



Chege (Suing as a Personal Representative of the Estate of Julius Chege Kiongo (Deceased)) v Amaingu & 8 others (Environment and Land Case 108 of 2016 & 34 of 2019 (Consolidated)) [2025] KEELC 7250 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7250 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 108 OF 2016 & 34 OF 2019 (CONSOLIDATED)**

CK NZILI, J

OCTOBER 22, 2025

BETWEEN

**ESTHER NJERI CHEGE PLAINTIFF
SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF JULIUS
CHEGE KIONGO (DECEASED)**

AND

JAMEN KIYAGI AMAINGU DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE 34 OF 2019

BETWEEN

**ESTHER NJERI CHEGE PLAINTIFF
SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF JULIUS
CHEGE KIONGO (DECEASED)**

AND

**BENJAMIN KARANGATHI, JOYCE WANGEE WAIHARO AND HANNAH
WANJIKU (SUED AS AN ADMINISTRATOR OF THE ESTATE OF JAMES
WAIHARO KIONGO (DECEASED)) 1ST DEFENDANT**

JAMIN KIYAGI 2ND DEFENDANT

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT 3RD
DEFENDANT**

THE LAND REGISTRAR TRANS NZOIA 4TH DEFENDANT



HON. ATTORNEY GENERAL 5TH DEFENDANT
JANE AMALEMBA 6TH DEFENDANT
BEATRICE KADENYI KIYAGI 7TH DEFENDANT
EMILY SHUMI SAKWA 8TH DEFENDANT

JUDGMENT

1. The judgment relates to two consolidated suits herein after the 1st and 2nd suits, namely ELC. No. 34 of 2019 and ELC No. 108 of 2016, respectively.

A. The 1st Suit

2. The plaintiff in the 1st suit, suing as the widow and the administratrix of the estate of the late Julius Chege Kiongo, approached the court through an amended amended plaint dated 22/5/2022 against eight defendants. She sought:
- Declaration that she is entitled to Land Title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha originally demarcated and to which her late husband had paid for, and not Title No. Trans Nzoia/Cherangani/13 measuring 8.3 Ha.
 - Mandatory order directing the County Land Registrar, Trans Nzoia, to cancel all the titles that resulted from the subdivision of Land Title No. Trans Nzoia/Cherangani/11, as originally demarcated, being Title No. Trans Nzoia/Cherangani/1196, 1197, and 1198, any other titles, and also cancel any titles which have resulted from the subdivision of land Title No. Trans Nzoia/Cherangani/1297, 1298, 1438, and 1439, any other titles resulting therefrom, and revert the two titles being land Title No. Trans Nzoia/Cherangani/11, measuring 14.8 Ha and land Title No. Trans Nzoia/Cherangani/13, measuring 8.2 Ha, in the names of Julius Chege Kiongo and Jamen Kiyagi, respectively.
3. The plaintiff contended that her late husband was the lawful allottee of Plot No. 11, Cherangani Settlement Scheme, which was later registered under his name as Land Title No. Trans Nzoia/Cherangani/11, measuring 14.8 Ha, and a title deed issued to her late husband on 25/9/1995.
4. The plaintiff averred that the mother title initially was held by the Government of Kenya under the Ministry of Lands & Settlement, but later was issued to individuals under loan, among them her late husband, who, after clearing the loan due to the Settlement Fund Trustees, obtained a clearance certificate, and was eventually transferred to his name.
5. The plaintiff averred that the 2nd defendant, Jamin Kiyagi, on the other hand, was allotted Plot No. 13, Cherangani Settlement Scheme, which was later transferred and registered under his name as Land Title No. Trans Nzoia/Cherangani/13, measuring 8.2 Ha,
6. The plaintiff averred that the parcel belonging to Jamin Kiyagi does not share a common boundary with her parcel of land, as evidenced in the area map, being on the upper side of the hill, unlike her parcel which is on the lower side of the hill, bordering Nzoia River, Plot No. 12 in being in between, making it impossible to confuse the two plots.
7. The plaintiff averred that sometime in 1965, the 2nd defendant, in collusion with the 3rd and 4th defendants forcefully evicted her and her late husband from her plot, and were settled on the parcel of



- land title No. 13 measuring 8.2 Ha which the 2nd defendant had been allocated, who with the help of the 3rd and 4th defendants, was moved to land title No. Trans Nzoia/Cherangani/11, as if it were his land, yet unlike her late husband, he had never paid for which was in her late husband's name.
8. The plaintiff averred that she and her late husband unsuccessfully followed up with the 2nd, 3rd, and 4th defendants to have the situation on the ground rectified, but were informed by the then District Land Registrar and the Director of Land Adjudication & Settlement that they were actually occupying plot No. 11, Cherangani Settlement Scheme, now land title No. Trans Nzoia/Cherangani/11, which turned out to be untrue.
 9. Further, the plaintiff averred that in Kitale HC Civil Suit No. 100 of 1999(O.S), the court had decreed that Julius Chege Kiongo held 10 acres of the suit land in Trans Nzoia/Cherangani/11, comprising 14.8 Ha in trust for her mother-in-law and the plaintiff in the said case, one Lucia Njoki Kiongo, who, upon her death, was later substituted by her son James Waihora Kiongo, whose estate is now represented by the 1st defendant in this suit.
 10. The plaintiff averred that her late husband, aggrieved by the decree appealed, but the said decision was affirmed in the Eldoret Court of Appeal Civil (Appeal) Application No.18 of 2005. The plaintiff averred that the foregoing cases proceeded on the basis that the late Julius Chege Kiongo was the registered owner of land parcel No. Trans Nzoia/Cherangani/11 comprising 14.8 Ha, which translates to 36.57 acres, meaning that after deducting 10 acres, his balance was 26.57 acres
 11. The plaintiff averred that the decree holder, while effecting the decree, never involved or presented any relevant statutory form for signature to either her or her deceased husband. The plaintiff averred that on 11/12/2018, upon conducting an official search at the lands office, Kitale, she discovered fraud on the part of the 1st defendant, the late James Waiharo Kiongo or his estate, by allegedly presenting mutation forms on 2/8/2013 to the Deputy Registrar of the High Court, Kitale, for signature without first consulting or notifying them.
 12. The plaintiff avers that the suit land in which she possesses, which the 3rd and 4th defendant had misrepresented to her or maintained, was actually land title No. Trans Nzoia/Cherangani/11 was subsequently subdivided into 3 plots, namely No. 1196, 1197, and 1198, measuring 5.8 acres, 9.98 acres, and 3.78 acres, and the title closed for subdivision.
 13. The plaintiff avers that, vide a survey conducted on 12/1/2019 and upon perusing the relevant registry index maps, she established fraud on the part of the 2nd, 3rd, 4th, 6th, 7th, and 8th defendants, that she lives on land title No. Trans Nzoia/Cherangani/13, but not No. 11, as the 3rd and 4th defendants had allegedly initially misrepresented to her that title deed No. Trans Nzoia/Cherangani/13 had been subdivided to create parcels No. 1196, 1197, and 1198; parcel No. 1196 and 1198 measuring 9.58 acres, which were registered in the names of Julius Chege Kiongo, while parcel No. 1197 measuring 9.98 acres has been registered in the name of James Waiharo Kiongo; the estate of Julius Chege Kiongo got less land than what was contemplated in the decree in Kitale ELC No. 100 of 1999.
 14. Again, the plaintiff contended that title No. Trans Nzoia/Cherangani/11, had been subdivided into parcel Nos. 1297, 1298, and 1299; that land title No. Trans Nzoia/Cherangani/1299 was registered initially on 6/3/2015, in the name of the 2nd defendant, and later on 16/9/2015, was transferred to the 6th defendant. Further, the plaintiff averred that land title No. Trans Nzoia/Cherangani/1298 was registered in the name of the 2nd defendant on 6/3/2015, and was later transferred to the 7th defendant on 16/9/2015; that land title No. Trans Nzoia/Cherangani/1299, was registered in the name of the 2nd defendant on 6/3/2015 and later subdivided on 3/8/2018 to create parcel No. Trans



Nzoia/Cherangani/1438 and 1439 and transferred to the 8th defendant on 25/7/2018, while title No. 1439 remained in the name of the 2nd defendant.

15. The plaintiff termed all the subdivisions, subsequent transfers, and registrations as fraudulent and subject to cancellation by the court. The plaintiff further averred that the 2nd, 3rd, and 4th defendant acted fraudulently and illegally by forcefully evicting her from land title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha, which her late husband had paid for, and moving her and her late husband to land title No. Trans Nzoia/Cherangani/13 measuring 8.2 Ha, which had been allocated to the 2nd defendant.
16. The plaintiff averred that, over and above moving her and her late husband from their genuine parcel of land, the 2nd, 3rd, and 4th defendants intentionally misled her and also falsified land records to cover the fraud, that the plot they had moved her into was land title No. Trans Nzoia/Cherangani/11, which she had paid for, when in reality it was land title No. Trans Nzoia/Cherangani/13, which was less in acreage than what her late husband had initially applied and paid for, yet it belonged to the 2nd defendant.
17. Further, the plaintiff averred that the 1st defendant committed the fraud by subdividing the land title No. Trans Nzoia/Cherangani/11 to defeat her claim in contravention of the terms and conditions of the court decree in Kitale HC Civil Case No. 100 of 1999 and also intentionally failed to involve her in the subdivision, by misleading the court that she had declined to sign the relevant statutory form and proceedings to subdivide the land, while at the same time knowing too well that he was dealing with a different land but not land title No. Trans Nzoia/Cherangani/11.
18. The plaintiff avers that despite repeated demands and entries made for the defendants to stop their illegal trespass and fraudulent action, the defendants have remained adamant and continued to interfere with her quiet use and possession of her rightful property rights.

B. The 2nd Suit

19. In the 2nd suit, the plaintiff, based on a similar set of pleadings as in the 1st suit, sued Jamin Kiyagi as the sole defendant. She sought:
 - a. Declaration that she is entitled to Land Title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha as originally demarcated and not Land Title No. Trans Nzoia/Cherangani/13 measuring 8.2 Ha.
 - b. Mandatory order directing the County Land Registrar, Trans Nzoia, to cancel all the titles that resulted from subdivisions of Land Title No. Trans Nzoia/Cherangani/11 as originally demarcated, being Land Title No. Trans Nzoia/Cherangani/1196, 1197, and 1198, and any other title, and also to cancel titles that resulted from the subdivision of Land Title No. Trans Nzoia/Cherangani/13 as originally demarcated, being Land Title No. Trans Nzoia/Cherangani/1297, 1298, 1438, and 1439, and any other titles resulting therefrom, and revert the two titles being Land Title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha and Land Title No. Trans Nzoia/Cherangani/13 measuring 8.2 Ha in the names of Julius Chege Kiongo and Jamin Kiyagi, respectively.
 - c. Eviction and mesne profits.
20. The court record indicates that though the 1st and 8th defendants in the 1st suit were served with summons to enter appearances and notices to attend court, the two did not enter an appearance or participate in the proceedings.



C. The 2nd Defendant's Response to the Two Suits

21. Jamin Kiyagi, as the 2nd defendant 1st suit and the sole defendant in the 2nd suit, respectively, opposed the two suits. He denied that the plaintiff's late husband's land, Trans-Nzoia/Cherangani/11, measures or has ever measured 14.8 Ha.
22. It was his defence that the plaintiff's late husband was issued with a title deed for Trans- Nzoia/Cherangani/11, which had an error and that the plaintiff's late husband was notified of the same by the letter referenced TN/CSS/BD/40/71 and dated 30.7.1996 from the District Land Registrar, Trans-Nzoia District, that his land measures 8.5 Ha and not 14.5 Ha.
23. Jamin Kiyagi, therefore, denied being a proprietor of L.R. No.13 measuring 8.2 as alleged by the plaintiff. Further, Jamin Kiyagi averred that the plaintiff resides on and occupies land parcel No. Trans-Nzoia/Cherangani/11, and at no time has he, whether alone or in concert with any officer of the land administration, invaded the plaintiff and her family on their land with a view to moving them to any other land, whether Trans-Nzoia/Cherangani/13 or any other.
24. Further, Jamin Kiyagi denied ever violating the plaintiff's alleged constitutional rights of ownership of property, as pleaded or at all. On the contrary, Jamin Kiyagi averred that there was no reason as alleged for him to move out of title no Trans- Nzoia/Cherangani/11, since he is the lawful and constitutional owner and occupier of Trans-Nzoia/Cherangani/13 as first registered proprietor under the repealed Registered Land Act.
25. Jamin Kiyagi averred that in September 2015, he lawfully subdivided that parcel of land Trans-Nzoia/Cherangani/13 and transferred the subdivisions No. Trans- Nzoia/Cherangani/1297 measuring 6.60 Ha to the 6th defendant, Trans Nzoia/Cherangani/1298 measuring 6.60 Ha to the 7th defendant, and retained Trans- Nzoia/Cherangani/1299 measuring 1.62 Ha.
26. Accordingly, Jamin Kiyagi denied that the court should issue any injunction against him; otherwise, he has not engaged in any of the alleged fraudulent acts to deprive the plaintiff of her property generally and, in particular, having had any involvement with title no Trans-Nzoia/Cherangani/11 for which any order of eviction or for mesne profits would be merited in favor of the plaintiff.
27. Jamin Kiyagi maintained that he has never received any notice to sue from the plaintiff as administratrix of the Estate of Julius Chege Kiongo. Jamin Kiyagi averred that the plaintiff is guilty of concealing material facts, given that her late husband, Julius Cege Kiongo, had sued him (as the 5th defendant) along with the Director of Land Adjudication and Settlement, the District Settlement Officer Trans-Nzoia, the Commissioner for Lands, and the Registrar Trans-Nzoia in Nairobi HCCC 1523 of 1998, in which suit was later amended to remove any claim against the Government officers.
28. Jamin Kiyagi further averred that the plaint in Nairobi HCCC No. 1523 of 1998 was further amended on 10.9.1998 and, by an application dated 21.12.1998, he applied to strike it out, but that on the 6.9.1999, before the defendant's application to strike out was heard, Julius Chege Kiongo filed and served notice of withdrawal, whose the costs of the withdrawal were awarded, and a certificate of taxation issued on 20.7.2000.
29. Jamin Kiyagi further averred that the plaintiff in this present suits has not revealed that her late husband was party to Eldoret High Court Judicial Review Miscellaneous Application No. 9 of 1996, where orders were issued quashing the proceedings of the Makutano Land Disputes Tribunal of 26.10.1995 that had been recorded in Kitale Senior Principal Magistrates Civil Case No. 135 of 1995 and made judgment of that court on 22.12.1995.



