



Moughal v Mopel & another (Sued as the Administrators of the Estate of William Mopel - Deceased) (Environment and Land Case 12 of 2023) [2025] KEELC 6964 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6964 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 12 OF 2023
LC KOMINGOI, J
OCTOBER 9, 2025**

BETWEEN

MOHAMED SHAHID MOUGHAL PLAINTIFF

AND

EUNICE MOPEL 1ST DEFENDANT

VERONICA MONYERE 2ND DEFENDANT

SUED AS THE ADMINISTRATORS OF THE ESTATE OF WILLIAM MOPEL - DECEASED

JUDGMENT

1. This suit was first filed as Ngong SPMCC No. 206 of 2018, then transferred to Kajiado CMCC No. 199 of 2019, again transferred to Kajiado High Court as HCCC No. 8 of 2020 and later to this Court.
2. Through the Amended Complaint dated 25th May 2021, the Plaintiff claimed that he owned a purchaser's interest in Share No.36 in the Keekonyokie Farmers Co-operative Society Limited after purchasing it from one John Olengero Ole Nchoki through Sale Agreement dated 12th November 2010 and a subsequent Power of Attorney dated 17th November 2010. This share initially belonged to one Patete Ole Mangura. Share Number 36 in the Keekonyokie Farmers cooperative Society Limited was later translated to mean a share in the parcel of land Kajiado/Olchoro-Olchoro/28765 which was subdivided from Kajiado/Olchoro-onyore/46 that belonged to Keekonyokie Farmers cooperative Society Limited.
3. The Defendant wanted to transfer the land to himself, but this could only be done after the Plaintiff's interest, among other parties, was settled. On 25th July 2017, an elder's meeting between the Plaintiff, the Defendant and other interested parties chaired by the Ngong District Commissioner Ngong was



- held. The discussion was on the share No. 36 and its liabilities which the Defendant understood and committed to settle the Plaintiff's purchaser's interest.
4. The Plaintiff claims that on 25th August 2017, the Defendant executed an agreement with the Plaintiff in which he was to pay Kshs. 5,550,000 as the value for the purchase of share No.36. On 7th November 2017, a further agreement was executed between the Plaintiff and the Defendant to change the terms of the agreement dated 25th August 2017, where the Defendant further agreed to pay Kshs.7,300,000 for share No. 36 before the transfer was effected. As a sign of acknowledgment and commitment, the Defendant paid the Plaintiff Kshs.1, 300,000 and further agreed that the balance of Kshs.6,000,000 would be paid before 16th December 2017, failure to which a penalty of Kshs.1,000,000 would be paid after every 40 days until the purchase price was paid in full.
 5. It is the Plaintiff's case that, the Defendant refused to pay the amount as agreed, and in disregard of the Plaintiff's purchaser's interest, un procedurally transferred the property to himself in total breach of the terms of the agreement. The Plaintiff claimed that the Defendant breached the contract by:Conspiring with the liquidator of KeekonyoKie Farmers Society limited and transferred the property related to share No.36 to his himself contrary to the sale agreement dated 7th November 2017.Refusing to pay the balance of Kshs.6,000,000 and an interest thereto as provided in the agreement and time for payment of the balance had since expired as per the terms of the agreement.The Defendant had since subdivided the land but refused to honour agreement leading the Plaintiff to incurring damages of Kshs. 6,000,000 as the principal amount and increment of Kshs. 1,000,000 after every 40 days from 6th March 2018, as well as the penalty payment of Kshs. 8,000,000 as per the agreement.
 6. He therefore sought the following reliefs;
 - a. A declaration that the defendant breached the sale agreement dated 7th November 2017.
 - b. Payment of the principal sum of Kshs. 6,000,000 being the outstanding balance, and accrued increment of Kshs.1,000,000 per every 40 days from 6th March 2018, totalling to Kshs. 41,000,000 as at the time of filing of the Amended Plaint, and which shall keep increasing till judgment.
 - c. General damages for breach of contract.
 - d. Interest on b and c above at court rate.
 - e. Costs of the suit.
 7. The Defendant in his Statement of Defence dated 1st February 2019 denied the Plaintiff's claim on the grounds that there was no sale agreement between him and the Plaintiff indicating that the signatures on the agreements dated 25th August 2017 and 17th November 2017 were forged. He also contested the sale agreement dated 17th November 2010 between the Plaintiff and one John Olengero Ole Nchoki for parcel Kajiado/Olchoro Onyore/28765 calling it baseless on grounds that: the sale agreement dated 25th August 2017 and 17th November 2017 was not clear on what was being sold, whether it was land or shares. He denied that he owed the Plaintiff money claiming that it was the Plaintiff who owed him Kshs. 3,300,000 which was advanced by the Defendant to him as a friendly loan which he demanded for repayment.
 8. The defendant also stated that the Plaintiff did not adduce evidence of the alleged subdivision of Kajiado/Olchoro Onyore/28765 or how Kajiado/Olchoro Onyore/46 was transferred from Keekonyokie Farmers Society Ltd to John Olengero Ole Nchoki or how the Defendant became the legal owner of Kajiado/Olchoro Onyore/28765. The Defendant went on to state that according to



the Society's records, the share No. 36 was registered in favour of the late Patete Ole Mankura and as such it was not possible for the Plaintiff to claim to have owned the share. He stated that if there is any dispute, then it should be between the Plaintiff and the estate of the late John Olengero Ole Nchoki who he allegedly got into an agreement with. The Defendant therefore sought that the suit be dismissed with costs.

