachunu**.

479. It is further their case that they entered into a land sale agreement dated 23rd December, 2010 and paid a purchase price of Kshs. 2, 585,000/=.

480. It is their case that they were issued with a title deed on 10th March, 2011.

481. It is also their case that they did not acquire the suit parcel fraudulently as they relied on documents from the Land Registry before purchasing the land.

482. It is further their case that if the Court allows the Plaintiff's case, then the 5th and 6th Defendants should indemnify them.

483. In support of their case, they produced a Receipt and Certificate of Official Search as **Exhibit D (1, 2, 3,7) 7 (a)** and **(b)**. The Certificate of Official Search (**Exhibit D (1, 2, 3,7) 7 (a)**) is for land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** and it is dated 10th March, 2011. It shows that as at 9th March, 2011 the 7th Defendant was

registered as the owner of the said parcel of land and was issued with a title deed on 10th March, 2011.

484. The receipt **Exhibit D (1, 2, 3,7) 7 (b)** is issued by the Department of Lands on 10th March, 2011 and is for a sum of Kshs. 500/= . It is in respect to **Kiambogo/Kiambogo/Block 2/485 (Mwariki)**. The receipt number is 2205503.

485. A copy of the official search for land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** was produced as **Exhibit (1, 2, 3, 7) D8**. It is dated 21st December, 2010 and it shows that **Kamau Gachunu** is the registered owner of the said parcel having been registered on 13th February, 1990.

486. A copy of a land sale agreement dated 23rd December, 2010 was produced as **Exhibit D (1, 2, 3, 7) 9**. It was entered between **Kamau Gachunu** (vendor) and **Jane Mumbi Weru, Mary Adhiambo Nyakure, James Njuguna Gathiru** and **Anastacia Wairumu** as trustees of

Muungano Wa Wanavijiji Akiba Mashinani Trust
(Purchaser).

487. The agreement is for the purchase of land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** at a consideration of Kshs. 2, 585,000/= . The agreement is signed by the vendor and the purchasers. There is also a stamp and signature of Munene C.M. Advocate.

488. Copies of various cheques were produced as **Exhibit D (1, 2, 3, 7) 10 (a), (b), (c) and (d).** **Jacinta Mwelu** who testified as **DW5** set out in great detail the contents of each of the cheques.

489. A copy of a letter dated 10th March, 2011 was produced as **Exhibit D (1, 2, 3, 7) 11.** It is written by **Munene Muiyuro** Advocate and addressed to the Director of the 7th Defendant and it encloses the title deed for land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki).**

490. A copy of an acknowledgement was produced as **Exhibit D (1, 2, 3, 7) 12**. It is dated 10th March, 2011 and signed by one **Moses Mwangi Gatura**. It states that the said **Moses Mwangi Gatura** received the original title deed for land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** which is registered in the name of **Muongano Wa Wanavijiji Akiba Mashinani Trust** from the firm of **Munene & Associates Advocates**.

491. A copy of the title deed for land parcel No. Kiambogo/Kiambogo Block 2/485 Mwariki was produced as **Exhibit D (1, 2, 3, 7) 13**. It states that the registered owner is **Muongano Wa Wanavijiji Akiba Mashinani Trust** who was registered as the owner on 9th March, 2011 and issued with a title deed on 10th March, 2011.

492. The 4th, 5th and 6th Defendants case is that as per the records at the Lands Registry, the Plaintiff is the registered owner of land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)**.

493. It is also the 4th, 5th and 6th Defendants case that the suit parcel was initially registered in the name of **Kamau Gachunu** and upon his death, the Plaintiff was registered as an administrator of his estate.

494. It is further the 4th, 5th and 6th Defendants case that the 7th Defendant has never been registered as the owner of the suit parcel and neither has their office ever issued the 7th Defendant with a title deed.

495. In support of their case, they produced certified copies of green cards of the suit parcel as **Exhibit D (4,5,6) 1 & 2** and a

Certified copy of a member's register as **Exhibit D (4,5,6) 3.**

496. Liyai Collins Aliela who testified as **DW1** set out in great detail, in his evidence, the contents of the said documents.

497. It is not disputed that land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** was initially registered in the name of one **Kamau Gachunu** on 13th February, 1990 and he was issued with a title deed on the same date.

498. What is disputed is whether the said **Kamau Gachunu** sold the suit parcel of land to the 7th Defendant.

499. As afore stated, the Plaintiff contends that **Kamau Gachunu** died on 30th March, 2005 and it was therefore not possible for him to have sold the suit parcel to the 7th Defendant in the year 2010.

500. The 7th Defendant on the other hand submits that the Plaintiff failed to produce a Death Certificate to show that the said **Kamau Gachunu** died on the said date and therefore there is a possibility that he was alive and he sold the said parcel of land to it.

501. A perusal of the documents produced during the hearing show that indeed, the Plaintiff did not produce a Copy of the Death Certificate of **Kamau Gachunu**.