30. Jamin Kiyagi denied that Kitale CMC Land Cause No. 135 of 1995 ended at the Magistrate's Court as alleged by the plaintiff. Jamin Kiyagi averred that the plaintiff's claim was time-barred, insofar as it seeks the same or similar orders arising from the same facts as were sought in Nairobi High Court Civil Case No. 1523 of 1998, and insofar as the Plaintiff pleads for mesne profits at a rate to be fixed by the court from 1965. He further termed the plaintiff's suit and claims an abuse of the court process, frivolous, since he has never owned or occupied, whether lawfully or unlawfully or by force and unconstitutionally, land parcel Trans-Nzoia/Cherangani/11
31. Again, Jamin Kiyagi averred that the issue of the rightful owner of L.R. No.13 measuring 14.8 Ha was settled in Kitale Judicial Review Miscellaneous Application No. 9 of 1996, where the third defendant was adjudicated as the lawful and rightful proprietor. It was averred that the plaintiff has not complied with Order 4 Rule 1(1)(f) and (2) of the Civil Procedure Rules, and has concealed critical facts relating to the previous proceedings between the plaintiff and the 1st defendant and between the estate she represents and the 2nd defendant, hence the verifying affidavit was a perjury.
32. Jamin Kiyagi averred that the plaintiff has failed, refused, or ignored to disclose that by letter Reference No. TN/CSS/BD/40/71 dated 30.7.1996 from the then District Land Registrar, Trans-Nzoia District, addressed to "Mr. Julius Chege Kiongo, KITALE" informing the plaintiff's late husband that the acreage of his parcel of land was incorrect, and to surrender the title deed for amendment, as per recommendations in a letter Ref. No. SC/3/RVP/VOL.2/137 of 17.1.1996 from the Provincial Surveyor, Rift Valley Province.
33. Equally, Jamin Kiyagi averred that the letter by the Land Registrar dated 30.7.1996 was issued a day after the date of the certificate of official search dated 29.7.1996, showing the erroneous approximate area of the title L.R. No.11 as 14.8 hectares contained in the plaintiff's bundle of documents.
34. Jamin Kiyagi averred that the Director of Land Adjudication and Settlement reiterated the information he had conveyed to the late Julius Chege Kiongo in 1986 by letter of 8.1.1987, which stated that he was in the wrong parcel of land plot No.11 and not plot No.13.
35. Further, Jamin Kiyagi averred that the "green card" was apparently issued and certified as a true copy on 24/8/2016, the rectification of the approximate area of the parcel No. Trans-Nzoia/Cherangani/11 as 8.15Ha. He therefore stated that the late Julius Cege Kiongo was erroneously registered as the owner of 14.8 Ha, which error was later corrected on the register.
36. Jamin Kiyagi reiterated that he has never been involved, whether with the 3rd and 4th defendants or with any other person, in any attempt or actual forceful eviction or movement of the plaintiff (whether alone or with her family) from her residence on Tranz Nzoia/Cherangani/11, where she has always lived, otherwise the plaintiff was misinterpreting the contents of the Director of Land Adjudication's letters of May 1986 and 8.1.1987.
37. Jamin Kiyagi denied that he was a party to the suits in the High Court, and the Court of Appeal referred to. He averred that the persons with primary authority to determine land boundaries and to ascertain adjudication and settlement details are, respectively, the Land Registrars and the Land Adjudication and Settlement Officers.
38. Further, Jamin Kiyagi averred that the alleged subdivision was effected on the parcel L.R. No.11 measuring 8.15 Ha and not over 14.8 Ha by the Director of Survey Sheet 4(75/3/20), that was issued by the Survey of Kenya for Cherangani Settlement Scheme, clearly showing the parcels numbers 1196-8, into which parcel L.R. No.11 was subdivided and the resultant titles no 1297, 1298 and 1438 and 1439 into which parcel L.R. No.13 was subdivided.



39. Jamin Kiyagi averred being a stranger to the internal family wrangles detailed in paragraphs 19-21 of the amended amended plaint, otherwise records for title no Trans Nzoia/Cherangani/11, and the official searches show that it was indeed subdivided before the registered owner died.
40. Jamin Kiyagi denied that he was invited to witness the alleged survey carried out on 12.11.2019. In particular, Jamin Kiyagi denied all the allegations of fraud. He averred that titles no Trans-Nzoia/Cherangani/1297, 1298, and 1299 are not subdivisions out of the original Trans-Nzoia/Cherangani/13, which measured 14.8 hectares; otherwise, he has never resided on any parcel of land registered as "Trans Nzoia/Cherangani/11.
41. As to the alleged forceful eviction of the plaintiff from one plot to another in 1965 as the cause for the complaint and the alleged claim for recovery of land, Jamin Kiyagi termed the claim as barred by limitation of time, being 54 years late.
42. Jamin Kiyagi denied that he had colluded with the 3rd and 4th defendants to evict the plaintiff from any land and move her to any other; or being part of any scheme to mislead the plaintiff about any land the plaintiff may have moved to from any other. Jamin Kiyagi maintained that the Plaintiff has never been moved from any 14.8 Ha, known as Trans-Nzoia/Cherangani/13, which measured 14.8 Ha, or ever having moved the Plaintiff to any land, or having been privy to such acts of the alleged movements to land title No. Trans Nzoia/Cherangani/11 or at all, or been party to falsifying any records at any lands office, whether to cover any fraud or otherwise.
43. Again, Jamin Kiyagi pleaded limitation in limine, since the plaintiff's acquisition of title on 16.10.1995, she ought to have challenged the titles within 12 years from that date; otherwise, he lawfully subdivided and transferred what was his private property to the 6th, 7th, and 8th defendants, who acquired from him what is now theirs to own as their private property. He averred that the suit against the 6th, 7th, and 8th defendants is calculated to waste judicial time and increase costs unnecessarily; otherwise, nothing was pleaded in terms of Section 26 of the *Land Registration Act*, 2012, alleging or showing that these defendants (or any defendants) were in fact involved in any fraud or illegality or corrupt scheme.

D. The 3rd, 4th and 5th Defendant's Defence

44. The 3rd, 4th, and 5th defendants opposed the suit through an amended defence dated 10/2/2023. The 3rd - 5th defendants denied the alleged lawful allotment of the plaintiff of Plot No.11, Cherangani settlement scheme, and her capacity to claim the same.
45. The 3rd - 5th defendants denied knowledge that the plaintiff was in occupation of a different parcel of land other than that he was allocated or was moved therefrom in collusion with the 1st and 2nd defendants. They also denied knowledge of or being privy to Kitale HCC 100 of 1999 or Eldoret CACA 18 of 2005, as alleged or at all.
46. The 3rd - 5th defendants denied all allegations of fraud or particulars thereof, terming the plaintiff's claim as time-barred, defective in law, res judicata, abuse of court process, disclosing no cause of action, frivolous, malicious, and untenable.
47. The 3rd - 5th defendants averred that the register for L.R. No.11 was first opened on 17.11.1989 in the name of the Settlement Fund Trustees before it was transferred to Julius Chege on 25.9.1995 pursuant to the instrument of correction of names registered on 25.9.1995.
48. The 3rd - 5th defendants contended that on 16.9.2014, the register L.R. No. 11 was closed on subdivision to L.R. No. 1196, all through to 1198, which were registered as follows: the register for L.R. No.1196 was opened on 17.9.2014 in the name of Julius Chege Kiongo and remains so registered. The register



for L.R. No.1197 was opened on 16.9.2014 in the name of Julius Chege Kiongo before it was transferred to James Waiharo Kiongo on 13.11.2014. The register for L.R. No.1198 was opened on 16.9.2014 in the name of Julius Chege Kiongo and remains so registered.

49. Further, the 3rd - 5th defendants contended that from the available records, the sub-division of L.R. No.11 and transfer of sub-divisions as aforesaid were in pursuance of vesting orders issued in Kitale HCCC 100 of 1999 under which the Deputy Registrar was directed to sign sub-division and transfer documents to facilitate the sub-division and transfer.
50. The 3rd - 5th defendants contended that from the documents submitted for registration, including the application for consent for sub-division, mutation, and transfer forms, which were signed by the Deputy Registrar, and the 3rd - 5th defendants merely executed their statutory duties to register them, confirmation that they were in line with the law.
51. The 3rd - 5th defendants averred that Gazette Notice No. 2981 dated 2.5.2014 was submitted in place of the original title deed, the receipts showing payment of stamp duty and registration fee were also submitted together with a letter of consent for sub-division and transfer, which are the prerequisites for registration.
52. In addition, the 3rd - 5th defendants averred that all requisite documentation to facilitate sub-division and transfers was submitted, and upon satisfying that the documents were genuine. Since the properties were unencumbered, the 3rd and 4th defendants averred that they executed their statutory obligations absolutely in good faith, and were not aware of or not party to the alleged fraud.
53. The 3rd - 5th defendants averred that the register for L.R. No.13 was opened on 17.11.1980 in the name of the Settlement Fund Trustees, was transferred to Jamen Kiyagi Amaingu on 16.10.1995, and was later closed on sub-division into L.R. No. 1297 to L.R. No.1299 on 6.3.2015 as per the available records.
54. Further, the 3rd - 5th defendants a averred that from the available records: the register for L.R. No.1297 was opened in the name of Jamen Kiyagi Amaingu on 6.3.2015 and later on transferred to Jane Amaleba Kiyagi on 16.9.2015; the register for L.R. No.1298 was opened in the name of Jamen Kiyagi Amaingu on 6.3.2015 and later on transferred to Beatrice Kadenyi Kiyagi on 16.9.2015; the register for L.R. No.1299 was opened in the name of Jamen Kiyagi Amaingu on 6.3.2015 and later on closed on sub-division on 3.8.2018 to create Trans-Nzoia Cherangany 1438 and 1439; the register for L.R. No.1438 was opened in the name of Jamen Kiyagi Amaingu on 3.8.2018 and later on transferred to Emily Shumi Sakwa on 25.7.2018; the register for L.R. No. 1439 was opened in the name of Jamen Kiyagi Amaingu on 3.8.2018 and has not been transferred to date.
55. The 3rd - 5th defendants averred that it is apparent that the orders sought, if they were to be granted, are likely to affect innocent parties who are not privy to the instant proceedings, contrary to the rules of natural justice.
56. The 3rd and 5th defendants averred that they were not privy to the allegations that the plaintiff was in 1965, placed on a parcel other than the one she was allocated, and, in any case, her claim is statute-barred.

E. The 6th and 7th Defendants' Defence

57. The 6th and 7th defendants opposed the suits through statements of defence dated 20.1.2023. They denied knowledge of how and what the plaintiff, her late husband, brother, or mother-in-law may have acquired, subdivided, or disposed of done with their title No. Trans Nzoia/Cherangani/11, or



being party to any suits that the plaintiff may have had previously with the 1st defendant or her family members.

58. The 6th and 7th defendants averred that they were lawful transferees /owners of title Nos. Trans Nzoia/Cherangani/1297 and 1298 since September 2015, after Jamin Kiyagi, their husband, subdivided title No. Trans Nzoia/Cherangani/13.
59. The 6th and 7th defendants denied knowledge of any forceful, illegal, or fraudulent eviction of the plaintiff from the parent title or portion, for she has never been a resident thereto or been involved in any fraudulent dealings with the parent title or its resultant subdivisions. The 6th and 7th defendants termed the claim against them as scandalous, an abuse of court process, and lacking merit.
60. From the court records, it appears that the plaintiff did not file any replies to the 2nd, 3rd, 4th, 5th, 6th and 7th defendants' statements of defence despite raising serious factual and legal issues requiring a rebuttal from her.