Evidence of the Plaintiff

9. PW1, Mohamed Shahid Moughal, the Plaintiff adopted his witness statement dated 9th April 2024 as his evidence in chief and produced his bundle of documents as exhibits. He said he knew the Defendant who had since passed away. He stated that share No. 36 was initially registered in favour of Patete Ole Mankura and before it was transferred to John Ole Nchoki who was the chairman of the Keekonyokie Cooperative society on 12th November 2010. He then purchased it from Ole Nchoki through a sale agreement dated 17th November 2010. Since he was not a member of the Cooperative Society, he was given a Power of Attorney by Ole Nchoki to show that he owned half a share of share No. 36.
10. A dispute arose between him and the defendant and they attended a meeting chaired by the District Commissioner where James Patile Mankura (Patete Mankura's son) was questioned about the sale of land to the Defendant. The meeting was held in presence of M/S Naikuni Ngaah Advocates who were acting for the Defendant. The advocates had drawn the documents for the transfer of shares from Patete Ole Mankura to John Ole Nchoki and this was witnessed by James Patile. He further stated that James Patete had no authority to sell his deceased father's share and therefore the sale to the Defendant was of no consequence. This is the reason the plaintiff agreed to sell his share to the defendant on 23rd August 2017. A sale agreement entered into on 25th August 2017 where the Defendant paid Kshs. 550,000 and a revised agreement on 20th November 2017, where the Defendant paid Kshs. 1,300,000 as deposit and did not make any further payment thus breaching the agreement. This notwithstanding, the defendant transferred the suit property to a third party which led to the filing of this suit. The Plaintiff therefore sought the reliefs in the Amended Plaintiff.
11. On cross examination he stated that he served the Defendant with a demand letter dated 27th March 2018 and thereafter filed the Plaintiff dated 2nd November 2018. In that Plaintiff he claimed purchaser's interest of half share in No. 36 and in the Amended Plaintiff dated 5th December 2019 he claimed purchaser's interest in share No. 36. He stated that the sale agreement dated 17th November 2010 between him and John Ole Nchoki was clear that share meant ½ of the shares held by the shareholder. He stated that this agreement was stamped by P. Maina Mukoma Advocate, and neither does the name Muiyaki nor Stephen appear on the agreement. He admitted acknowledged that he was not a member of the Keekonyokie Farmers Co-operative but John Ole Nchoki gave him the Power of Attorney to confirm his interest which the Defendant and the Liquidator had conspired to dispossess him of. He confirmed that he did not have a stamped copy of the Power of Attorney. He stated that the letter dated 13th September 2017 to the Liquidator made reference to the letter dated 4th July 2017 seeking the transfer of the land to him.
12. He further stated that meetings chaired by the Deputy County Commissioner Ngong were on 18th July 2017 and 25th July 2017 and the sale agreement dated 8th February 2013 was dismissed by the elders. He also confirmed that William Mopel (the defendant) executed the sale agreement dated 7th November 2017. He went on to confirm that clause 4 of the agreement was not objected to as it was agreed upon at the meeting held at the Deputy County Commissioner's office although he did not have minutes of the meeting. He had witnesses. He stated that he had an agreement with the Defendant. He also stated that he tried to put a restriction against the title, he got no response and was later informed that the file was missing. He stated that he owned half a share of share No. 36 and the other half belonged to