502. This Court has however, established that the Plaintiff produced other documents which point to the fact that the late **Kamau Gachunu** died on 30th March, 2005. The Plaintiff produced a copy of a Grant of Letters of Administration Intestate issued in Nakuru HC Succession Cause No. 17 of 2012 on 12th April, 2012 as **Exhibit P3**. It is issued in the matter of the estate of the late **Kamau Gachunu** who died on 30th March, 2005 to **Philip Kamau Gachunu**. I am of the view that based on this document, the Plaintiff has established that **Kamau Gachunu** died on 30th March, 2005.

503. Having found that there is irrefutable evidence that **Kamau Gachunu** died on 30th March, 2005, the question that follows is whether it is probable that he, as the registered proprietor of the suit parcel, sold the suit parcel to the 7th Defendant in the year 2010. Certainly not.

504. Further, **DW1**, the Land Registrar in his evidence states that they have no records showing that the 7th Defendant was ever registered as the owner of the suit parcel.

505. 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.”

506. 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.”

507. The Plaintiff has set out particulars of fraud against the 1st, 2nd, 3rd and 7th Defendants in the Amended Plaint.

508. The burden of proof is on the Plaintiff to prove on a standard higher than a balance of probability but lower than beyond reasonable doubt that indeed the 1st, 2nd, 3rd and 7th Defendants engaged in acts of fraud.

509. It is my view that the Plaintiff has discharged the said burden. It has been shown that at the time of the alleged purchase of the suit parcel by the 7th Defendant, the registered owner one **Kamau Gachunu** was long dead.

510. Even though the 1st, 2nd, 3rd and 7th Defendants in their evidence state that the 7th Defendant purchased the suit parcel from **Kamau Gachunu**, in their witness statements, they state the contrary.

511. In particular, **DW5** in her witness statement states that the agent from whom they purchased the suit parcel from, one **Josphat Maina Kangara** introduced them to a **Mr. Simiyu** who had the original title deed.

512. She further states that a search was conducted before the sale agreement was allegedly signed by the vendor.

513. It is evident that the 1st, 2nd, 3rd and 7th Defendants did not interact directly with the alleged vendor. In any event, the registered owner was deceased.

514. 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.

515.As afore stated, the Land Registrar in his evidence denied having any records that show that the 7th Defendant was ever registered as the owner of the suit parcel.

516.In **Daudi Kiptugen Vs Commissioner of Lands Nairobi Lands & 4 others [2015] eKLR**, the learned Judge held as follows;

“The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein...”

517. From the totality of the evidence adduced, it is evident that the 7th Defendant acquired title of the suit parcel fraudulently.

**B. Whether the prayers sought in the Amended
Plaint should be granted.**

518. Section 26 (1) of the Land Registration Act provides as follows;

“26.(1)The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that

proprietor shall not be subject to challenge, except—

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

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

519. The Plaintiff seeks an order of cancellation of the 7th Defendant's title.

520. Section 80(1) of the Land Registration Act provides as follows;

“Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

521. From the above provision, the Court has the power to order for rectification of a register by directing that any registration be cancelled if it was obtained by fraud or mistake.

522. The circumstances of this case are such that an order of cancellation of any records of the 7th Defendant's title over land parcel No. **Kiambogo/Kiambogo Block 2/485 (Mwariki)** are merited.

523. The Plaintiff also seeks for general damages for trespass. The Plaintiff submits that Kshs. 6,000,000/= be awarded as general damages for trespass.

524. The 1st, 2nd, 3rd and 7th Defendants are also seeking for general damages as against the 5th and 6th Defendants but they failed to address the Plaintiff's prayer for general damages for trespass.

525. In Philip Ayaya Aluchio v Crispinus Ngayo [2014]eKLR

the Court held as follows;

“The Plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the Plaintiff’s property immediately after the trespass or the costs of restoration, whichever is less. See Hostler - VS - Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).”

526. In Nakuru Industries Limited v S Mehta & Sons [2016]

eKLR the Court stated as follows;

“A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the Defendants did trespass onto the Plaintiff’s land and conduct some excavation. For

this reason, I award the Defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full.”

527.In **Willesden Investments Limited Vs. Kenya Hotel properties limited** NBI H.C.C. NO. 367 of 2000 the Court held as follows;

“There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that Kshs. 10 000 000 is a reasonable award for general damages”.

528.In the present matter, it is not disputed that the 1st, 2nd, 3rd Defendants and the other members of the 7th Defendant are in occupation of the suit parcel.

529. Although the exact value of the land before and after the trespass is not proved and the difference in the value of the Plaintiff's property immediately after the trespass or the costs of restoration is not known, it is my view that a sum of Kshs. 1,000,000/= as General Damages is adequate.

C. Whether the 1st, 2nd, 3rd and 7th Defendants have established any claim against the 5th and 6th Defendants.

530. The 1st, 2nd, 3rd and 7th Defendants have filed a Notice of Indemnity against the 5th and 6th Defendants.

531. They submit that they purchased the suit parcel on the strength of the Certificate of Search that was issued by the 5th Defendant and therefore they should bear responsibility for any loss they suffer.