F. The Testimonies

61. At the trial, Esther Njeri Chege testified as PW1. She relied on two witness statements dated 1/4/2019, filed in ELC No. 34/2019 and 28/3/2023 as her evidence-in-chief. PW1 told the court that she was the widow of the late Julius Chege Kionga and an Administratrix of his estate.
62. PW1 said that the deceased was allotted Plot No. 11, Cherangani Settlement Scheme, later registered under his name, measuring approximately 14.8 Ha, and obtained a title deed on 25/9/1995. As initially government land, PW1 said that her late husband had cleared the settlement fund trustees' loan before the issuance of the title deed, and obtained a clearance certificate.
63. Further, PW1 said that the 2nd defendant was also allocated Plot No. 13, which was later registered under his name, measuring 8.2 Ha. PW1 said that as per the original Registry Index Map, the two plots Nos. 11 and 13, Cherangani Settlement Scheme, did not share a common boundary, since from the map plot No. 11 is on the lower side of the hill and borders Nzoia River, which Plot No. 13 is on the upper side of the hill and does not border Nzoia River. Similarly, PW1 said that Plot No. 11 is separated from Plot No. 13 by Plot No. 12; hence, one could not confuse the two plots.
64. PW1 said that sometime in 1965, the 2nd defendant, in collusion with the 3rd and 4th defendants, forcefully evicted them from Land Title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha, which they had paid for to Land Title No. Trans Nzoia/Cherangani/13 measuring 8.2 Ha, which had been allocated to the 2nd defendant.
65. Further, PW1 said that the 2nd defendant, with the help of the 3rd and 4th defendants, moved to their supposed parcel of land, which he had never paid for, and which was in the names of her late husband. PW1 said that in efforts to follow up with the 2nd, 3rd, and 4th defendants to have the ground situation rectified, they were told by the District Land Registrar, as he then was, as well as the Director of Land Adjudication and Settlement, that they were actually occupying parcel No. 11, now Land Title No. Trans Nzoia/Cherangani/11.
66. PW1 said that vide Kitale HC Civil Case No. 100 of 1999, the court held that Julius Chege Kiongo held 10 acres of Land Title No. Trans Nzoia/Cherangani/11 comprising 14.8 Ha in trust for the plaintiff in the said case, one Lucia Njoki Kiongo, who upon her death was later substituted by her son James Waiharo Kiongo, deceased, now represented by the 1st defendant in ELC No. 34 of 2019, which decision was also affirmed by the Court of Appeal in a ruling dated 28/2/2013.



67. Further, PW1 said that the above two cases proceeded on the ground that the late Julius Chege Kiongo owned Land Title No. Trans Nzoia/Cherangani/11 comprising 14.8 Ha, which translates to 36.57 acres, meaning that after 10 acres were removed, the balance was 26.57 acres.
68. PW1 said that the 1st defendant did not present a relevant statutory form for signing either by her late husband or herself upon his demise in 2013, but out of her official search on 11/12/2018, she established that the late James Waiharo Kiongo fraudulently presented mutation forms on 2/8/2013 to the Deputy Registrar High Court, Kitale, for signature without first involving her or the deceased husband.
69. PW1 said that the suit land where she stays, and which the 3rd and 4th defendants had maintained, was land title No. Trans Nzoia/Cherangani/11, was subsequently subdivided into three plot Nos. 1196, 1197, and 1198, measuring 5.8 acres, 9.98 acres, and 3.78 acres, and the title closed on subdivisions.
70. PW1 said that she further established more fraud through a survey conducted on 12/1/2019 by perusing the registry index map, in that she stays on plot No. 13, but not No. 11 as earlier informed by the 3rd and 4th defendants, the said parcel has been subdivided into three portions; the parcel No. 1996, among the three parcel Nos. 1997 and 1998, measuring 9.98 acres, belongs to the 1st defendant Julius Waiharo Kiongo; the 1st defendant got less acreage contrary to the decree in Kitale Environment and Land case, land title No. Trans Nzoia/Cherangani/11 is elsewhere and has been subdivided into parcel Nos. 1297, 1298, and 1299.
71. In addition, PW1 termed the foregoing subdivisions and registrations as acts of fraud, illegality, and forceful eviction of her and her late husband, orchestrated by the 2nd, 3rd, and 4th defendants, yet he had paid for 14.8 Ha as land title No. Trans Nzoia/Cherangani/11, but was intentionally misled while he was moving to his land, when in reality it was not the intended land; moving the 2nd defendant to land belonging to her and her husband, namely parcel No. 11, falsifying the land documents to cover the fraud and lastly, subdividing and transferring the resultant subdivisions in the land titles No. Trans Nzoia/Cherangani/11, to defeat her claim.
72. PW1 said that the 1st defendant contravened the decree in ELC No. 100 of 1999, yet it had directed that land title No. Trans Nzoia/Cherangani/11 be subdivided into two portions measuring 10 acres and 26.5 acres, yet he intentionally failed to involve her in the subdivision, and misled the court that she had declined to sign the relevant statutory forms.
73. PW1 said that the 1st defendant proceeded to subdivide the said land, knowing very well that he was dealing with a different land, yet not the land title No. Trans Nzoia/Cherangani/11. PW1 said that despite demand and entries made for the defendants to stop their illegal trespass and fraudulent actions, they have remained adamant and continue to interfere with her interest in land title No. Trans Nzoia/Cherangani/11, hence the suit.
74. PW1 produced a copy of her identification card as P. Exhibit No. (1), rectified certificate of confirmation of grant dated 11/2/2016, P. Exhibit No. (2), bundle of loan forms with effect from 4/6/1965, P. Exhibit No. 3(a) and (b), charge dated 4/6/1965, letter dated 13/12/1969, statement of account dated 13/10/1993, letters dated 21/5/1986 and 9/1/1987, from the Ministry of Lands and Settlement, demand letter dated 2/3/1992, letters dated 6/7/1994, 11/8/1995, and 10/8/1995, title deed for Trans Nzoia/Cherangani/11, search certificate, title deed for Trans Nzoia/Cherangani/13, decree from HC No. 100 of 1999, Court of Appeal judgment Eldoret No. 18 of 2005, mutation forms, copy of green card for parcel No. Trans Nzoia/Cherangani/11, search certificate dated 11/12/2018 for titles Nos. 1196-1198, letter dated 20/1/2015 and 14/1/2019, copies of the title deed for title No. Trans Nzoia/Cherangani/1297-1299 and registry index maps as per the list of documents dated 11/4/2019



- and 28/3/2023, as P. Exhibits No. 1 – 23, 24 – 26, respectively. The court noted that the originals were only P. Exhibit No. 12, 7(a) and (b), and P. Exhibit No. 13; the rest were not certified.
75. PW1 said that initially, they had refused to move out of the land where they had constructed a house, but the police came to remove them. PW1 said that after sending a land surveyor to the land who prepared a report showing that she lives on plot No. 13 and not No. 11, where she relocated to in 1965 which has less acreage than her initial 14.8 Ha as per P. Exhibit No. 9(a) and (b), which do not show the reality on the ground as referred in the survey in 2019.
76. PW1 said that the 3rd defendant in ELC No. 34 of 2019 and defendant in ELC No. 108 of 2016 was now living on her land after they were moved to what essentially should be his land namely No. 13. PW1 said that though parcel No. 11 has been subdivided into three portions, Jamin Kiyagi does not occupy all of them, otherwise parcel No. 1297 is occupied by his 1st wife, parcel No. 1298 is occupied by his 2nd wife and parcel No. 1299 is occupied by him.
77. In cross-examination, PW1 said that the green card for P. Exhibit No. 14 is dated 28/2/2016, which she obtained after searching for its title. PW1 said that she was not in agreement with the note or the green card regarding the acreage of 8.13 Ha, as courtesy of a Provincial Land Surveyor's letter dated 17/1/1996. She doubted whether the letter was brought to the attention of her late husband on 30/7/1996, allegedly seeking him to surrender his title for amendment to 8.15 Ha.
78. PW1 said that she was married to the late Julius Chege Kiongo when the land was allocated to them, but was removed from the land in 1965, at the instance of the 2nd defendant. Asked about a letter of consent dated 17/12/1984, which showed the 2nd defendant bought the land from Humphrey Omido, PW1 said that she was not certain if the 2nd defendant owned the land in 1965, to have been the one who engineered the forceful eviction.
79. PW1 said that she could not tell if her late husband refused to surrender the title for amendments as required in the letter. PW1 said that she was aware that her late husband had a dispute at the land disputes tribunal with the 2nd defendant at Cherangani, which outcome was that each went back to his own land, following which her late husband was taken to court by the 2nd defendant, whose outcome she could not remember.
80. PW1 said that the ground position was different from the numbering on the land office records. As to P. Exhibit No. 9(b) dated 9/1/1987, PW1 disputed its contents as to the locality and occupation of her true land parcel. As to P. Exhibit No. 9(a) dated 21/5/1986, PW1 said that the ground confirmation of the two plots by the land officers found them living on the hilltop; otherwise, the title deeds issued to her in 1995 were misleading as regards the true positioning of her land on the ground.
81. As regards the title issued to the 2nd defendant, P. Exhibit No. 7, issued on 25/9/1995 over Registry Sheet No. 4, PW1 said that it indicated 14.8 Ha. PW1 admitted that as of 1995, they had already built on the ground where they had relocated since 1965. PW1 insisted that what was on paper was different from what was on the ground, since they are supposed to be near the river and not at the hilltop.
82. As regards the survey by Kenneth Nyabera, who visited the land in January 2019, she said that she had not notified her neighbours, especially the 2nd defendant, of the visit, who only confirmed ownership of her land. As to P. Exhibit No. 8(a), (b), and (c), the map dated 29/6/1989 and 1965, PW1 said she obtained the survey maps from the survey office.
83. As to P. Exhibit No. 10, PW1 said that the decree holder was the mother of Julius Chege Kiongo, then residing at the hilltop side. Asked why she did not join the suit as a claimant over parcel No. 11, PW1



- said that they were waiting for the case to be completed. PW1 said that she did not appeal or seek review against the judgment at the Court of Appeal regarding the late Lucia Kiongo.
84. PW1 confirmed that by a ruling dated 13/2/2012, James Waiharo Kiongo substituted her late mother in the decree, produced as P. Exhibit No. (14). PW1 said that she had also obtained a development plan for the scheme showing the locality of the land (marked PMFI-9).
 85. Further, PW1 said that she discovered the fraud and the illegalities in 2019, and that she was occupying the wrong parcel of land after the surveyor made the report. PW1 said that parcel No. 11 was subdivided by the 1st defendant through a mutation form dated 16/9/2014 to create parcel Nos. 1196, 1197, and 1198, as per the titles she produced as P. Exhibits. No. 17, 18, 19, and 20. The survey report dated 4/11/2019 was marked as P. Exhibit No. (27).
 86. PW1 insisted that she was allocated the land by a letter dated 4/6/1965, produced as P. Exhibit No. (3). PW1 said that it was the Settlement Fund Trustees who evicted them from the land to a parcel of land they were told was Plot No. 11 as per the letter produced as P. Exhibit No. 7(a) and (b).
 87. PW1 said that after they were moved to the land, they continued making payments until a title was issued in 1995 for 14.8 Ha, to which the late Lucia Kiongo sued her late husband, claiming 10 acres as per P. Exhibit Nos. 15 and 16.
 88. PW1 said that he sued Benjamin and Joyce because they possess the title to the land belonging to her. PW1 said that he has sued the Settlement Fund Trustees because they sent police and bulldozers who demolished their properties and evicted them from the land. About the gazette notice of 2/5/2014, PW1 said that she was not aware of it or privy to its implications, nullifying her late husband's title, after the failure of her late husband to surrender the original title as requested by the Land Registrar in a letter dated 30/7/1996.
 89. Additionally, PW1 said that she was not certain if the land office acted fraudulently by recalling and cancelling the title as per the letter and the entries to the green card dated 17/1/1996. PW1 said that there was no justification for them to be swapped with the 2nd defendant on the locality of their parcels of land by the Settlement Fund Trustees. Asked if the 2nd defendant committed any fraud or role in the process of relocation process, PW1 said that she did not know the same, as he was equally moved as they were at the time.
 90. PW1 said that even though her witness statement dated 5/7/2016 said that the 2nd defendant was part of the collusion, she said that she was not certain if he was part of the land officials who took part in the exercise of evicting them in 1965. PW1 could not tell if the 2nd defendant had bought his land in 1965. Or if the owner of the land at the time was Humphrey Omido. Furthermore, PW1 could not confirm if the 2nd defendant transferred the land on 25/4/1983 or in 1984 as per the consent dated 11/12/2019.
 91. As to how her late husband obtained the land, PW1 said that he did not ballot for it but simply visited the same, and eventually went to the land office to report that he had identified some parcel of land to which he paid for.
 92. Regarding the development plan produced as P. Exhibit No. (8), PW1 said that it showed her land next to the river. PW1 said that she did her investigation together with Mr. Nyabera, in the absence of the 2nd defendant, to discover the fraud on 12/1/2019 as per P. Exhibit No. (21). PW1 said that she was not certain if the surveyor visited the land office to see the records or saw the records, including P. Exhibit No. (14), while conducting the investigations.



93. PW1 said that during the inquiries, the surveyor and her other than P. Exhibit No. (8) and (9), did not come across the registry index map marked DMF1-4(b)(ii) dated 17/1/2019 and DMF1-5 (2) dated 30/7/2021.
94. PW1 said that the survey did not establish that parcels No. 11 and 13 had been subdivided on 7/12/2013 and 4/2/2015 into several subdivisions. PW1 said that she did not know if P. Exhibit No. (21) had not captured the aforesaid subdivisions; otherwise, it was not part of the scope of the surveyor.
95. Further, PW1 said that she could not tell how or who did the subdivisions. PW1 said that she was currently living on parcel No. 13, which has now been subdivided into Nos. 1196, 1197, and 1198 by the 1st defendant's late husband without her approval, knowledge, or participation after the High Court and the Court of Appeal decisions.
96. PW1 said that she could not tell if, at the time of the verdicts, her late husband had received a letter to surrender his title for amendments. PW1 said that in 2014, she found some police and her brothers-in-law in law on the land, in the company of a surveyor, whom she did not bother. PW1 said that she did not reside on the land but had planted some maize therein. She could not recall how long she had not resided on the land; otherwise, in 2013, she was residing therein, but could not recall when she vacated the land.
97. PW1 said that she has sued Jane Amalemba Kiyagi because they reside on land that should be hers. She could not tell if they were a party to the fraud to obtain the titles. Similarly, she said that she had not blamed Emily Sakwa for any fraud. As to Kitale HCC No. 100 of 1999 and Appl. No. 18 of 2005, PW1 said that Jamin Kiyagi was not party to them; otherwise, they were between her late husband and her mother-in-law. PW1 said that the 2nd defendant is not related to her late husband.
98. PW1 said that the 1st defendant is are beneficiary of parcel No. 1197, though they reside in Subukia, Nakuru, and were aware of the ongoing case. She said that they subdivided the land into three parcels of land without her knowledge and contrary to the High Court decree, mentioning only two portions at the ratio of 10 acres and 26 acres.
99. PW1 said that James Waiharo Kiongo was a brother-in-law. As for Jamin Aminga, PW1 said that he was not present in 1965 when the forceful eviction took place. She could not tell how long he had been on her land, save that it could be more than 50 years. Cross-examined by Mr. Odongo, PW1 said that the allotment letter was not specific that the plot was 14.8 Ha, or whether the actual size was known at the time of allocation or occupation, or issuance of the title. PW1 said that during allocation, the land was a grassland. She said the land was a joint allocation with the mother-in-law, but only her late husband's name was indicated on the record.
100. PW1 said that they built on the land and resided there for about a year before moving to the hilltop. PW1 said that no surveyor or officers from the Settlement Fund Trustees accompanied or visited the land to show them the land size, while taking its occupation. PW1 said that she was not aware of the procedures for the allocation of land requiring the presence of the land by Settlement Fund Trustees officials or surveyors to view and show an allottee the exact locality of the land, and to be shown the extent of its boundaries.
101. PW1 said that she was not sure that was the reason Settlement Fund Trustees told them to vacate land belonging to someone else. PW1 said that her husband passed on in 2013 after he had written a letter of complaint on 28/8/1995, over the land, and a reply dated 21/5/1986 from the Settlement Fund Trustees. PW1 said that she doubts whether the late husband was aware of the fraud by 1985 or had sued Settlement Fund Trustees for the relocation.



