

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**

**ELC CASE NO. 29 OF 2024**

**(FORMERLY NAKURU ELC 149 OF 2017)**

**JAMES MUNYUA WAMUGI & ABBY NYAMWATHI (Suing as the administrators of estate of JOSEPH JAMES MUNYUA).....  
.....PLAINTIFF**

**VERSUS**

**STEPHEN KAMAU KAIRU ..... 1<sup>ST</sup>  
DEFENDANT**

**NAIVASHA UNITY FARMERS CO. LTD.....2<sup>ND</sup>  
DEFENDANT**

**THE DISTRICT LAND REGISTRAR,  
NAIVASHA REGISTRY.....3<sup>RD</sup>  
DEFENDANT**

**KENYA COMMERCIAL BANK LTD.....4<sup>TH</sup>  
DEFENDANT**

**OFFICE OF THE ATTORNEY GENERAL.....5<sup>TH</sup>  
DEFENDANT**

**AND**

**THE NATIONAL LAND COMMISSION.....3<sup>RD</sup>  
PARTY**

**JUDGEMENT**

1. Vide a Complaint dated the 3<sup>rd</sup> April 2017 and amended on the 6<sup>th</sup> April, 2023, the Plaintiff herein sought judgement against the Defendants for the following orders:

- i. A declaration that the transfer, registration and issuance of the title deeds in respect of Naivasha/Maraigushu Block 18/660 and 659 in favour of the 1<sup>st</sup> Defendant and subsequent creation of the charge was fraudulent and

therefore null and void.

- ii. An order compelling the 3<sup>rd</sup> Defendant to cancel the title deeds of Naivasha/Maraigushu Block 18/660 and 659 issued to the 1<sup>st</sup> Defendant and the same be registered in the name of the Plaintiff.
  - iii. An order compelling the 4<sup>th</sup> Defendant to cancel the charge registered against the title numbers Naivasha/Maraigushu Block 18/660 and 659.
  - iv. An order for permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their agents or servants from interfering with the suit property and deliver vacant possession to the Plaintiffs.
  - v. Costs of the suit.
  - vi. Any other relieve that the Honourable Court may deem fit and just to grant.
2. Upon service, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their Amended Defence and Counterclaim (2<sup>nd</sup> Defendant) dated 5<sup>th</sup> December 2022 denying the contents contained in the amended Plaintiff while putting the Plaintiffs to strict proof while contending that the suit parcels of land had not been identified through ballots but through purchase from Simon Thuo Kairu. They denied that Plot Nos. 725 and 726 were registered as Naivasha/Maraigushu Block 18/660 and 659 respectively. That there had been no perimeter fence or temporary structures on the suit lands and neither had the Plaintiffs or their parents been in possession or occupation of the suit lands at any one time. Lastly, that the Plaintiffs' case was statute time barred.
3. In its counterclaim, the 2<sup>nd</sup> Defendant (now the Plaintiff) claimed against the Plaintiffs (now Defendants) a sum of Kshs. 23,696/= on account of outstanding balance on share capital, fees and disbursements with regard to parcels of land known as Naivasha/Maraigushu Block 18/540 and 607 which it had paid on their behalf and whose full particulars were well within their knowledge.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants thus prayed for orders that:

- i. The Plaintiffs' case be dismissed with costs.
  - ii. Judgement be entered for the 2<sup>nd</sup> Defendant against the Plaintiffs in the sum of Kshs. 23,696/= as per the Counterclaim.
  - iii. Costs and interest.
5. The 3<sup>rd</sup> and 5<sup>th</sup> Defendants vide their Statement of Defence dated 3<sup>rd</sup> April, 2023 denied the contents contained in the amended Plaint putting the Plaintiffs to strict proof. They argued that if at all the transactions that the Plaintiffs had alluded to had occurred, then the same had been due to misrepresentation of facts and fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
6. They particularized fraud against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as:
  - i. Presenting forged document to the officers of the 3<sup>rd</sup> Defendants;
  - ii. Misrepresenting facts to the 3<sup>rd</sup> Defendants;
  - iii. Deliberately concealing facts from the 3<sup>rd</sup> Defendant.
7. The 3<sup>rd</sup> Defendant further stated that it was not an expert in detecting fraud and could not, and was not mandated to either investigate or detect if the documents presented for registration at their offices had been forged, and that its duties were limited only to its statutory duties. They thus prayed that the Plaintiffs' claim against them be dismissed with costs.
8. The 4<sup>th</sup> Defendant in its Statement of Defence dated 22<sup>nd</sup> November, 2023 also denied the contents contained in the Plaint putting the Plaintiffs to strict proof. It argued that it had registered a valid charge over the land Title number Naivasha/Maraigushu Block 18/660 (Naivasha Unity) after conducting due diligence to establish the ownership and therefore it had not been a party to any other intention alluded to by the Plaintiffs. That indeed, the name of the Plaintiff did not feature anywhere in the records preserved by the land registrar Naivasha. That it was not a party and had not been aware of any fraud if any, in the process of acquiring the title deed as their interest in the land was only to the extent of the legal charge registered in its favour.
9. That the court lacks the requisite jurisdiction to entertain any dispute

between it and the Plaintiff over the subject matter, the case against it having been withdrawn vide a consent dated 27<sup>th</sup> March 2018 and filed in court on 29<sup>th</sup> March 2018. It thus prayed that the Plaintiff's suit against it be dismissed with costs.