- John Ole Nchoki's sons. He stated the Defendant did not pay for the said share but he somehow had a title in his name which he obtained fraudulently.
13. On re-examination he stated that he purchased the share through John Ole Nchoki, who gave him a Power of Attorney. He pointed out that share No. 36 was converted into land which is now in dispute. When asked why he did not sue the liquidator, he stated that the Defendant had shown interest in settling the matter. It is his case that, the Liquidator was present at the meetings held at the Deputy County Commissioner's office in Ngong on 18th July 2017 and 25th July 2017. He stated that he was only interested in half of the share No. 36.
 14. PW2 Emmanuel Kenga a document examiner stated that on 11th February 2019 he received instructions from M/S Lumumba Mogire Advocates, with the following documents forwarded: Letter of offer dated 16th August 2017 marked as A1, Sale agreement marked as A2, Another sale agreement marked as A3. He was also given known signatures of William Mopel marked as B1 and a cheque dated 8th September 2017 marked as B2 and C1 was the specimen signature of William Mopel. He stated that the instructions were to examine the signatures on the documents to determine their authenticity. He stated that after the examination, he concluded that the signatures were authored by the same person as per the comparison chart in the report dated 19th February 2020 which he produced an Exhibit in this case. He further stated that Martin Papa (DW1) was his student but never completed the course and was therefore not a Document examiner. He further stated that the said Martin Papa had been charged, convicted of an offence and served a term of three years.
 15. On cross examination he stated that the physical location of his office was not indicated in the report but confirmed that Smart Life Technologies and Consultancy was his company which was duly registered. On being asked about ELRC No 13 of 2015 he stated that during the vetting he was suspended by the Board and later filed a suit in Court which found the charges to be false. He therefore retired honourably as a Commissioner of Police. He stated that he received the documents from the advocates, conducted the analysis and prepared the report. He stated that although he was not the who obtained the specimen, he was the one who carried out the analysis of the documents. He also stated that the documents were photocopies but were clear and had not been manipulated. He stated that his analysis confirmed that the signatures had been authored by the same person. He confirmed that age, intoxication and sickness were elements that could affect signatures. He also confirmed that he had not seen the report from one, Martin Papa (DW1).
 16. On re-examination he stated that he examined the documents using a scientific microscope and there was nothing barring him from examining documents as a Private Document Examiner.
 17. PW3 Stephen Saitoti Kapaika a businessman and livestock farmer adopted his witness statement dated 9th April 2024 as his evidence in chief. He confirmed that he was a witness to the agreement for transfer of shares. He stated that Patete Ole Mankura was his neighbour and one morning he sent his firstborn son James Oloishiro to call him. Upon his arrival, Patete Ole Mankura informed him that he was unwell and wanted to sell his share. As a committee member of Keekonyokie Society, he informed the Chairman of the society one John Ole Nchoki. Together with Ole Nchoki they visited Patete Ole Mankura who restated his intention to sell his share and it was agreed that Ole Nchoki would buy half share for Kshs. 450,000. He stated that he witnessed this transaction as well as James Muiyaki, the Defendant's son in law. Jane Wangare, Patete's wife was also a witness. He confirmed that James Oloishiro was a witness to the agreement entered between his father Patete Ole Mankura and Ole Nchoki in 2010. He further stated that Methusela Onchieku Onchiri was the Liquidator of the Keekonyokie Farmers Cooperative Society and by this time, the land had already been subdivided. He stated that the Liquidator interfered with member no. 15, 16, 33 and 36 for his personal interests. He



- also confirmed that he was present at the meeting held at the Deputy County Commissioner's office in Ngong' regarding share No. 36 where half share had been sold to John Ole Nchoki. He stated that the Plaintiff was Ole Nchoki's agent and the Defendant was interested in the half share which belonged to Ole Nchoki.
18. On cross examination he stated that he was a Committee member of the society and his father Kapaiko Ole Puley was member number 37. He stated that a member could only sell their share to a fellow member and not a non-member. He maintained that Patete sold half of his share to Ole Nchoki who was member no. 11 and there was evidence of the transfer of ½ share of No. 36. He stated that John Ole Nchoki was given a share certificate by Patete Ole Mankura. He confirmed that he knew the Plaintiff whom Ole Nchoki brought to assist them in relation to parcel No. 46. The Plaintiff was to be given land as payment for his services. He stated that he did not know whether the Plaintiff was paid in cash for his services. He stated that the Plaintiff was an agent in the transaction undertaken in 2010 and confirmed that he was present in the meetings held on 18th July 2017 and 25th July 2017 at the Deputy County Commissioner's offices where the defendant claimed to have purchased share No. 36 from Patete Ole Mankura's family. He said this could not be true as Patete Ole Mankura passed away in 2011. He stated that while at the Deputy Commissioner's office, the Defendant said that he would refund the Plaintiff's money. He also stated that he was not aware if the Power of Attorney in favour of the Plaintiff had been registered. He stated that he had not been influenced by the Plaintiff to testify in this case. He also stated indicated that some members still had cases in court.
 19. On re-examination he stated that he witnessed Patete Ole Mankura transfer half of his share to John Ole Nchoki as per the sale agreement dated 17th November 2010. He added that after the meetings at the Deputy Commissioner's office, the defendant agreed to refund the Plaintiff the money he had paid and wrote him a cheque. He stated that following the purchase of half a share by Ole Nchoki, Patete Ole Mankura's family was left with half a share.
 20. PW4 Chris Mairrana Nchoki one of the sons of John Ole Nchoki adopted his witness statement dated 9th April 2024 as his evidence in chief. He stated that Ole Nchoki purchased share No. 36. He stated that he did not know the Defendant or his family. He further stated that the Plaintiff was his father's agent in his dealings and confirmed that he was in attendance of the meeting held at the Deputy Commissioner's office in Ngong on 18th July 2017 in relation to share No. 36 which Patete Ole Mankura had sold to his father; John Ole Nchoki. He stated that the Defendant was claiming the same share but after the meeting he agreed to refund the money to the Plaintiff. He also confirmed that they did not sell their share to the Defendant.
 21. On cross examination he confirmed of the Defendant's presence at the Deputy County Commissioner's office and he had no objection to the Plaintiff assisting them to get their share. He stated that his father passed on in 2016 and they had not undertaken succession proceedings. He stated that he was born on 19th November 1988 and in 2010 when Patete Ole Mankura sold share No. 36 to his father, he was 22 years old. He stated that he knew Patete and some of his sons. He was not aware that the family of Patete sold share No. 36 to the Defendant. He was also not aware that the defendant had been given the original share certificate. In reference to the letter dated 10th June 2017 in the Defendant's bundle, he confirmed that Jeremiah, Francis and James were his half brothers and that James was the eldest. He maintained that during the meeting held at the Deputy County Commissioner's office, the Defendant agreed to pay the Plaintiff for half the share.
 22. On re-examination he stated that his three brothers were not representing the interests of Ole Nchoki's family because no Administrator had been appointed. He confirmed that the Plaintiff was his father's



agent and that his father purchased the whole share No. 36. He also stated that he saw the Defendant at the Deputy County Commissioner's office in Ngong during the meetings.