102. PW1 denied knowledge of the letter dated 21/5/1986, though she confirmed the visit to the land by the D.C. PW1 admitted that the D.C. accompanied them to the land office over the change of the ground status in relation to her late husband's land without notice. PW1 said that she could not recall the letter dated 9/1/1987 or its contents.
103. As to the developments map dated 29/6/1989, certified on 13/3/2014, PW1 admitted that she collected the same from the Nairobi land office after writing a letter.
104. PW1 admitted that the map has a caveat that it was not an authority on the precise location of the boundaries in accordance with Section 22 of the Registered *Land Act* (repealed). PW1 denied that the development map was in conflict with the procedure of sequencing numbers in surveying. Asked about the letter dated 16/1/1996 in the list of documents by the Hon. Attorney General, PW1 denied knowledge of the letter or its contents, stating that the two plots were erroneously interchanged, hence the correction of the errors by the land office, following the original survey records.
105. Equally, PW1 said that when they first went to the ground, they found a signpost in location plot No. 11, which had been erected by the Settlement Fund Trustees. Asked about the vesting order to subdivide the parcel into three, PW1 denied knowledge of the same. Asked about the green card and the mutation form for parcel No. 11, PW1 said that she was not privy to the entries or the exercise, which occurred after her late husband passed on; otherwise, she did not notify the Land Registrar about his death.
106. PW1 said that the subdivisions were done by her brothers-in-law, based on a court order, from both the High Court and the Court of Appeal. PW1 said that she was not aware that the Deputy Registrar had powers to sign the documents in order to effect the decree of the court.
107. PW1 said that she was also not privy to the Kenya Gazette and its implications. PW1 said that she has been in occupation of the current parcel with her four sons as her home. PW1 insisted that P. Exhibit. No. 23(b) was an authentic map from the Survey Department of Kenya, showing the locality of her plot next to the river. PW1 said that the size of the acreage of the land in the green card was done without her knowledge; otherwise, she did not receive the letter dated 17/1/1996 or the gazette notice.
108. PW1 disputed the acknowledgment list in the defendant's list of documents as being inauthentic. Asked by the court whether she could have surrendered the title had she come across the letter, PW1 said a big no. Further, asked about when she discovered the fraud, PW1 told the court that it was when they were asked to move from their land at the river to the present place where they now reside.
109. Cyrus Thairu Kabui testified as PW2. He relied on a witness statement dated 27/7/2021 as his evidence-in-chief.
110. He confirmed that he was directed by the Land Settlement officer to the late Julius Chege to go and move him from the plot he had occupied. Said to be No. 11 to take him to another plot, which later on was discovered to be plot No. 13 instead of No. 11, as she had been made to believe.
111. PW2 said that he knew the 2nd defendant at the time, for he was also involved in a land disputes tribunal case as a witness for Julius Chege Kiongo. PW2 said that the Settlement Fund Trustees are the ones who instructed him to relocate Julius Chege Kiongo, for he had been settled there by an error or mistake.
112. PW2 said that he discovered the mischief when the matter went before the panel of elders. PW2 said that he knew that the deceased had made various complaints about the relocation. He said that he used a tractor belonging to the Settlement Fund Trustees to carry away the plaintiff's items to the new site at the hilltop. He denied employing any force to evict the plaintiff.



113. PW2 confirmed that he was also a plot owner of parcel No. 310 Suwerwa Settlement Scheme, which he acquired from Settlement Fund Trustees. PW2 said that the plaintiff had built two houses on the land before relocation.
114. Following the transfer of the previous court, directions were issued on 10/12/2024 for the matter to proceed before me from where it had reached.
115. Beatrice Kadenyi Kiyagi testified as DW1. She relied on a witness statement dated 9/8/2023 as her evidence in chief. She told the court that she has been married to the 2nd defendant since 1967, living on parcel No. Trans Nzoia/Cherangani/1298, given to her by her husband. She produced a copy as D. Exhibit No. 4.7. DW1 denied procuring the title deed through fraud on 16/12/2015, which was a subdivision of title No. Trans Nzoia/Cherangani/13.
116. DW1 said that she had no land control board application form, land control board consent, or transfer forms used to acquire the land. DW1 said that she was unable to recall attending a land control board meeting for its consent. Further, she denied receiving a demand letter before the suit was filed.
117. Jane Amalemba Kiyagi testified as DW2. She relied on a witness statement dated 9/8/2023 as her evidence-in-chief. DW2 told the court that the 2nd defendant, who is her husband, was the one who subdivided his land and transferred parcel No. Trans Nzoia/Cherangani/1297 to her as per the title deed produced as D. Exhibit No. 4.6. DW2 denied any fraud in acquiring the land. DW2 said that the plaintiff has been her neighbour since 1984. DW2 said that her title was regularly acquired on 16/9/2015 as a resultant subdivision of parcel No. Trans Nzoia/Cherangani/13.
118. DW2 said that she had no title deed, an application for land control board consent, the consent, and a transfer form signed at the time of acquiring the land. DW2 could not remember attending such a land control board meeting. DW2 said that she was not aware of a pending suit when or before acquiring her title to the land. DW2 said that it was her husband who transferred the two titles to her and DW1.
119. Jamin Kiyagi Macuga testified as DW3. He relied on witness statements dated 2/5/2023 and 20/8/2021 as his evidence in chief. DW3 relied on an identification card, title deed for parcel No. 13, letter to Land Registrar dated 30/7/1996, plaint in HCCC No. 1523 of 1998, amended plaint dated 21/7/1998, application dated 10/7/1998, notice to withdrawal of application dated 10/8/1998, an amended amended plaint to remove public officers dated 10/9/1998, notice of withdrawal of the suit dated 3/9/1999, certificate of taxation dated 20/7/2000, title deed for DW1, issued on 16/9/2015, title deed for parcel No. 1299, issued on 12/3/2015, certified copies of green card for parcel No. 11 issued on 24/8/2016, official search certificate for parcel No. 1196, official search certificate for parcel No. 1197, dated 22/8/2016, an application for official search, certificate of official search for parcel No. 1198 dated 22/7/2016, an application for official search as D. Exhibits. No. 1 – 20 respectively.
120. Further, DW3 relied on documents in a supplementary list of documents dated 17/11/2021, namely, pleadings in HCC No. 53 of 1998 (Nairobi), affidavit of 1st defendant sworn on 20/7/1993 and annexure thereto, gazette notice No. 2981 of 2/5/2014, settlement scheme certified copy of RIM 4 (75320) published in June 1989, drawing No. TPA 77/96 of 4/5/1965, for Cherangani Settlement Scheme, copies of titles for Trans Nzoia/Cherangani/1297, 1298, and 1299 as D. Exhibit No. 22, 23, 13, 12, and 11 respectively. Additionally, DW3 relied on a RIM Sheet No. 4 (75320) issued on 30/7/2021 as D. Exhibit No. 26.
121. DW3 said that he obtained his title deed for parcel No. 13, twenty-one days after the plaintiff obtained her title deed. From the settlement fund trustees, DW3 said that a letter produced as D. Exhibit No. 13 had been written to Julius Chege Kiongo over the title discrepancy regarding the acreage. DW3



- said that he subdivided and transferred parcels to DW1 and DW2 after the Nairobi suit had been withdrawn.
122. DW3 said that he was legally entitled to subdivide and transfer the land in 2015. DW3 said that he did not require an agreement to dispose of the land to his wives, for there was no dispute among his family over the subdivisions and transfer.
123. DW3 said that he was not in a position to confirm that Julius Chege Kiongo received the letter or gazette notice asking for the surrender of title for amendment as per D. Exhibits. No. (3) and (4). DW3 said that Julius Chege Kiongo was among the initial allottees of the land. DW3 said that he bought the land before the title deed was issued. DW3 said that as per a green card dated 24/8/2016, the title for the plaintiff had been adjusted to 8.15 Ha in compliance with gazette notice No. 2981, following which changes were effected on the RIM as per D. Exhibit No. (22).
124. DW3 said that he bought his land from a Mr. Omido as per the land control board consent and transfer dated 11/12/1984 for land measuring 36.3 acres produced as D. Exhibit No. (23).
125. DW3 said that his land has remained constant in all the records, including the D.C.'s minutes for a meeting called through a letter dated 10/1/1997. DW3 said that the plaintiff's title deed was automatically cancelled by the gazette notice, following which the ground measurements were corrected to align with the amended registry index map, going by D. Exhibit No. (22) as per the amended registry index map on 17/12/2013. DW3 said that he cleared the loan of Kshs. 3,800/= for 36.2 acres on behalf of Mr. Humphrey Omido. DW3 denied seeing any record to show that the plaintiff paid a loan equivalent to 36.2 acres to the Settlement Fund Trustees in 1965. DW3 said that he entered his land in 1983. DW3 said that he lawfully transferred the land to DW1 and DW2 as per D. Exhibits. No 11, 12, and 13.
126. C.N. Nyanga testified as DW4. As the County Land Adjudication & Settlement Officer, Trans Nzoia. DW4 told the court that, as per the office records, plot No. 11 was allocated and discharged to Julius Chege, while plot No. 13 was initially allocated to Humphrey Omido, but transferred to the 2nd defendant. She said that two plots were measuring 14.8 Ha and 8.2 Ha. DW4 produced a letter dated 9/1/1987 as D. Exhibit No. 27, a letter dated 8/10/1983 as D. Exhibit. No. 28.
127. In cross-examination, DW4 said that the two plots were discharged as per the area list of 27/6/1989 in terms of the acreage given before the court. DW4 said that the list of documents filed in ELC No. 34 of 2019 emanates from the Land Registrar's office, but not her office; otherwise, once the plots were discharged after 1985, they became private property and their role came to an end.
128. DW4 said that the letters dated 17/1/1996 and 30/7/1997 were not addressed to her office and fell within the offices of both the Land Registrar and the Land Surveyor to act on them. DW4 confirmed that parties on 11/12/1984 went before the land control board, to enable the 2nd defendant to be transferred the land by the initial allottee for 36.2 acres as per appendices A & E, which then her office authenticated by countersigning.
129. DW4 said that her office is the one that forwarded the land control board consent dated 11/12/1984. DW4 said that her office had no record of any lodged complaints over the acreage or ground locality of the suit land by the plaintiff or her late husband. DW4 said that it is only the Land Surveyor and the Land Registrar who could locate the parcels on the ground.
130. DW4 said that D. Exhibit. No. 28 was clear that a site visit took place in 1984 or 1985 and established the ground status between the late Julius Chege Kiongo and the 2nd defendant. Similarly, DW4 said that D. Exhibit. No. 27 had confirmed the correct occupation and acreage. DW4 said that the letter dated



27/5/1996 responded to the plaintiff's complaint. Equally, D. Exhibit. No. 7 confirms the position of the office that the late Julius Chege Kiongo was told by the Director of the correct ground position of his parcel of land and the acreage.

131. DW4 said that the copy of record for his parcel of land was opened on 17/11/1989 at 14.8 Ha, but was later rectified to read 8.15 Ha pursuant to the Provincial Surveyor's letter dated 17/1/1996. DW4 said that the copy of the register is the primary source of information, which is prima facie evidence, a copy of the proof of ownership.
132. DW4 said that there was an amendment of the register in 1996, otherwise the role of her office came to an end after discharging the two plots on 25/9/1995, with respect to parcel No. 11. Before then she said that her office was not involved in any changes to the land size.
133. Further, DW4 said that her office was not privy to or aware of any swapping of the two parcels of land and their locality on the ground. DW4 said that by 2019, the plots were beyond her office jurisdiction and therefore was not party to any changes that may have taken place on the land size and locality.
134. DW4 said that the loan payable to Settlement Fund Trustees is ordinarily pegged on the land size. DW4 said that she had no record to show that the size of plot No. 11 was amended in 1965 or any other time before the discharge in 1995.
135. DW4 said that the letter dated 17/1/1996 was never copied to her office, nor did she play any role in making any changes to their records.