10. In response to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Amended Defence and the 2<sup>nd</sup> Defendant's counterclaim, the Plaintiffs confirmed that the 1<sup>st</sup> Defendant bought one share, in the year 1979, presented as Plot No. 728, from Naivasha unity. In the year 1998, he bought plot No. 727 from Paul Wanyoike Kiarie which was adjacent to his plot No. 728, in 1999 he bought plot No. 662 from Philip Gichuhi which plot was far from the other two plots.
11. That Plot No. 728 which was the 1<sup>st</sup> Defendant's residence was currently parcel No. 657 and had a ballot number. That plot No. 727 was currently parcel No. 658 and lastly, plot No. 723 was currently parcel No. 662. That it was common knowledge that in any known survey mapping work there should be a sequence hence the parcels next to parcel No 727 ought to be, No. 726 and 725.
12. Ballot numbers e.g., 728, 727, 726, 725 identified the parcels before the Registry Index Map (RIM) was produced in 2004 and 2010.
13. That membership of Naivasha unity was identified by membership numbers wherein Wamugi was member No. 01692 and 01692 while Stephen Kamau was No. 0341B. That the same had been affirmed by the payment receipts and membership register. They thus urged the court to find that the Defence was misguided and not factual and dismiss the same.
14. In response to the 2<sup>nd</sup> Defendant's counterclaim, the Plaintiffs stated that the two titles, Naivasha/Maraigushu block 18 (Naivasha Unity) 540 and 607 which were dubiously presented to them, were rejected resulting in the instant suit. That the same had then been surrendered to the National Land Commission through the County Land Management board secretary. That there had been no documented evidence on the counter claim neither were there demand notes, invoices or official claims by the 2<sup>nd</sup> Defendants. That however, each parcel was costing Kshs. 8,600/= thus the 2 parcels of land were Kshs. 17,200/= and which had been affirmed by a document by Top

Card surveys that had been annexed by the 2<sup>nd</sup> Defendant.

15. That the 2<sup>nd</sup> Defendant had registered the transfer on 18<sup>th</sup> February 2003 wherein the 1<sup>st</sup> Defendant had entered into the said suit parcels in the year 2004. That the issue of the suit being statute time barred could not stand as there had been a Tribunal proceeding in the year 2009, a period of 5 years after the 1<sup>st</sup> Defendant's illegal/fraudulent entry into the suit plots. That the Plaintiffs had been using the parcels of land to farm during the period of 1981 to mid-1980s wherein they had erected a fence and had built a house. They thus denied the 2<sup>nd</sup> Defendant's counter claim.
16. In response to the 3<sup>rd</sup> and 5<sup>th</sup> Defendant's Defence, their stand was that the first batch of the registry index map for Naivasha Maraigushu Block 18 (Naivasha Unity) release letter was dated 6<sup>th</sup> April 2004 while the second batch which contained the parcel numbers 659 and 660 had been released on 5<sup>th</sup> May 2010. That the title deeds had been processed for the 1<sup>st</sup> Defendant on 16<sup>th</sup> November 2004. That there were no documents, ballots, payment receipt that had been presented for registration in respect of plot 726 which was adjacent to plot No. 727 (now 658) and plot 725 (now parcel 661)
17. The third party neither entered appearance nor filed any Defence.
18. The matter proceeded for hearing on the 5<sup>th</sup> June, 2024 wherein PW 1, James Munyua in his opening remarks stated that he and his sister Abby were the Plaintiffs in the matter. That in the present case, they intended to show the court that although Joseph Wamugi, their deceased father was a shareholder and owner of two parcels of land within Naivasha Unity Company, the 1<sup>st</sup> Defendant had fraudulently acquired title deeds to the said two plots.
19. That they also intended to prove that the 2<sup>nd</sup> Defendant had given them land that had not been balloted for and which parcels of land had been rejected hence the National Land Commission (NLC) was holding them. That lastly, they intended to prove that the 4<sup>th</sup> Defendant (KCB) had charged the two contested titles in favour of the 1<sup>st</sup> Defendant for a loan of Ksh. 1,000,000/=.