532. The 4th, 5th and 6th Defendants submit that the 1st, 2nd, 3rd and 7th Defendants cannot claim indemnity against them as there is no evidence that the suit parcel was ever registered in the name of the 7th Defendant.

533. The Court of appeal in **Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others [2019] KECA 157 (KLR)** held as follows;

“45. On the issue of indemnity, the Appellant in the Third Party Notice sought indemnity from the SFT. Having held that the Appellant did not have a genuine and authentic letter of allotment, it follows that the SFT cannot indemnify the Appellant.”

534. The holding of the above cited judicial decision is that a person cannot be indemnified if he/she did not or does not have a genuine and authentic letter of allotment.

535. In the present matter, this Court has found that the 7th Defendant acquired title to the suit parcel fraudulently and there is no evidence that the 7th Defendant was ever registered as the owner of the suit parcel.

536. That being the case, I shall not grant any orders of indemnification against the 5th and 6th Defendants and in favour of the 1st, 2nd, 3rd and 7th Defendants.

D. Whether the defence of innocent purchaser for value is available to the 1st, 2nd, 3rd and 7th Defendants.

537. The 1st, 2nd, 3rd and 7th Defendants submit that they are bona fide purchasers for value as they hold a valid certificate of title as they purchased the said parcel without any notice of fraud.

538. Even as I interrogate this question, I need to categorically state that the 1st, 2nd, 3rd and 7th Defendants have not given evidence that they purchased from the deceased **Kamau**

Gachunu Evidence tendered points to the fact that the alleged vendor (**Kamau Gachunu**) was long dead as at the time of purchase.

539. The 1st, 2nd, 3rd and 7th Defendants submit that the Criminal Investigations Department conducted investigations and found that they had a valid title. They did not produce any such report in their evidence. In any event, the question whether or not the title documents are valid is for determination by this Court and not the Criminal Investigations Department.

540. The Plaintiff and the 4th, 5th and 6th Defendants did not submit on this issue.

541. The Court of Appeal of Uganda in **KATENDE V HARIDAR & COMPANY LIMITED [2008] 2 E.A.173** held as follows;

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who

honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, ... (he) must prove that:

- (a) he holds a certificate of title;***
- (b) he purchased the property in good faith;***
- (c) he had no knowledge of the fraud;***
- (d) he purchased for valuable consideration;***
- (e) the vendors had apparent valid title;***
- (f) he purchased without notice of any fraud;***
- (g) he was not party to any fraud.”***

542. During the hearing, the 1st, 2nd, 3rd and 7th Defendants confirmed that they did not have any transfer form for the suit parcel and neither were they aware of the persons who represented them at the Land Control Board.

543.The Court of Appeal in **Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others [2017] KECA 700 (KLR)** held as follows;

“29. The conduct of the 3rd Respondent in deliberately failing to enter into a written sale agreement with the 2nd respondent; failing to pay stamp duty for the transfer (if any); and failing to keep a copy of the transfer, if at all, raises more questions than answers and portrays him quite negligent in his business transactions. In our view, he cannot be described as a bona fide purchaser for value.”

544.In the present case, the 1st, 2nd, 3rd and 7th Defendants failed to produce the transfer form and admit that they were not aware of the persons who represented them at the Land Control Board.

545. That being the case, I find that 1st, 2nd, 3rd and 7th Defendants cannot be deemed as innocent purchasers for value.

E. Who should bear costs of the suit.

546. The general rule is that costs 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.

547. In the result, I find that the Plaintiff's suit only succeeds against the 1st, 2nd, 3rd and 7th Defendants and I hereby enter judgment in his favour in the following terms:

a. A declaration is hereby made that Philip Kamau Gachunu is the owner of land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki).

b. A declaration is hereby made that the title document held by the 7th Defendant for land parcel No. Kiambogo/Kiambogo

Block 2/485 (Mwariki) is illegal, null and void and it is hereby cancelled.

c. The 1st, 2nd, 3rd and 7th Defendants and their agents are hereby ordered to vacate land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki) within 90 days from the date of this judgement, failure to which eviction orders shall issue.

d. An order of permanent injunction is hereby issued restraining the 1st, 2nd, 3rd and 7th Defendants, their agents, employees, nominees and/or servants from interfering with the Plaintiff's use and possession of land parcel No. Kiambogo/Kiambogo Block 2/485 (Mwariki).

e. The 1st, 2nd, 3rd and 7th Defendants shall jointly and severally pay to the Plaintiff Kshs. 1,000,000/= (one million only) as damages for trespass.

f. The suit against the 4th, 5th and 6th Defendants is hereby dismissed.

g. The costs of this suit shall be borne by the 1st, 2nd, 3rd and 7th Defendants jointly and severally.

548. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 2ND DAY OF OCTOBER, 2025.**

**L. A. OMOLLO
JUDGE.**

In the presence of:-

Mr. Mwathe for Kibe Mungai for the Plaintiff.

Mr. Mburu for the 1st, 2nd, 3rd and 7th Defendants.

AG for the 4th, 5th and 6th Defendants.

Court Assistant; Mr. Joseph Makori.