G. Written Submissions

136. After the close of the defence case, parties were directed to file written submissions.
137. The plaintiff relies on written submissions dated 19/9/2025. It is submitted that this case is not merely about boundaries or allocation mistakes but about the sanctity of land rights violated by state officials who were entrusted with protecting them. The plaintiffs submit that the case is about how her husband, as the rightful owner of 14.8 Ha of land, cleared all his obligations, but was defrauded, displaced, and robbed of his dignity while others thrived on his loss.
138. The plaintiff submits that in the two consolidated cases, she bears the burden of proving fraud and historical injustice to restore dignity, protect property rights, and enforce constitutional guarantees. In this case, as courts have established, when a title is under challenge, proprietors' rights are not protected by the doctrine of indefeasibility if it is shown that they obtained the title through fraud or misrepresentation to which he was a party.
139. The plaintiff isolated five issues for the court's determination based on undisputed facts that :
 - (a) Her late husband was the original allottee of plot No. 11 measuring 14/8 Ha to which he paid off the settlement loan as confirmed by the settlement officer, before the same was discharged in his favour, to become private property, otherwise any changes to the land size after the discharge were illegal and wrong, for they were not noted in the records of the land adjudication and settlement office.
 - (b) That in 1965 her family was wrongfully and without notice evicted from their allotted plot No. 11 and relocated to Plot No. 13.
 - (c) The eviction and the relocation were forceful and state-sanctioned acts carried out by government officials, as confirmed by Cyrus Thairu Kabui, a retired administration police officer.



- (d) There was an illegal change in the land size from 14.8 Ha to 8.15 Ha, without the plaintiff's knowledge and after he had cleared the loan.
140. Equally, the plaintiff submits that she has established the aforesaid facts through documentary evidence, including allotment documents, loan repayment records, title deed issued in 1995, and the alteration of the Registry Index Map, all pointing out that there was a deliberate conspiracy to defraud her late husband of his land.
141. The plaintiff submits that the law is clear that fraud vitiates everything, including a registered title, and cannot be used to protect a title that is a product of fraud. Reliance is placed on *Arthi Highway Developers Ltd v West End Butchery Ltd & Others* [2015] eKLR and *Akhuta & Another v Mutia & Another* ELC Appeal No. E009 of 2023[2024] KEELC 7115 eKLR, while the cause of action relates to events that occurred decades ago.
142. The plaintiff submits that the suit is not barred by the *Limitation of Actions Act*, since it is based on concealed fraud, whose limitation period commenced upon discovery of the fraud and not its occurrence in 2018, which was also confirmed following a survey conducted in 2019, when she also identified the alteration of the registry index map in 2024. The plaintiff submits that it is not contested that she learned of the fraud in 2018. The plaintiff submits that the preliminary objection on limitation having been dismissed by this court and the suit ordered to proceed on merits, the suit is not statute-barred by dint of Section 26 of the Act.
143. Reliance is placed on *Base Titanium Limited v Kitaka (Suing for and on Behalf of the Estate of Kitaka Mulonzi - (Deceased) & 3 others (Environment and Land Appeal E002 of 2023) [2025] KEELC 532 (KLR) (13 February 2025) (Judgment)*
144. The plaintiff submits that she has produced a survey report confirming the parcel's location and its size, which report was not contradicted by any rival evidence by the defendants, making this point undisputed. The plaintiff submits that the defendants' submissions are a web of inconsistencies and contradictions seeking to legitimize a fraudulent process.
145. In particular, the plaintiff submits that the defendants said that the size of both plots was changed through a letter dated 17/1/1996, and a subsequent letter of 20/7/1996, which was a blatant attempt to mislead the court; otherwise, the title to plot No. 11 had already been issued on 25/9/1995 to her late husband.
146. The plaintiff submits that the said two letters were written after the deceased had become the registered owner of the 14.8 Ha of the land, with an intention of altering the land size, and these letters were addressed to the address of the deceased nor was any evidence tendered to prove that they had been delivered to the deceased.
147. Further, the plaintiff submits that, though the defendants rely on a gazette notice dated 2/5/2014, there is no evidence that such a letter was ever served on her late husband; otherwise, the changes were conducted without his knowledge or consent.
148. The plaintiff submits that the alleged subdivisions of plot No. 11 to subdivisions No. 1196, 1197, and 1198 based on Kitale HCC No. 1823 of 1998 and the land disputes tribunal case are misleading as the further suit was withdrawn and no judgment was ever delivered out of it while the land disputes tribunal ruling has no mention of her late husband or evidence that he was served with summons to appear or to be joined in the matter.
149. As to the letter dated 20/7/1999, the plaintiff submits that the said letter was never served, addressed to, or delivered to her late husband or his known address. The plaintiff submits that the said letter is a



- stark contrast to the other letters from the land office dated 21/5/1986 and 1987, which bore a postal address for her late husband; hence, her letter lacked a postal address.
150. The plaintiff submits that the defendants' documents lack credibility, for they are not dated, stamped, or addressed to anyone in particular, and are not supported by any sale agreement. The plaintiff submits that this case reveals the darkest face of land injustice in Kenya, where government complicity meets private greed, and the poor are displaced while records are altered.
 151. In this case, the plaintiff submits that she seeks not sympathy but justice that has long been denied; she does not seek charity but only what was rightfully paid for and lawfully registered. The plaintiff asked the court to waive procedural technicalities and see this case for what it truly is, a right for dignity, fairness, and constitutional rectitude, and to allow the reliefs sought in the amended amended amended plaint dated 12/5/2022 in ELC No. 34 of 2019 and in the plaint dated 7/11/2022 in ELC No. 108 of 2016.
 152. The 2nd, 6th, and 7th defendants rely on written submissions dated 1/9/2025. It is submitted that the single issue for the court's determination is whether the plaintiff is entitled to any relief on the consolidated suits and the claim therein.
 153. Jamin Kiyagi Amaingu, as the defendant in the land file Kitale LEC No. 108 of 2016, on his own behalf and on that of his spouses Jane Mutembi Kiyagi and Beatrice Kadayi Kiyagi, the 6th and 7th defendants in Kitale ELC No. 34 of 2019, submits through oral and written testimonies.
 154. The 2nd, 6th, and 7th defendants submit that even though the plaintiff sought to further amend the plaint on 4/3/2025, the cause of action is described as having arisen in Namanjalala, the reality is that the parcels of land in question are in Kapteret sub-location, Suwerwa location in Cherangani constituency, Trans Nzoia East Sub-county, and not in Kwanza Constituency as alleged.
 155. The 2nd, 6th, and 7th defendants submit that, without prejudice to paragraph 5 of the submissions about Namanjalala at the date of filing the two suits, Gazette Notice No. 2981 of 2014 (D. Exhibit No. 23) had been issued by the Land Registrar, Trans Nzoia, on 2/5/2024 to cancel and invalidate the deceased title No. Trans Nzoia/Cherangani/11.
 156. The 2nd, 6th and 7th defendants submit that under Section 14(1) and 16(2) of the *Land Registration Act*, 2012, if a land registrar calls for surrender of any instrument, it should be surrendered and whenever the boundary of a parcel is altered, on the cadastral map, the parcel number shall be cancelled and the parcel shall be given a new number.
 157. In the gazette notice, the 2nd, 6th and 7th defendants submit that the late John Chege Kiongo was to by 22/6/2014, to surrender the title for purposes of cancellation following subdivision of the parcel comprised in title, so that 1o acres could go to Lucia Njoki Kiongo, the plaintiff's mother in law following High Court order in Civil Suit No. 100 of 1999 (O.S), Lucia Njoki Kiongo v Julius Chege Kiongo, which orders had been issued according to Section 143 of the Registered *Land Act* (repealed).
 158. The 2nd, 6th, and 7th defendants submit that the title deed was not surrendered, but was cancelled and closed on the register. The 2nd, 6th, and 7th defendants submit that if the plaintiff felt that there was an omission by the Land Registrar who did and write to her about the title deed. In court, after the plaintiff was asked on 23/7/2024 if she received the letter, she could have complied; her answer was outright no.
 159. The 2nd, 6th, and 7th defendants submitted that the cancellation of the title and the rectification of the land register were effected on 16/9/2014 as evidenced by D. Exhibit No. 14 and a title deed issued to Jamin Kiyagi Amaingu on 24/8/2016, following rectification. The 2nd, 6th, and 7th defendants submit



- that as of 6/7/2016 and 12/4/2019, the plaintiff was not the Administratrix of the alleged 14.8 Ha, otherwise, P. Exhibit No. 2, being the rectified certificate of confirmation of grant in Succession Cause No. 284 of 2014 was not backed by any evidence that the alleged 14.8 Ha to be held in trust for herself and children was transmitted to her in law, otherwise the land registrar would have put her to task concerning adjustments to size ordered in the originating summons case.
160. The 2nd, 6th, and 7th defendants submit that, despite the amendment of the register pursuant to Section 142(1)(c) of the repealed Registered [Land Act](#) in 1996, the plaintiff continued to exhibit a copy of the un-surrendered and amended title deed.
 161. The 2nd, 6th, and 7th defendants submit that there is no evidence that the plaintiff ever challenged the Gazette Notice No. 2981, yet she alleged that she did not know about it. The 2nd, 6th, and 7th defendants submit that the two suits before the court do not challenge Gazette Notice No. 2981 under Section 79 3(A) of the [Land Registration Act](#) but are premised on the Land Registrar's letter of 30/7/1996 pursuant to which the size of parcel No. 11 was amended to 8.15 Ha. The 2nd, 6th, and 7th defendants submit that the gazette notice is not specifically pleaded as, or alleged to be, one of the missteps leading to the plaintiff losing the land.
 162. Reliance is placed on *Baikenda v Nkumbuku & Others*, ELC App No. E038 of 2023 [2024] KEELC 1233 KRL (6TH Match 2024) (Judgment), that the jurisdiction to determine the size, location, and boundaries of land lies with the Land Registrar, under the [Land Registration Act](#) 2012, and under the [Survey Act](#).
 163. The 2nd, 6th, and 7th defendants submit that as long as Gazette No. 2981 of 2014 remains unchallenged, the title deed No. Trans Nzoia/Cherangani/11 was procedurally and competently cancelled.
 164. Further, the 2nd, 6th, and 7th defendants submit that under Section 85 of the [Evidence Act](#) and Section 69 of the [Interpretation and General Provisions Act](#), Cap 2, a copy of a gazette purporting to be made under any written law shall be prima facie evidence in all courts and for all purposes whatsoever of the due making and tenor of such written law.
 165. The 2nd, 6th, and 7th defendants submit that the High Court in HCC No. 100 of 1999 (OS) P. Exhibit No. 12 and the Court of Appeal in P. Exhibit No. 13, proceeded on the mistaken basis and owing to misrepresentation that there existed title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha, when none existed in fact or in law, owned by Julius Chege Kiongo, whose deduction of the 10 acres would leave a balance of 26.57 acres.
 166. The 2nd, 6th, and 7th defendants submit that the evidence herein shows that since 1965, through 1986, 1987, 1996, 1997, 2005 till 2014, Julius Chege Kiongo knew having been party to HCCC No. 100 of 1999 (OS), that as of 2005, according to the decree in that suit, Trans Nzoia/Cherangani/11 comprising of 8.15 Ha was less than 8.15 Ha, by 10 acres hence the relief in the two complaints should not be countenanced, otherwise, the only record of what acreage the late Julius Chege Kiongo had paid for as per a copy of green card (D. Exhibit No. 14) in 1995 on a discharge of charge for 8.15 Ha.
 167. The 2nd, 6th, and 7th defendants submit that the plaintiff, as admitted during cross-examination, had no proof that her deceased husband had paid for 14.8 Ha and not 8.15 Ha. The 2nd, 6th, and 7th defendants submit that the plaintiff was, in fact, aware, or had cause to be aware, that neither land title No. Trans Nzoia/Cherangani/11 measuring 14.8 Ha, nor land title No. Trans Nzoia/Cherangani/13 measuring 8.15 Ha existed when she filed Kitale ELC No. 108 of 2016, since one of the documents in her list of documents No. 5 accompanying the complaint was a letter of consent and transfer indicating that the 1st defendant plot No. 13 was purchased from one Humphrey Lugadiru Omido, whose stamp is the same as the stamp on the 1st defendant's copy of the records of the Makutano land disputes tribunal