Evidence of the Defendants

23. DW1, Martin Esakina Papa, a document examiner testified that he was instructed by M/S Naikuni Ngaah to examine three documents marked as A1 to A3. An offer to transfer interest and two sale agreements. He was given William Mopel's known signatures which were marked as B1 to B6 and Mopel's sample signature marked as C1 which he compared to the signatures on documents A1 to A3. He stated that he did not find any similarities on the signatures which was an indication that they were not made by the same author. He produced his report dated 5th April 2023 an exhibit in this case.
24. On cross examination he stated that the known signatures he received were given to him by the advocate but did not see William Mopel sign on the documents. He stated that he received the instructions on 27th March 2023 with document marked as C1 being the specimen signature. He confirmed that he and Mr. Kenga (PW2) used similar documents in their examination. He stated that the identification certificate was very clear and the dates on the Cheque drawn were the same. He denied that he had been convicted of any offence.
25. DW2 Methuselah Onchiku Onchiri, the Liquidator of Keekonyokie Farmers Cooperative Society adopted his witness statement dated 4th December 2024 as his evidence in chief. He stated that the society had 40 members, the initial owner of share No. 36 was Patete Ole Mankura and that Mohamed Shahid was not a member. He stated that the Society had bylaws which prohibited non members from buying shares and if a member wanted to sell shares, it would be to a fellow member. The initial land was approximately 1100 acres of which 630 acres given to the members. Each member got 14.5 acres which was equivalent to one share. As for share No. 36, Patete Ole Mankura wanted to sell the share to John Ole Nchoki but the sale did not materialise. It was later sold to William Mopel. When the subdivision was undertaken, William Mopel was allocated the share No. 36. He stated that the Society did not have half shares. He acknowledged that there was a dispute in respect to share No. 36 with some members indicating that the share had been sold to John Ole Nchoki. He sought to get clarity about this issue from Ole Nchoki's sons who confirmed that their father only had one share. When referred to the sale agreement in the Defendant's bundle he indicated that no one was entitled to 15.7 acres and the Management Committee had no power to sell land which was under liquidation. He also stated that he knew the Plaintiff who availed several documents showing he was a consultant.
26. On cross examination he denied the report from the Chief's office about the issue or the family of William Mopel agreed to compensate the Plaintiff. He stated that he took over from Stanley Ongeti and became the Liquidator sometime in 2015. He stated that share No. 36 belonged to Patete Ole Mankura and there was neither a sale agreement between him and Ole Nchoki nor transfer of share to Ole Nchoki. In reference to the Power of Attorney, in favour of the Plaintiff, he stated that it was not specific and it had not been registered with the Land Registry. He did not produce the Society's Constitution as evidence. He stated that the transfer of share amounted to fraud because the beneficiaries of Patete Ole Mankura availed documents acknowledging payment by the Defendant though they did not avail Grant of Letters of Administration. He further stated that out of the forty (40) members all had been settled except three. He said he had never held any meetings with the plaintiff but he was aware that he submitted some letters. In reference to the letter to the Liquidator from the Plaintiff, he confirmed that the Plaintiff availed some letters.
27. On re-examination he reiterated the contents of paragraph 6 of his witness statement. He stated that the beneficiaries of Patete Ole Mankura confirmed that they had no objection to their father's share being given to William Mopel. They confirmed their father had sold the share to the Defendant.



28. DW3 Sammy Leiyan Mopel the son of the late William Mopel, adopted the witness statement dated 1st February 2019 as the evidence in chief and produced the bundle of documents which was marked as exhibit D1 and D2.
29. On cross examination he stated that he was not aware if the beneficiaries of Patete Ole Mankura had taken out Grant of Letters of Administration. He also admitted that only an Administrator had the legal right to sell property. He stated that his father purchased the share from the late Patete Ole Mankura in 2013. He stated that he did not witness the sale agreement dated 7th November 2017 and was not aware of the reason for the payment made to the Plaintiff by his father. He also admitted that he did not produce a share certificate. He went on to claim that his father realised that the agreements were forged although he did not file a report with the police. He said he did not know Martin Papa (DW1).
30. On re-examination he stated that he was not aware of the agreement between the Plaintiff and John Ole Nchoki. He said his father denied that he entered into an agreement with the Plaintiff. He stated that he did not know the reason for the payment.
31. At the close of the oral testimonies, parties tendered final written submissions.