- proceedings and determination in the trial bundle dated 12/5/2023, relating to Eldoret JR Misc. No. 9 of 1996 read on 22/7/1996.
168. The 2nd, 6th, and 7th defendants submits that going by D. Exhibit No. 22 relating to Nairobi HCC No. 1523 of 1998, it is beyond doubt that the plaintiff was aware of the letter of consent, the application for land control board, the title deed issued to the 1st defendant for 14.8 Ha and the letter dated 10/1/1997 addressed to the Land registrar to her late husband, regarding a visit to the land by the District Commissioner, the District Land Registrar and the District Settlement officer on 23/1/1997 to sort out the land ownership dispute over plot Nos. 11 and 13.
 169. The 2nd, 6th, and 7th defendants submit that the dispute settlement process was followed by a D.C's title letter 4/12/1996, appearing on page 36 of the plaintiff's trial bundle, copied to her husband as the one who must have lodged the matter with them after he was asked to surrender the title for amendment.
 170. The 2nd, 6th, and 7th defendants submit that the D.C's visit afterward was followed by a DC's report that the plaintiff had not raised any such complaint until the original owner, Mr. Humphrey Lugadiri Omido, passed on in 1994. The 2nd, 6th, and 7th defendants submit that the plaintiff was also aware of the DC's report, as the dispute was the one that had been referred to the Makutano Land Disputes Tribunal in 1995, whose proceedings had been quashed in the Eldoret JR Misc. Appeal No. 9 of 1996.
 171. The 2nd, 6th, and 7th defendants submit that in the letter dated 20/9/1965, notifying the changes on the survey map, the late Julius Chege Kiongo had acknowledged and signed for in 1965 as per D. Exhibits. No. 21 and 22. Therefore, the 2nd, 6th, and 7th defendants submit that the plaintiff's late husband received both deliberately, ignored, or refused to comply with the request to surrender the title for amendment as indicated on D. Exhibit. Nos 8, 5, and 4.
 172. As to the allegation that the plaintiff became aware of the alleged fraud on 12/1/2015, the 2nd, 6th, and 7th defendants submit that the surveyor who conducted the survey and prepared a report - marked as PMFI-P21 was not called to testify, recording the report valueless as evidence, which was only marked and not produced or proven. Reliance is placed in Ken Nyaga Mwangi v Austin Kiguta & Others [2015] eKLR.
 173. The 2nd, 6th, and 7th defendants submit that in the absence of the maker of the survey report, the plaintiff's pleadings in the two suits remain unsupported by evidence. The 2nd, 6th, and 7th defendants submit that their evidence is that no notice for no survey was served upon them for any boundary re-survey or verification on the ground of any of their parcels of land on 12/1/2019, hence their defences remain uncontroverted.
 174. Further, it is submitted that PMFI-21 does not show that the surveyor complied with Regulation 29 of the Survey Registration set out in the [Survey Act](#) by consulting all previous surveys and or the concurrent of the County Land Registrar in undertaking the exercise.
 175. The 2nd, 6th, and 7th defendants submit that if the re-survey was to provide evidence to challenge their title deeds, consultation with the Land Registrar and them was crucial, otherwise, their title deed as per Section 26 and 80 of the [Land Registration Act](#) remain prima facie evidence of them as absolute proprietors in absence of any fraud, mistake, or misrepresentation leading to the questioned registration and the content of the register.
 176. The 2nd, 6th, and 7th defendants submit that PMFI No. 21 does not show if the previous survey by the Rift Valley Provincial Surveyor dated 17/1/1996 was considered and whether the Director of Survey was consulted regarding the alleged survey errors on the report, otherwise, under Sections 14-19 of the [Land Registration act](#), and Regulation 29 of the Survey Regulations, the Director of Surveys and



his officers must be consulted to cause any survey changes, and or to avail all available information in respect of any previous survey of the land.

177. The 2nd, 6th, and 7th defendants submit that the proceedings and decision of both the Provincial Survey officer and the District Land Registrar were not timeously challenged, after Nairobi HCCC No. 1523 of 1998 was withdrawn. Similarly, the 2nd, 6th and 7th defendants submit that the subdivisions of the parcel and closure of the title register from the decree in Kitale ELC No. 100 of 1999(OS), that was confirmed in Eldoret Court of Appeal Civil Appeal No. 18 of 2005, was not challenged elsewhere, and the court cannot sit on to review the rectification and the cancellation made in 2014, based on government officials duties exercised formally in 1965, 1986, 1987, 1996 and 1997, when the correct acreages and boundaries and the position on the ground for the two parcels of land was established.
178. The 2nd, 6th, and 7th defendants submitted that no special ground is availed or proved for any order of survey to be made and depart from the plaintiff's specific pleading in case the court is minded to order for re-survey. The court is urged not as pleaded in paragraph 11 of the plaint in Kitale ELC No. 108 of 2016 for the County Surveyor to re-survey plots 11 and 13 to determine their actual acreages and their respective position on the ground. Reliance is placed on *Odd Job v Mubea* [1970] EA 476, that the parties are bound by their pleadings, *Ann Wairimu Wanjohi v Jane Wambiru Mukabi* [2021] eKLR, and *IEBC & Another v Stephen Mutinda Mule & Others* [2014] eKLR.
179. As to the relief for the County Land Registrar to cancel the titles, the 2nd, 6th, and 7th defendants submit that the Land Registrar under Section 79 of the *Land Registration Act* should have been allowed to sort the matter before. Section 80 of the Act can be invoked. In this suit, however, the 2nd, 6th, and 7th defendants submit that the plaintiff has an uphill task of convincing the court that it can review or interfere with or order the decision of the Court of Appeal by which the Land Registrar acted.
180. Relying on *Karin Anne Challis v The Hon. Attorney General & Others* [2002] KEHC 692 [KLR], the 2nd, 6th, and 7th defendants submitted that the burden was on the plaintiff to prove that the 2nd defendant knowingly participated in any of the alleged frauds. Reliance is place also on *Supernova Properties Ltd v Kenya Ports Authority & Others* [2025] KECA 1083 [KLR] (20th June 2025), that a court cannot grant a relief not contained in the pleadings or not regularly sought by a party expressly or by implication, otherwise, where a party requires cancellation or rectification, or an amendment of a title, he must specifically plead such a relief before a court of law can grant the same.
181. The 2nd, 6th, and 7th defendants, as to the relief for a declaration that the 2nd defendant is only entitled to 8.2 Ha, it is submitted that no evidence has been produced by the plaintiff that the 1st defendant paid for only 8.2 Ha and not 14.8 Ha.
182. The 2nd, 6th, and 7th defendants submit that the evidence before the court is that the plaintiff's late husband was privy to the visit by the District Land Registrar with the DC visit to the two parcels of land in January 1997, who established that indeed there had been an error in 1965 regarding the numbering of the two parcels of land on the registry land map, which error was corrected in 1965 after the late Julius Chege Kiongo acknowledged the error, accepted and signed for the correction, therefore it is submitted that there is therefore, no basis for the relief that the court restores and order of the registration of the late Julius Chege Kiongo as the person entitled to Trans Nzoia/Cherangani/11.
183. In any case, 2nd, 6th, and 7th submit that the plaintiff erroneously pleaded and tendered evidence that subdivision parcels No. 1196, 1197, and 1198 arose out of parcel No. 12 and not 11, as they actually are, since the plaintiff is bound by her pleadings. It is submitted that without amendments, and or contrary evidence, there is no veracity in the claim for cancellation and those subdivisions.



184. The 2nd, 6th, and 7th defendants submit that since the suit is for the recovery of land, the suit should have been filed in compliance with Section 7 of the *Limitation of Actions Act*. The 2nd, 6th, and 7th defendants submit that, in view of Nairobi HCC No. 1523 of 1998, the deceased was aware that he had in 1996 been required to surrender his title for amendment, but withdrew the case on 6/9/1996, as per D. Exhibit. No. (9). Therefore, the court is urged to find the withdrawal of the suit by a notice dated 3/9/1999, he should have sustained the suit to hearing on merits, otherwise the consolidated suits were filed outside the 12 years, for a right cause of action that accrued in 1996 when the notice of rectification of the register was issued to the late Julius Chege Kiongo, and whose 12 years expired on 2009, for the cancellation of the title issued to the 1st defendant on 16/10/1995.
185. The 2nd, 6th, and 7th defendants submit that ELC No. 34 of 2019 is also time-barred since the title to the 1st defendant was obtained on 16/10/1995, and any challenge to it should have been made by 16/10/2007.
186. As to the claim of forceful removal from the land, the 2nd, 6th, and 7th defendants submit that it was also filed 54 years after the alleged cause of action accrued. As to concealment of material facts in ELC No. 108 of 2016, the 2nd, 6th, and 7th defendants submit that in view of Nairobi HCC No. 1523 of 1998, the claim for mesne profits had not been raised therein, or raise the issue of the 2nd defendant being privy to the relocation in 1965.
187. The 2nd, 6th, and 7th defendants submit that in the absence of a reply to defence to counterclaim the averments that the late Julius Chege Kiongo was aware of or had been notified about or was aware of the changes to the title register and the acreage coupled with numerous correspondences placing the late Julius Chege Kiongo as aware of the notice to surrender the gazette notice and the subsequent changes to the title and register the court should find that the defence on facts bar the grant of the reliefs sought by the plaintiff.
188. The 2nd, 6th, and 7th defendants submit that DW1, DW2 and DW3 produced all the paper trail to show that the subdivisions and transfer of titles in favour of DW1 and DW2 by DW3 were formal, procedural and regular, otherwise, there is no evidence of mistake or omission, fraud or misrepresentation or anything to show that DW1, DW2 and DW3 knew of Kitale HCC No. 100 of 1999 (OS) and Eldoret Civil Appeal No. 18 of 2005, or were knowingly involved in any fraud or illegality, otherwise, subdivision Nos. 1196, 1197, and 1198 as per D. Exhibit No. 15, 17, and 19, followed a valid court order and Gazette Notice No. 2871 of 2014.
189. The 2nd, 6th, and 7th defendants submit that the plaintiff failed to produce any evidence to show that DW1, DW2, and DW3 were involved in any fraud or illegality, or took place in the alleged forceful eviction in 1965. The 2nd, 6th, and 7th defendants submitted that particulars of fraud must be specifically pleaded and proved. In this case, it is submitted that the 2nd defendant's spouses could not have been party to the alleged fraud before they got married to DW3. Reliance is placed on *Okere v Kiiyuka & Others* [2007] 1 EA 304 and *Koinange & Others v Koinange* [1986] KLR 23.
190. The 2nd, 6th, and 7th defendants urge the court to dismiss the suit with costs guided by *Bellevue Development Co. Ltd v Francis Gikonyo & Others* [2020] eKLR.

H. Issues for Determination

191. The court has carefully gone through the record of this suit, the various pleadings by both sides and amended in various stages of this court, the evidence tendered at various stages of the suit, exhibits produced, and the written submissions. The issues calling for my determination are:



- (1) What are the causes of action in the two consolidated suits?
- (2) Whether the cause of action against the 2nd, 3rd, and 4th defendants in ELC No. 108 of 2016 and the 3rd, 4th, and 5th defendants in ELC No. 34 of 2019 is time-barred.
- (3) Whether the cause of action against the 1st, 5th, 6th, and 7th defendants in ELC No. 108 of 2016 and 1st, 2nd, 3rd, 6th, 8th, and 7th defendants in ELC No. 34 of 2019 is time-barred.
- (4) Whether the court has jurisdiction to revisit the action raised by the plaintiff against the 1st defendant in ELC No. 34 of 2019 in view of Kitale HCC No. 100 of 1999 and Eldoret Court of Appeal Civil Appl. No. 18 of 2005 and HC Succession Cause No. 284 of 2014.
- (5) Whether the court has jurisdiction to reopen the acreage of Title No. Trans Nzoia/Cherangani/11 and its location in view of the doctrine of surrender.
- (6) Whether the plaintiff has proved any fraud or illegality against the defendants in the two consolidated suits.
- (7) Whether the plaintiff is entitled to the relief.
- (8) What is the order as to costs?

I. Analysis and Determination

192. A cause of action is a legally recognized wrong that creates the right to sue. It is a set of predefined factual elements that allow for a legal remedy. See *DT. Dobie v Machina* (1982) KLR. In *Read v Brown* [1888] 22 QBD 128, Lord Esther MR defined a cause of action as comprising every fact which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court.
193. Order 2 Rule 1 of the Civil Procedure Rules provides that a plaintiff may bring in the same suit several causes of action. Joint interest in the main question raised by the litigation is a condition precedent to join several causes of action against several defendants, as cited in Mulla 6th Edition page 1652.
194. It is trite law that parties are bound by their pleadings and issues for the court's determination that arise from the pleadings. In *Supernova Properties Ltd v Kenya Ports Authority* (supra), the court emphasized that a court will not grant a relief not pleaded or sought by a party expressly or by implication.
195. In *Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others* (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) [2023] KESC 105 (KLR) (15 December 2023) (Judgment), the court observed that where there are two competing claims on ownership of the suit parcel, a court, based on the law and evidence before it, has to decide who the owner is and thoroughly interrogate how such ownership was conferred.
196. The court said that fraud must be pleaded and strictly proved on a standard higher than proof on a balance of probabilities as required in civil suits, by tabling concrete evidence to prove the allegation, since, as held in *Central (K) Ltd v Trust Bank Ltd & Others* [1996] eKLR, fraud and conspiracy to defraud are very serious allegations. The court cited *Vivo Energy (K) Ltd v Maloba Petrol Station Ltd & Others* [2015] eKLR, that Order 2 Rule 10 of the Civil Procedure Rules, provides that fraud must be specifically pleaded and particulars thereof given.
197. The cause of action by the plaintiff is captured in the amended amended plaint dated 12/5/2022 in ELC No. 34 of 2019 and the amended plaint dated 7/11/2022 in ELC No. 108 of 2016. The plaintiff traces her causes of action to the events of 1965, when, despite allocation and payment for plot No.