Submissions of the Plaintiff

32. Counsel submitted that the Plaintiff sued the Defendant for breach of Agreement dated 7th November 2017. It was submitted that Patete Ole Mangura owned share No.36 in Keekonyokie Famers' Cooperative Society Limited. On 12th November 2010 he sold this share to John Olngereo Ole Nchoki. John Olngereo Ole Nchoki sold this share through a sale agreement dated 17th November 2010 and further executed Power of Attorney dated 17th November 2010 in regard of ½ share in Keekonyokie Farmers' Cooperative Society Limited. The Plaintiff bought this at a Consideration of Kshs. 5,000,000. This meant that Ole Nchoki sold half a share and he remained with another half. The Society later acquired land and subdivided it and share No. 36 was allocated Kajiado/Olchoro-Onyore/28765. Later the Defendant, showed interest in parcel Kajiado/Olchoro Onyore/28765 and was notified by the Society that there had been an interest for the Family of Ole Nchoki and that of the Plaintiff Therefore, he could not have transferred the land without paying off the purchasers' interest for both parties.
33. On 18th July 2017 the Defendant was invited for a meeting at Ngong Chaired by Deputy County Commissioner. In attendance was the plaintiff, Stephen Kapaiko, Marianne Nchoki and also Ole Nchoki's family. The essence of the meeting was to disclose all material information regarding the purchase of Kajiado/Olchoro-Onyore/28765. The Defendant understood and promised to settle all the interests on the land before the transfer. After the meeting, the Plaintiff wrote an offer letter dated 16th August 2017 to the Defendant. The offer for the purchaser's interest was for Kshs. 5,500,000 and in default, a 5% monthly interest. On 23rd August 2017 the Defendant signed the acceptance section as an acknowledgement of the terms therein and a copy was returned to the Plaintiff. Two days after, the Letter of Offer matured into a Sale agreement dated 25th August 2017 and both parties signed the agreement. According to the agreement, the Defendant was to pay Kshs. 550,000 as a sign of commitment which was paid via Cheque No.000420 dated 8th September 2017. According to the conditions of the agreement, the transaction was to be concluded by 25th December 2017. The agreement was witnessed by parties Advocates being Michael Ngure for seller and JN Mburu for the Purchaser. The Defendant breached the agreement and the Plaintiff indulged him to enter into another sale agreement dated 7th November 2017. According to the new agreement, the Purchase price was set at Kshs. 6,000,000. In default, this amount would increase by Kshs 1,000,000 after every 40 days until



payment in full. The parties agreed to the same and the agreement was executed as witnessed by the respective Advocates. As a sign of commitment, the Defendant deposited Kshs. 1,000,000.

34. From the foregoing, the following were the issues for determination outlined: i. How did the Plaintiff acquire interest in Kajiado/Olchoro-Onyore/28765? ii. Whether the defendant signed the sale agreement dated 17th November 2017. iii. Whether there was a binding contract between the Plaintiff and Defendant. iv. Whether the Plaintiff is entitled to the remedies sought. v. Who should pay costs of the suit?
35. On how did the Plaintiff acquire interest in Kajiado/Olchoro-Onyore/28765, counsel submitted that the Plaintiff purchased the share as per the agreement dated 17th November 2010 from one Ole Nchoki and a corresponding power of attorney issued. After the main parcel was subdivided he was allocated Kajiado/Olchoro-Onyore/28765 measuring approximately 15.17 acres. It was also submitted that the liquidator acknowledged that members could sell subdivided land to non-members and the Plaintiff was among the first to purchase the land.
36. Counsel went on to submit that a General power of attorney was executed by Nchoki and making the Plaintiff the Donor's agent in all matters concerning ½ share of Share No.36. As such, the Plaintiff was a lawful agent of Ole Nchoki. Counsel argued that since the Power of Attorney was not specific on land issues, its registration was not mandatory as the share could have been used to transact something else other than land. And its non-Registration neither invalidated the agreement dated 17th November 2010 between Ole Nchoki and the Plaintiff, nor the agency agreement between them. It was also argued that Mariana Nchoki, Ole Nchoki's son also confirmed in Court that the Plaintiff was his father's agent. To support the argument that non-registration of the Power of Attorney did not invalidate an agreement, reference was made to the case of Mayfair Holdings Vs Ahmed Civil Appeal No.18 of 1990.
37. On whether the Defendant signed the sale agreement dated 17th November 2017, counsel submitted that upon receiving of the Defendants Defence on 15th February 2019, the Plaintiff noticed fraud on the side of the Defendant on the mutilation of the original sale agreement and the denial by the Defendant that he did not sign the original agreements. This was reported to the Director of Criminal Investigations, Kiambu Road under OB Number 154/11/19. The document was also placed before a document examiner Emmanuel Kenga, who as per his findings and report dated 19th February 2019 found that there were similarities on the signatures indicating that they were from the same Author. Counsel also submitted that the defendant sneaked in another sale agreement with different clauses and upon examination, it was confirmed that the 1st page of that agreement was not from a common origin as the rest of the agreement with the fonts and prints being different and not from the same machine.
38. Counsel also questioned the credibility of the defendant's document examiner Martin E. Papa on grounds that the Plaintiff's document examiner testified before Court that Martin was his Student and never completed school. And even after producing such documentation, the Plaintiff did not have a chance to verify the authenticity from the school alleged to have attended. Counsel also submitted that as per evidence produced in court, Martin E. Papa had a criminal record and had served a jail sentence as per Milimani High Court Criminal Case No.379 of 2015, Martin Eskina Papa vs. Republic. As such, he could not be a credible witness. Counsel also argued that the documents examined by the Defendant's examiner were questionable because they were copies of copies of the Plaintiff's documents. Therefore, they had been photocopied severally thus altering their original state citing Jonathan Mbithi vs Caroline Wanjiru ELC 346 of 2019. Counsel also questioned why the Defendant's signature was not taken for examination between 2019 when he filed the defence and 2021 prior to his demise also pointing out that the alleged fraud had not been reported. Counsel also probed why



the Defendant's advocate who witnessed the sale agreement dated 7th December 2017 was not called to testify or disprove the authenticity of the sale agreement.