- 11 measuring 14.8 Ha and taking vacant possession, her late husband was forcefully and wrongly and without notice, evicted from the locality through state-sanctioned acts and moved to plot No. 13, which belonged to Jamin Kiyagi Amaingu.
198. The plaintiff's first limb of the cause of action is that her parcel No. 11 was illegally changed in land size from 14.8 Ha to 8.15 Ha without her knowledge, consent, or approval, including the surreptitious alteration of the registry index maps to deliberately defraud her of the land.
199. The plaintiff's second limb of her cause of action is that the suit parcel of land was subdivided, transferred, and registered in the name of the defendants. The plaintiff maintains that all these acts of fraud came to her knowledge in 2018/19 when she caused a survey to be undertaken, and PMFI No. 21 was produced by the surveyor, confirming both the illegal activities and the swapping of the two parcels of land.
200. The plaintiff came to court as the widow and a legal administratrix of the estate of the late Julius Chege Kiongo pursuant to a rectified confirmation of a grant produced as P. Exhibit. No. 2. There is no evidence that she ever became the owner of P. Exhibit. No. 11 on account of transmission.
201. According to the plaintiff, she became aware of the fraud in 2018; hence, her suit is properly before the court. In *Gathoni v Kenya Co-operative Creameries Ltd* [1982] eKLR, Porter JA at page 107, observed that the law of limitation is intended to protect defendants against unreasonable delay in the bringing of suits against them, since the statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. In *Iga v Makerere University* [1972] EA, the court held that unless a plaintiff had put himself within the exceptions of Sections 3 and 4 of the *Limitation of Actions Act*, the court should reject his claim.
202. The plaintiff, in her own admission, stated that the fraudulent activities began in 1965 when they were illegally and fraudulently evicted by the Settlement Fund Trustees from the correct locality of their plot and taken to the locality occupied by the Jamin Kiyagi. When a title is under challenge, it is not enough to waive the instrument of title without showing the paper trail towards its acquisition. See *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR).
203. DW4 produced letters dated 9/1/1987 and 8/10/1985 as D. Exhibits. No. 26 and 27, showing when the two plots were discharged by the Settlement Fund Trustees. The plaintiff feigned ignorance of the alleged fraud until 2018/19. On the other hand, the defendants blame the plaintiff for material non-disclosure otherwise, her late husband, in whose estate she sue, knew or was aware or neglected or acquiesced to the facts for an early as 26/10/1995, he knew, the origin of the title deed held by Jamin Kiyagi, arose out of an application for a land central board consent, letter of consent and transfer for plot No. 13 which he bought from one Humphrey Lugadiri Omido.
204. The 2nd, 6th, and 7th defendants submit that the plaintiff is estopped in law from denying those facts otherwise, her late husband had included the alleged fraud documents as part of his suit. It is also submitted by the 2nd, 6th, and 7th defendants in their statement of defences, which the plaintiff did not reply to, and or challenge, D. Exhibit No. (1). The 2nd defendant relied on a letter dated 20/9/1968, on which Julius Chege Kiongo acknowledged and signed the changes, letters from the D.C. and the District Settlement Officer and District Land Registrar over the two parcels, dated 4/12/1996, 23/1/1997, 10/1/1997, 30/7/1996, report by the D.C produced as D. Exhibit. Nos. 21 and 22.
205. Further, the 2nd, 6th, and 7th defendants relied on a letter dated 30/7/1996 requiring the surrender of the title deed for an amendment for plot No. 11 from 14.8 Ha to 8.15 Ha and the Gazette Notice No. 2918 of 2014. The 2nd, 6th, and 7th defendants take the view that there is no contrary evidence to show that the plaintiff did not know all these facts until 2018.



206. Discovering fraud requires a process of uncovering the acts that the perpetrators wished to keep in the dark. In *Jubilee Insurance Co. Ltd v Nyaene & Others* [2024] KEHC 6803 [KLR] (16th May 2024) (Judgment), the court observed that fraud is criminal in nature and that there must be discovery of not only the action but also the actors. The court said that before the faces are put to the fraudsters, the fraud has not been discovered.
207. Order 2 Rule 10(1) of the Civil Procedure Rules provides that every pleading shall include particulars of any misrepresentation or fraud.
208. Section 26 of the *Limitation of Actions Act* provides that a cause of action based on fraud of the defendant or his agent, or a right of action concealed by fraud of or an action for relief from the consequences of a mistake, time for limitation does not begin to run until the plaintiff has discovered the fraud or mistake or could with reasonable diligence have discovered it.
209. Postponement of fraud is what the plaintiff invokes, so that according to her time for limitation started to run in 2018/19 and not earlier than that. What I have to establish from the rival positions is when the plaintiff discovered or could have, with tenable diligence have done.
210. In *Saddiq Omar Abu Seedo v Fahmy El Gamal and Others* [2023] EWCA Civ 330. The court said that the question of limitation arises after the trial, when facts have been discovered is different from before the trial in an application for striking out by reference to the pleaded case. The court said that time starts to run when the claimant has discovered enough to plead their case. The court said that if one wants to know if the claim is barred, the relevant inquiry is when the claimant knew enough to plead that claim.
211. The words used in Section 26 of the *Limitation of Actions Act* are “reasonably would have known”. The court observes that in inferring guilty knowledge, courts look at the surrounding circumstances to draw inferences. In these two suits, there are government letters starting with the one dated 30/9/1965, followed by inquiries by the D.C., District Land Registrar, and the District Settlement Officer at the behest of the late Julius Chege Kiongo. From the letters spanning between 1965 and 1995, when the two parcels of land became registered and title deeds issued to both Jamin Kiyagi and the late Julius Chege Kiongo, and up to 2013, contrary to the plaintiff’s pleadings and evidence, it is apparent that the late Julius Chege Kiongo was aware of or knew of the facts of the alleged fraud or illegality, but willfully shut his eyes to the obvious.
212. That is why the late Julius Chege Kiongo filed the Nairobi suit but withdrew it. Between 1998, when he withdrew the suit, and 2013, when he passed on, there is no evidence that he had revived the suit. Again, between 2013 and 2016, when the plaintiff filed the 2nd suit case in the consolidated suit, there is no explanation why there was an inordinate delay. The plaintiff, while aware that her cause of action covered facts ranging from 1965 – 2018, did not seek leave of court to file the two suits out of time.
213. The plaintiff has submitted that this is a historical injustice claim where the plaintiff land ownership rights were violated by state officials entrusted with protecting them, that the plaintiff seeks to reclaim what the law, equity and justice affirmed was hers; that the suit is not barred by the *Limitation of Actions Act*, while the cause of action relates to events that occurred decades ago, the plaintiff’s claim is based on concealed fraud, hence the limitation period commenced upon discovery of the fraud, not on its occurrence, that the preliminary objection, has already been addressed, that the suit falls under the exceptions of Section 26 of the *Limitation of Actions Act*, as held in *Beja Base Titanium Limited v Kitala* (supra) on concealed fraud, that the court should rise above procedural technicalities and see this case for what it truly is, a right for dignity and constitutional rectitude.



214. Limitation goes to the jurisdiction of the court, as held in *Bosire Orenge v Royal Media Services* [2015] eKLR, it can be raised at any stage of the proceedings. If a matter is statute-barred a court has no jurisdiction to entertain the same. Though a preliminary objection was determined, that did not absolve the plaintiff from justifying through evidence that the two suits were not time-barred and that it was falling within the exceptions of the law on limitation.
215. In *Mbowa v East Meno District Administration* [1972] EA 352, the court said that the time for limitation begins to run as from the date when a plaintiff could first successfully maintain an action. To qualify for an exception under Section 26(2)(b) of the *Limitation of Actions Act*, Cap 22, a plaintiff has to show a physical disability, illness, financial, family, or social challenges.
216. Section 21(2)(b) and 25(1) of the *Limitation of Actions Act* and Order 37 Rule 6(3) of the Civil Procedure Rules provide the parameters to seek leave to file a suit out of time. The plaintiff is not saying that she was ignorant of the material facts. In *Justus Tureti Obara v Peter Koipeitai* [2014] eKLR, the court observed that the issue of when the fraud was discovered is a matter to be ascertained at the trial. The court said a cause of action is a set of facts sufficient to justify a right to sue or to enforce the right against another party.
217. The legal theory upon which the plaintiff brings the suit is by the Settlement Fund Trustees that took place in 1965. Her late husband, from the letters produced, seems to have been aware of the basis of the alleged forceful eviction and relocation in 1965. The changes to the area list details were communicated, acknowledged, and signed by the late Julius Chege Kiongo on 30/9/1965. Subsequent to these, it appears he caused the District Commissioner, Land Registrar, and the District Settlement Officer to visit the two plots in 1987, or thereabouts.
218. A report was made by the said officers on why there was an error in the numbering of the plots, hence the need to alter the records. So, if aggrieved by the alleged alterations, the earliest the deceased could mount a claim against the Settlement Fund Trustees was in 1966. That is when the time for limitation initially started running under Section 7 of the *Limitation of Actions Act*.
219. Again, when the changes to the register occurred in 1995, guided by *Kimani Buchine & Another v Swift Rutherford & Co. Ltd & Another* [1980] KLR 10, time started to run afresh after the 1st defendant became the registered owner. So, the 12 years to recover the land from the 1st defendant, who was not the owner in 1965, ended by 2007.
220. In *Stanbic Bank (K) Ltd v Santowels Ltd*, SCOK Petition No. E005 of 2023, the court said that the issue of limitation entails revisiting the factual findings of the courts below and the interpretation of statutes in a matter for the courts, depending on the text and the context, to discover the intention.
221. The legal framework for determining how long a claimant has to initiate legal proceedings is designed to balance the claimant's right to seek redress with the defendant's right to certainty and protection from indefinite liability. What is before the court is not a constitutional petition or a historical injustice claim. See *Chief Land Registrar & 4 others v Nathan Tirop Koeh & 4 others* [2018] KECA 27 (KLR)
222. Complying with the limitation period is critical for anyone seeking to enforce their legal rights. Determining the actual date, seeking legal advice early, and preserving the evidence are what the plaintiff ought to have done and moved to court when she first became aware of the fraud. Waiting for 54 years to mount the suit based on the second limb of her cause of action against the 1st defendant, who was not even the owner until 1995, and later on, after 21 years, with effect from 1995, granted the defendants a defence to leverage on limitations of the causes of action.



223. From the evidence tendered, I think the plaintiff's late husband in 1965, 1995, 1996, and 1998 knew enough of the facts and had enough publicly available evidence to make it reasonable to investigate further, and if necessary, obtain professional advice to bring a suit against the former owner of plot No. 11, Humphrey Omido, and the Settlement Fund Trustees. Such knowledge of or availability of facts and evidence would have led a reasonable person who had suffered such forceful eviction and relocation to consider it sufficiently serious to justify instituting proceedings.
224. A person's knowledge in this context includes knowledge which is reasonably expected to be acquired by the claimant from the facts observable or ascertainable by him, with or without any help of an appropriate expert advice which is reasonable for him to seek. The aforesaid facts and evidence cannot be said to have been concealed fraud and being out of the reach of the deceased.
225. In *Haward v Fawcetts* [2006] UK HL 9, the court held that knowledge does not mean knowing for certain and beyond the possibility of contradiction, but rather it means knowing enough with sufficient confidence to justify embarking on preliminaries to the issue of a claim.
226. The plaintiff pleads that this is a claim of concealed fraud. Pleadings on the manner in which the defendants concealed material facts were not made. The particulars of the alleged concealment of facts were not pleaded. Evidence to show that it was impossible and the facts were uncertain to the plaintiff or her deceased husband, or any other reasonable person, is lacking.
227. Access to possible documents held by the state offices is a constitutional right under Article 35 of *the Constitution*. Attempts to seek and denial of the material facts or documents from the Settlement Fund Trustees, Land Registrar, and District Land and Settlement Officer are lacking. Evidence of attempts to initiate steps and investigate the claim before 2018 is lacking.
228. Even without the evidence of the maker of PMFI-21, the plaintiff has been able to prosecute her claim before this court based on the documents attached to her pleadings. The plaintiff did not tell the court that she had difficulties accessing and obtaining the documents before 2016 or 2019. To the contrary, some of those documents were displayed in the Nairobi suit in 1998. Consequently, the court is not convinced that the plaintiff needed more material or evidence apart from what was reasonably available to her late husband as early as 1965, 1995, 1996, 1997, 1998, and 2005 to lodge the claim.
229. The next issue is whether the plaintiff has proved fraud against the defendants capable of impeaching their title deeds. Fraud must be specifically pleaded and proved on a balance higher than in ordinary civil suits. See *Vijay Morjaria v Nansingh Madhusingh Darbar* [2000] KECA 34 (KLR). In *Mbasa v Mbasa & Another Civil Appeal E034 of 2021* [2025] KECA 142 [KLR] (31st July 2025) (Judgment), the court cited *Samuel Kamau Macharia & Another vs KCB & Others* [2012] eKLR, that a certificate of title conferred with registration is absolute and should only be challenged where there is clear evidence of fraud, misrepresentation, or illegal acquisition.
230. Where a land title is under challenge, a party must show the chain of events leading to the acquisition, without any break to the root. See *Dr. Ngok v Moiijo Ole Keiwua & others* (1997) eKLR.
231. In *Fanikiwa v Sirikwa Squatters Group* (supra), the court cited *R.G. Patel v Lalji Makanji* [1957] EA 314, that an allegation of fraud must be strictly proved. Further, the court cited *Central (K) Ltd v Trust Bank Ltd & Others C.A. No. 215 of 1996*, that a vague and very general allegation of fraud against the respondent was not enough and that credible evidence was required to prove such a serious allegation.
232. Fraud is defined in *Black's Law Dictionary*, 10th Edition, as knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his detriment. In the *Administrator of the estate of Administrators of the Estate of Letoire ole Ntirori (Deceased) & 9 others v Mwangi & 25*