39. On whether there was a binding contract between the plaintiff and the defendant, it was submitted that there was offer, acceptance and consideration and the Defendant breached the terms by not completing the payment and fraudulently transferring share no. 36 to himself. Since contracts cannot be re-written there was need for compensation at the current market value.
40. On whether there was a valid transaction between the Defendant and the family of Patete, counsel submitted that by the time Patete passed away in 2012, he had already sold off the share to Ole Nchoki in 2010. There was therefore no share to sell in 2012 that was allegedly executed by Patete's family adding that they did not have letters of administration to validate the transfer. The alleged sale was therefore an act of intermeddling contrary to Section 45 of the *Law of Succession Act*. Counsel also argued that one of the witnesses in the sale between Ole Nchoki and Patete testified that the share was indeed sold to Ole Nchoki.

Submissions of the Defendant

41. On whether the Defendant lawfully acquired share number 36 in Keekonyokie Farmers Cooperative Society which translated to Property Land Reference Number Kajiado/ Olchoro Onyore 28765, Counsel submitted that Keekonyokie Farmers' Cooperative Society, was registered on 14th October 1966 to enable members to acquire land for their livelihoods. The members of the Society contributed for purchase of a large portion of property being Property Land Reference Number Kajiado/ Olchoro Onyore 46 which was subsequently subdivided by the Society and the resultant titles transferred to members. The society has since been liquidated and its affairs concluded. Counsel also pointed out that non-members could not purchase shares in the society and members could only sell their shares to other members. The Defendant who was member no. 2 purchased share no. 36 initially owned by Patete Ole Mangura (Deceased) who passed away in the year 2013 from the beneficiaries of his estate through agreement for sale dated 8th February 2013 at a purchase price of Kshs. 2,400,000. On 17th January 2014, the Defendant received the original share certificate from Jeremiah Sankale Mankura a son of the late Patete Mankura and the beneficiaries of the estate of Patete Ole Mangura acknowledged being paid the full purchase price and had no objection to the said share being transferred to William Mopel (Deceased) and signed an agreement of mutual understanding on 26th February 2016. Share No. 36 translated to parcel Kajiado/Olchoro Onyore/28765 which was registered in the Defendant's name. It was submitted that share No. 36 was never registered in favour of Ole Nchoki and he therefore could not sell what he did not own. And in a letter dated 10th June 2017, to the liquidator, Ole Nchoki's sons stated that they did not have any stake in share number 36. Counsel also submitted that the Liquidator testified that share number 36 had never been owned by Ole Nchoki and it was not possible that the Plaintiff was purchasing interests in share number 36 from Ole Nchoki who had never been the owner of the said share. The liquidator also testified that the Plaintiff wrote letters dated 13th September 2017 and 31st October 2017 to him seeking transfer of Property 28765 to him which was strange, because the Plaintiff had never been a member of the society and as such was not entitled to any land from the society. The Plaintiff equally wrote several letters to the Land Registrar seeking stopping of the transfer of parcel 28765 which the Defendant had legally acquired.
42. On whether John Olenjero Ole Nchoki or the Plaintiff were / have been the owners of share number 36 in Keekonyokie Farmers' Cooperative Society which translated to Title Kajiado/ Olchoro Onyore/ 28765, counsel submitted that there was no evidence tendered to show that Ole Nchoki purchased share No. 36 translating to Kajiado/ Olchoro Onyore/ 28765 from Patete Mankura. Pointing out that Section 3(3) *Law of Contract Act* was clear that purchase of land should be in writing supported by



- Patrick Tarzan Matu & Another versus Nassim Shariff Abdulla & 2 Others [2009] eKLR. Counsel also submitted that the transfer dated 12th November 2010 witnessed by Stephen Kipaiko, and James Moyake was invalid because they were not members of the society and were only nominees who inherited from their Deceased parents. He also argued that when a member sold a share to a member the vendor was to surrender the original share certificate to the purchaser, and during hearing, the liquidator stated that there were no records to demonstrate that share number 36 was transferred from Patete Ole Mankura to John Olingereu Ole Nchoki and Ole Nchoki was never issued with a share certificate of share number 36.
43. On the issue of the agreement dated 17th November 2010 and Power of Attorney of the even date, counsel submitted that the agreement and the alleged power of attorney were not only ambiguous but had nothing to do with the defendant. It was also argued that the said agreement was not witnessed, contained different signatures of the advocate and the clauses were unclear. Counsel also submitted that share No. 36 was in regard to land and therefore the claim that the Power of Attorney need not be registered since it was not specific to land was improper. Reference was made to: Francis Mwangi Mugo vs David Kamau Gachago [2017] eKLR where Sila Munyao J. held that, "... If the document is not registered, yet it requires registration, I do not think one can claim any rights under it unless and until it is registered..." and Daniel Kipketer Rugut vs Ernest Kavayi & 5 others [2021] eKLR where Kibunja J. held, "... it follows that the power of attorney which confers upon the donee a right to deal with immovable property, like the one the Plaintiff relies on, must be registered..."
 44. On whether there exists a contract between the Plaintiff and the Defendant, it was submitted that having indicated that Ole Nchoki never acquired share No. 36 from Patete meant that he had nothing to sell to the Plaintiff and as such, the Plaintiff had nothing to sell to the defendant citing Daniel Kiprugut Maiywa versus Rebecca Chepkurgat Maim [2019] eKLR. Counsel also argued that the alleged agreements describe the Plaintiff as a holding purchaser's interests in share number 36, and this was unclear. Additionally, Plaintiff in the said agreement purports to sell his interests as a beneficial owner, and he had not demonstrated how he was a beneficial owner yet he was not a member of the society and could not purchase any shares. The acreage described in the Plaintiff's agreement of 15.17 acres was also questioned on grounds that if each share was equivalent to 14.5 acres, how was half a share equivalent to 15.17 acres.
 45. On the conflicting evidence/ reports by the document examiners, counsel submitted that Emmanuel Kenga who testified to be a Commissioner of Police was an Assistant Commissioner who was dismissed by the National Police Service for giving contradicting document examination reports and colluding with another officer. As such, his testimony was inadmissible as held by Mativo. J. as he then was in Christopher Ndaru Kagina vs Esther Mbandi Kagina & another [2016] eKLR. Counsel argued that the Defendant's document examiner's report was conclusive and it demonstrated how the conclusion was arrived at.
 46. Counsel also argued that the alleged agreement dated 7th November 2017 had an arbitration clause meaning if the agreement was genuine, the Plaintiff's recourse was through arbitration, meaning this Court lacked jurisdiction to entertain the suit with reference to Owners of the Motor Vessel "Lillian S" versus Caltex Oil (Kenya) Ltd [1989] KLR 1 and Samuel Kamau Macharia and Another versus Kenya Commercial Bank Limited & 2 others [2012] eKLR.
 47. Counsel went on to point out that the Plaintiff had brought out new evidence at the submissions stage such as the issue of mutilated sale agreement and should not be considered.
 48. Counsel concluded by submitting that the Defendant had proved his case that he validly acquired share No. 36 and the Plaintiff had failed to prove his case and it should be dismissed with costs.



Plaintiff's supplementary submissions

49. Counsel for the Plaintiff filed supplementary submissions in response to the Defendant's submissions. He submitted that there was a valid purchaser's interest on the part of the Plaintiff, and this was formalized in a document titled "Agreement to sell Purchaser's interest in relation to Kajiado Onyore/28765, subdivided from Kajiado/Ochoro-Onyore/46 Keekonyoike Farmers Cooperative Share No.36" which was signed by both parties. Arguing that none of the Defendant's witness was there, not even the Advocates on record, and it was only the Plaintiff, Stephen Kapaiko and Chris Mairrana Nchoki that attended that meeting, and the same were availed in court for purposes of cross examination. Surprising William Mopel's Defence only challenges the agreement dated 17th November 2017 which formed the foundation of the consequent agreement.
50. Counsel also pointed out that counsel for the defendant also introduced new evidence in his submissions such as Francis Kireria Nchoki and Isaac Sapon Onlgereu who were unknown to both the court and the Plaintiff. It was also submitted that the liquidator did not present any documents in court to support his testimony and the issue about Mr. Kenga was not raised in cross examination but only at the submissions.

Analysis and Determination

51. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the Plaintiff has proved his case that he is the owner of parcel Kajiado/Olchoro Onyore/28765
 - ii. Whether there was a valid contract between the Plaintiff and the Defendant and if the same was breached by the Defendant
 - iii. Whether the Plaintiff is entitled to the reliefs sought;
 - iv. Who should bear costs of the suit?
52. This suit emanates from a claim of share No. 36 initially registered in the name of Patete Ole Mankura and which was converted to parcel of land known as Kajiado/Olchoro Onyore/28765. Both the Plaintiff and Defendant do not contest this fact.

The issue of contention is, whether share No. 36 sold/transferred to the Plaintiff or the Defendant.
53. The Plaintiff claims that share No. 36 was purchased from Patete Ole Mankura by the chairman of the Keekonyokie Cooperative Society, one John Ole Nchoki who later sold and or transferred it to him in the year 2010.
54. The Defendant on the other hand claims that he purchased share No. 36 in 2013 from beneficiaries of Patete Ole Mankura who had since passed away.
55. The Plaintiff produced a transfer document dated 12th November 2010 from Patete Ole Mangura to John Ole Nchoki. The transfer document reads:

Transfer of ½ shares No. 36 registered in the name of Patete Ole Mangura for Kshs. 450,000.
It is witnessed by Stephen Kapaiko and James S. Moyake as Keekonyokie members. Other witnesses were: Jane Wangare Ratete and James Olosishiro Mangura.