- others (Civil Appeal E620 of 2024) [2025] KECA 1585 (KLR), the court observed that under Section 9 of the *Land Registration Act*, the Registrar is vested with the duty to maintain the land register and any documents thereof. The court said that the evidence of who committed the alleged fraud, how the alleged fake identification card numbers were obtained, used, and by which respondent was critical to prove the alleged claim.
233. The burden of proof lies with he who invokes the Act of the law and substantially asserts in the affirmative of the issue under Sections 107-109 of the *Evidence Act*. See Ann Wambui Ndiritu v Joseph Kiprono Kipkoi & Another [2005] 1 EA 334 and Evans Nyakwara v Cleophas Bwana Ongaro [2015] eKLR.
234. It is the plaintiff who is asserting fraud; it is not enough to simply infer fraud from the facts as held in Ndolo v Ndolo [2008] 1 KLR. The plaintiff has to lay a basis by way of credible evidence upon which the court can make a finding that indeed the 1st, 6th, and 7th defendants colluded with the rest of the defendants to obtain titles in 1995 and 2015. See Moses Parantai & Another v Stephen Njoroge Macharia [2020] eKLR.
235. Even after the 1st and 8th defendants failed to enter an appearance, the formal proof against them required proof that satisfies the court as to the truth or falsity of the facts as held in Samson S. Maitai & Another v African Safari Club Ltd & Another [2010] eKLR, and Palace Investment Ltd v Geoffrey Kariuki Mwenda & Another [2015] eKLR.
236. In D.T. Moi v Mwangi Stephen Muriithi & Another [2004] eKLR, the court said that a court examines laid evidence of facts against the defence. Written submissions cannot amount to evidence or replace pleadings.
237. There is uncontroverted evidence that the 2nd defendant obtained titles to parcel No. 11 out of a sale from the initial allottee, Humphrey Omido, in 1995. Before then, the deceased had not brought a claim against the original allottee on account of fraud, forceful eviction, and or relocation. Evidence that the Settlement Fund Trustees were sued by the deceased is lacking. DW4 said that they had no records to that effect. There is undisputed evidence that a Gazette Notice was issued by the Land Registrar to amend the register and the acreage of the land.
238. Section 69 of the Interpretation and General Provision Act, Cap 2, expects this court, on production of a copy of the Gazette, containing a written law or notice purporting to be printed by Government Printers, to be taken as prima facie evidence in all courts. The Land Registrar had powers under the repealed Registered *Land Act*, Cap 300, to demand the surrender of a regulation instrument for amendment. The amended complaints do not challenge the gazette notice and the statutory powers of the 4th defendant in demanding from the deceased the initial title deed for an amendment.
239. There is no evidence that the deceased sought the decision to recall or surrender the title and the subsequent amendment in 2014, to be quashed for lack of notice or knowledge.
240. Pleadings of abuse of power or duties against the Land Registrar have not been made by the plaintiff. Allegation that the plaintiff and the deceased did not obtain, or were not aware of, or did not receive the letters, or were not privy to or notified about the intended surrender, before and after the change of the land size in the register by the Land Registrar was not specifically pleaded and proved. Parties are bound by the pleadings. Complaint letters written to the 3rd and 4th defendants regarding any fraud have not been produced.
241. There was no reply to the statement of defence by the 2nd, 3rd, 4th, 5th, 6th, and 7th defendants who averred that the law was strictly followed in effecting changes to the land size on the register after the deceased



- failed to surrender the original title despite notice to that effect through letters and notices presented before this court. There is a presumption in law of regularity of duties executed by public officers in the course of their lawful duties. Seeking the surrender of the deceased title to formalize the land size was the lawful duty of the Land Registrar. Section 97(1) of the *Evidence Act* presupposes that when a disposition of property is reduced into a document, parole evidence cannot be used to vary its contents. The Gazette Notice and the alteration in the copy of the register were done in line with the law and fall under Section 97(1) and 100 of the *Evidence Act*.
242. The notification letters issued to or sent to the deceased do not in any way show any illegality or fraud on the part of the 1st, 3rd, 4th, 5th, 6th and 7th defendants. The Registry Index Map is created under Section 18(1) of the repealed Registered *Land Act*. Its production is vested in the Director of Surveys. The Director of Surveys and its officers who prepared a report leading to the alterations are not sued in this suit. The 3rd, 4th, and 5th defendants are not answerable for those acts under the law.
243. Calling for the documents to be surrendered was among the statutory duties of the Land Registrar. Amendment of RIM and the title to align the land records with the ground location under Section 142(1)9(c), repealed Cap 300, were statutory duties belonging to the respective officers. See *Nathan Tirop Koech & Others v Chief Land Registrar (supra)*.
244. As to the role that the 2nd, 6th and 7th defendants played in the alleged fraud, changes to the registers, the subdivisions, transfers, and the registration of their resultant titles, the plaintiff did not lead any specific evidence to link the said parties with the official duties of the 3rd, 4th and 5th defendants. It is not enough to allege fraud without proof. The plaintiff did not demand that the land registrars and the land surveyors who effected the changes to attend court and produce her exhibits, or to cross-examine them.
245. Concerning the claim against the estate of the late James Waboro Kiongo (deceased) represented by the James Wiharo Kiongo, there is evidence of a decree in Kitale HC No. 108 of 1999 (O.S) which ended up in the Court of Appeal as Appl. No. 18 of 2005. There is no dispute that the decree of the two suits related to 10 acres. The decree of the Court of Appeal was not set aside or reviewed by the higher court on account of misrepresentation or fraud. At the time, the Court of Appeal was the apex court.
246. The principle of stare decisis is a constitutional requirement aimed at enhancing certainty and predictability in the legal system. See *Geoffrey M. Asanyo & Others v Attorney General [2020] eKLR* and *Gatirau Peter Munya v Dickson Mwenda Kithinji & Others [2014] eKLR*. Before 2010, the doctrine was a hallowed common law doctrine holding that the precedents of the Court of Appeal are binding on all the other courts in the Republic.
247. The plaintiff has not pleaded that the decree issued for 10 acres against the late Julius Chege Kiongo by her mother-in-law was procured through fraud or misrepresentation. The plaintiff is on record in her testimony that she saw the brother-in-law and the surveyor on the land affecting the decree.
248. The law is that a decision of a court of competent jurisdiction not appealed against remains valid, subsisting, and binding on the parties. It is the duty of parties to obey court decrees. The plaintiff urges the court to ignore a competent decree of a sister court that was affirmed on appeal. In *M'ikiara M'Rinkanya & Another v Gilbert Kabere M'Mbijiwe [2014] KEHC 281 (KLR)*, the court held that all post-judgment proceedings are statute-barred after 12 years based on Section 4(4) of the *Limitation of Actions Act*.
249. The plaintiff seeks, through the back door, for this court to revisit the legality of the decree confirmed by the Court of Appeal in 2005, almost 12 years after the decree was rendered and effected. Evidence that the plaintiff or her late husband, upon discovery of new evidence or error on the face of the record



- regarding plot Nos. 11 and 13 being swapped or mistaken identity, having moved the two courts to review or set aside the decree, is lacking. The court cannot reopen the decree through a purported claim based on fraud against the estate of the late John Chege Kiongo, after the decree was confirmed in 2005, acted upon by the parties, and became invalid after 12 years. See *Shivabhai Umedbhai Patel v Keshvafal Bhavanishanker Vyas* Civil Appeal No. 16 of 1945.
250. The plaintiff is seeking recovery of land, mesne profits, and mandatory injunction on account of trespass by the 1st, 2nd, 6th, 7th, and 8th defendants. Trespass refers to unjustified entry and the commission of illegal acts on the land of another without permission. See Section 3(3) of the *Trespass Act*. The 2nd, 3rd, 4th, 5th, 6th, and 7th defendants have pleaded that the plaintiff's claim does not tally with the reality of the records held by the land registrar, and on the grounds location of the initial parcels of land. The plaintiff has not produced a proper paper trail to confirm the origins of the resultant parcels of land, contrary to the record held by the land registrar as regards the parcels now held by the 1st, 2nd, 6th, 7th, and 8th defendants.
251. Evidence by the 2nd, 6th, and 7th defendants, backed by DW4, has demonstrated that the 2nd defendant became a lawful owner of plot No. 11 as a bona fide purchaser without notice of any adverse claim by the plaintiff in 1995. The legality and the acreage of the land occupied and owned by the 2nd, 6th, and 7th defendants were not challenged on time by the plaintiff. The entry into and the development hereon, against the 1st defendant in 1995, was not raised at the point of entrance or registration of title in 1995. As to the estate of the late Julius Chege Kiongo, after the decree in Kitale HC No. 100 of 1999 (O.S) was confirmed by the Court of Appeal in 2005, the ten acres vested with the estate. There is no evidence of eviction or notice to vacate given then and up to date against the 1st, 2nd, 6th, 7th, and 8th defendants.
252. The plaintiff having unsuccessfully exercised the right of appeal in 2005 against the 1st defendant and not challenged the registration of the 2nd defendant's title in 1995 after the surrender and the rectification of the register and her deceased husband's title by the 4th defendant, cannot turn around to this court to launch an attack upon those decrees, by filing a fresh suit on account of fraudulent registration, forceful eviction or wrongful occupation, and for the restoration of the land after 12 years, without tangible and cogent evidence. To allow such a claim would, in the view of this court, be quite subversive to the principle of law of finality, indefeasibility of title, and regularity of statutory duties. See *Dr. Ngok (supra)*, *Fanikiwa (supra)*, and *Kenya Hotels Properties Ltd v Attorney General & Others* Petition No. 16 of 2020.
253. On the other prayers sought in the two consolidated suits, the rule of thumb is that parties are bound and must abide by their pleadings. See *Charles Muturi Macharia & Others v The Standard Group & Others* SCOK Petition No. 12 (E015) of 2022, the court cited *Raila Odinga v IEBC & Others* [2013] eKLR, that Article 15(a)(2)(d) of *the Constitution* was never meant to oust the obligation of litigant to comply with procedural imperatives as they seek justice from the court. The court has found the suits against the defendants statute-barred.
254. The court has also found that the 1st, 2nd, 6th, 7th, and 8th defendants' title deeds are not impeachable in law. The 2nd, 6th, and 7th defendants have submitted that the suits by the plaintiff were initiated based on a false hypothesis of facts and not on the true state of things regarding the status of plot No. 11 in 1965, 1995, 1996, 1997, 2005, and 2014, and at the filing of the suits in 2016 and 2019. A declaratory judgment in a court issued judgment that defines and outlines the rights and obligations of each party regards the legal question presented.
255. The court has made a finding that the plaintiff has failed to substantiate any legal or equitable rights over plot No. 11. PW1 told the court that her late husband was allocated the land by the defunct Settlement Fund Trustees in 1965. The applicable law at the time was Section 175 of the Agriculture



- Act (repealed). The plaintiff has not tendered the letter of offer, its terms and conditions at the time, acceptance letter for 14.8 Ha. The plaintiff told this court that her late husband was not shown the exact land location by the officers of the Settlement Fund Trustees at the time of taking possession and developing the suit land. Evidence from the allocating authority on the manner, terms, and conditions of the offer letter, compliance with the procedures of taking possession, and the placement of the plot on the map was not called by the plaintiff.
256. The area map that was drawn in 1965 and the final area list prepared by the Settlement Fund Trustees in 1965, showing both the acreage and the location on the ground, was not availed. The court expected the plaintiff to avail all those documents to show that there was a lawful allotment of 14.8 Ha, perfection of the offer through a discharge of charge and full compliance with the same, both on paper and in a particular parcel on the ground as per the map of 1965, which unfortunately was fraudulently altered to her late husband detriment to be entitled to declaratory reliefs is lacking.
257. In *Lawrence Sese Mosigisi v The Settlement Fund Trustees & Another*[2010] KEHC 994 [KLR], the facts were similar to the instant case, unlawful redrawing of the area map, and a relocation of a portion had been raised. The mistaken belief of the portion occupied had been raised. Defence of limitation has been raised. A former suit had been filed but withdrawn. The court found the plaintiff's case unsubstantiated for lack of documentary evidence from the allocating authority.
258. In this suit, the beaconing of plot No. 11 in favour of the late Julius Chege Kiongo in 1965, both on the ground and on the paper trail of the allocating authority, should have been the starting point to link the pleadings, evidence tendered, and the basis of issuing declaratory reliefs.
259. PMFI-12 was not produced by the maker. Documents marked for identification as held in *Ken Nyaga v Austine Kiguta* (supra) cannot amount to an exhibit. The maker did not attach to it any provisional maps, or final maps, and the area list as to 1965 and before the land was discharged in 1995. Survey maps are the ones that locate parcels of land on the ground. There is no evidence that the plaintiff had sued or complained against the Settlement Fund Trustees as the chargee for the forceful eviction and relocation of the plot under Section 167 of the repealed Agriculture Act Cap 318. See *Eliud Nyongesa Lusena & Another v Nathan Wekesa Omocha* [1994] eKLR and *Boniface Oredo v Webomba Mukile* Civil Appeal No. 170 of 1989.
260. Evidence that the tile holder obtained the title documents illegally, unprocedurally, or through fraud, in which the plaintiff had to prove through tangible and cogent evidence under Section 26(1) of the [Land Registration Act](#). The bottom line is that the plaintiff had to prove that the deceased husband was a lawful allottee for plot No. 11, later title No. Trans Nzoia/Cherangani/11 and its resultant subdivision held by the 1st, 2nd, 6th, 7th, and 8th defendants. See *Kamau Mbogo v Settlement Fund Trustees* [2019] KEELC 4765 [KLR].
261. The exhibits produced by the plaintiff as exhibits as held in *Ken Mwangi* (supra), became proved or disapproved when the court applies its judicial mind to determine the relevance and veracity of their contents. Makers of the documents were not called by the plaintiff to formally produce them, and for cross-examination to prove the existence of the facts relating to fraud. A case succeeds on its strength and not the weakness of the adversary. See *Botwa Farm Co. Ltd v Settlement Fund Trustees, Another* Civil Appeal No. 100 of 2015. The court cannot, therefore, order cancellation of the titles issued by the 3rd and 4th defendants and held by the 1st, 2nd, 6th, 7th, and 8th defendants without proof of their fraudulent acquisition.
262. I think I have said enough that the reliefs sought by the plaintiff in the two consolidated suits are lacking merit. The suits are therefore dismissed with costs to the 1st, 3rd, 4th, 5th, and 6th defendants.



263. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 22ND DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Mr. Mwenesi for the 1st defendant in 108 of 2016 and 6th and 7th defendants in 34 of 2019 - present

6th and 7th defendants - present

Teti for the plaintiff- present

Chilaka for the Hon. Attorney General, 2nd, 4th, 5th defendants -absent

8th defendant in 34 of 2029- absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