56. There is a sale of Shares Agreement dated 7th November 2010 between John Olengero Ole Nchoki and Mohamed Shahid Moughal. This agreement defines shareholders as advocates and share as ½ of the share held by the shareholder. Clause 2.1 provides: The Shareholder shall sell as legal and beneficial owner and the Purchaser shall purchase the Share at the Share Purchase Price free from all Encumbrances whatsoever and with all rights attaching or accruing to the Share...
57. The Defendant contested this arguing that every member was getting 14.5 acres of land and it was not logical how ½ a share would give land that was bigger than what each member was entitled to. And that shares could not be sold to non-members.
58. While the Liquidator (DW2) testified that shares could not be sold to non-members, this was not supported by any evidence. *The Constitution* of the Society was not availed for the Court's perusal. The Liquidator also stated that each member got 14.5 acres of land, and therefore the allegation of 15.17 acres as per the Plaintiff's agreement was invalid. He however adduced no evidence to show what each member was to get.
59. There is a Cheque dated 8th September 2017 for Kshs. 550,000 in favour of the Plaintiff written and signed by the defendant, the late William Koike. There is also an RTGS transfer dated 22nd March 2018 for Kshs. 1,000,000 once again from William Koike to Mohamed Shahid. On the bank statement there is also a highlighted Kshs. 1,000,000 paid by the Defendant on 5th February 2018. This was not controverted.
60. There is a letter dated 22nd November 2017 from the Plaintiff to the liquidator, whereby the Plaintiff indicates that he has withdrawn objections placed to the release of title deed for land parcel Kajjado/Olchoro Onyore/28765 after reaching an agreement dated 7th November 2017.
61. The title deed on record shows that the land was registered in favour of the Defendant and a title issued on 8th November 2017 and it was closed on subdivision on 19th December 2017.
62. However, the Defendant's claim is that he purchased share No. 36 from the beneficiaries of the late Patete Ole Mankura in 2013.
63. There is an Agreement of mutual understanding dated 26th February 2016 between James Oloishuro Patete, Joseph Simel Patete, Jane Njambi Mankura, Karariet Patete and Francis Tumpes Mankura as the vendors indicate that they agreed to sell share No. 36 belonging to Patete Ole Mankura (deceased) and the letter complaining of fraud regarding the sale was null since the sale agreement entered on 8th February 2013 was valid.
64. The agreement dated 8th February 2013 shows that the aforementioned names are the wife and children of the late Patete Ole Mankura owner of share certificate No. 36 and thus beneficial owners.
65. It is on record that at this time, Grant of Letters of Administration had not been taken out. So how was this share transferred to the Defendant without the said beneficiaries having legal authority to meddle with the affairs of the estate of the Late William Koike?
66. In a letter dated 10th June 2017 from Ole Nchoki's sons Isaac, Francis and Jeremiah confirm that share No. 36 was purchased by the defendant William Mopel and had no objection to it being transferred to him. As stated herein above they did not have Grant of Letters of Administration.
67. In my view this court has jurisdiction to deal with this dispute. The Deceased (Defendant) proposed a discussion between him and the plaintiff to resolve the issue. This means that the parties were not desirous of subjecting themselves to arbitration.



68. The sale of shares dated 17th November 2010 shows that the plaintiff bought half share from John Olengero Ole Nchoki who had acquired from Patete Ole Mangura on 12th November 2010.

69. The agreement dated 25th August 2017 in which the defendant accepted to buy the plaintiffs interest at Kshs. 5,500,000/= has not been disputed.

The evidence of Martin Esakina Papa (DW1) that the signatures are not those of the Defendant cannot stand. The court having considered other evidence is convinced that the Defendant agreed to buy the Plaintiff's interest.

70. In any case the evidence of the said document Examiner DW1 is just an opinion which the court has to consider together with other evidence.

71. The Sale Agreements dated 25th August 2017 and 7th November 2017 between the Plaintiff and Defendant comply with Section 3(3) of the Law of Contract Act.

The title deed was issued to William Mopel on the 8th November 2017 after the agreements and after the Plaintiff had written to the Liquidator withdrawing any objections, he had prior.

This confirms that the Defendant did sign the said sale agreements and was aware he was buying the Plaintiff's interest.

72. As stated earlier, the claim that a shareholder could not sell shares to an outsider is neither here nor there. The constitution of the Society was not produced before court. It remains a mere allegation which was not proved before this court.

73. I agree with the Plaintiff's submissions that there was no valid transaction between the Defendant and the family of Patete Ole Mankura as by the time he passed away in 2012, he had already sold off the share to Ole Nchoki in 2010. There was therefore no share to sell in the year 2012. The family had no Grant of Letters of Administration to allow them to dispose of the Deceased's share and this amounted to intermeddling contrary to Section 45 of the Law of Succession Act.

74. In conclusion I find that the Plaintiff has proved his case on a balance of probabilities as against the Defendant. As the court was not guided on the damages for breach of Contract I do not award any.

75. Accordingly Judgment is entered for the Plaintiff as against the Defendant as follows:

- a. That a declaration is hereby issued that the Defendant breached the sale agreement dated 7th November 2017.
- b. That the Defendant do pay to the Plaintiff the Principal Sum of Kshs.6,000,000/= being the outstanding balance and accrued increment of Kshs.1,000,000/= for every 40 days from 6th March 2018 totalling to Kshs.41,000,000/= as at the time of filing the Amended Plaint which shall accrue at interest at court rates till payment in full.
- c. Costs of the suit and interest.

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

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. G. Kansime for the Plaintiff.



Mr. Kipkirui for the Defendant.

Peter – Court Assistant.