20. Subsequently, they had moved the court for redress so that the two title deeds could be revoked and given to them as the rightful owners.
21. He then proceeded to testify that he was in court on behalf of his mother who had initiated the case and that he was one of the administrators to the Estate of their father Joseph Wamugi who had died on 31<sup>st</sup> July 1987. He produced the Death Certificate as Pf exh 1. That following his death, they had been issued with the letters of administration by the High Court in Nakuru Succession Cause No. 189/1992 on 21<sup>st</sup> July 2022. He produced the rectified Confirmation of Grant as Pf exh 2.
22. He testified that his father Mr. Joseph Wamugi (Deceased) bought two shares in Naivasha Unity Farmers (the Company) between the years 1975 and 1979 wherein he had been allocated two plots, being Nos. 725 and 726 in the year 1979.
23. That however, in the year 1979 the company called all its members for balloting so as to be shown their pieces of land wherein his father, who had been involved in an accident in February of that year and was bed ridden due to a spinal injury, sent his cousin Mr. Hiram Ndirangu, who was also a shareholder in the company, to do the balloting for him. Subsequently, Mr. Ndirangu had balloted for the two plots being Nos. 725 and 726.
24. That in the year 1981, they had started farming on the land which measured about 1 acre wherein they had fenced the same and put up a house, however around the year 1985, they stopped farming on that land because their mother was busy nursing his father while he and his siblings were in school.
25. That during this time, the ballot identification had been used as plot numbers until the year 2004 when the Survey of Kenya provided the RIM for Nos. 2 up to 500 within Naivasha Unity except for a few plots but in the year 2010, they had provided the RIM for the rest of the plots being Nos. 501-800 wherein their two plots was included in the second batch of the RIM.
26. That upon the change of the numbers, their plots changed from No. 725 and 726 to parcels No. 660 and 659 respectively. Members were issued with their respective title deeds wherein the 2<sup>nd</sup> Defendant had refused to give

out their title deed claiming that their father had not been a member of the company. In the year 2008, in pursuit of their titles, they had reported the matter to the District Commissioner (DC) who had referred them to Naivasha District Land Tribunal. He produced the RIM as Pf exh 3 and the balloting papers as Pf exh 4 (a - b).

27. That in December of 2010, the 2<sup>nd</sup> Defendant had been instructed to give their mother the two titles. That he did not have the ruling of the Tribunal because the office had been reluctant to give the same to them, he asked that the court directs the office to give them the said ruling.
28. That following the said instructions, the 2<sup>nd</sup> Defendant allocated them two plots being Nos. 540 and 607 wherein the titles had been registered to their mother's name Naomi Wairimu. He produced the copies of the titles as Pf exh 5 (a-b). That whereas the 2<sup>nd</sup> Defendant was to give them the new numbers to their original plots, they found out that the 2<sup>nd</sup> Defendant was trying to relocate them to another area which was not where they originally used to farm.
29. That they rejected the new titles and went back to the sub-county Commissioner who directed them back to the land Tribunal but unfortunately, they found that the same had been disbanded. Subsequently, the Commissioner referred them to the National Land Commission (NLC) in Nakuru wherein they been issue summons on 11<sup>th</sup> March 2016 to appear before the Nakuru County Land Management Board. He produced the letter summoning them as Pf exh 6.
30. That him, his sibling Abby and their mother appeared before the board wherein Kamau, the 1<sup>st</sup> Defendant, had also been present. That the board made a decision in their favour although they had later been informed that it had no mandate to proceed with the sitting. That they only got a draft of the decision. That the Commission had then advised them to surrender to them the title deeds for plot Nos. 540 and 607 so that they could assist with the cancellation of the same which titles they had returned vide a letter dated the 28<sup>th</sup> May 2019 and which letter he produced as Pf exh 7.

31. He produced receipts to show payment of the shares and payment of survey work, as evidence that that their father was a member of Naivasha Unity Farmers, as Pf exh 8 (a-r). He also produced a copy of the register to Naivasha Unity farmers that indicated his father as member No. 01691 and 01692, as Pf exh 9.
32. He stated that all they wanted from the court is the revocation of title Nos. 659 and 660 registered to the 1<sup>st</sup> Defendant and that the same be registered to their mother Naomi Wairimu, and the recalling and cancellation of the two title deeds being held by the National Land Commission because they were not theirs.
33. That in relation to the 4<sup>th</sup> Defendant, that the charge on plot No. 659 be cancelled so that the same is deposited in court.
34. During cross-examination by the Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, PW1 confirmed that he was aware that there was an MP for Naivasha, one Mr. Samuel Thuo Kairu who used to sell land between the years 1975 and 1979 and that he would issue the buyers with receipts bearing the name of Naivasha Unity Farmers Company. That Samuel Thuo Kairu was in the process of buying the land from Aberdares Estate Limited.
35. When he was referred to Pf exh 4 (a - b), he confirmed that the said ballot papers were issued by Naivasha Unity Farmers Company because his father, Ndirangu and Stephen were members who had the same ballot papers. That the MP Thuo was the leader of Naivasha Unity. That the people who had balloted for the land including his father were shown the land after which they settled on them. That however, he was not aware that in the year 1988 Aberdare had issued notices to those people to vacate from the land for being trespassers.
36. That he was however aware that the people who bought the land had come together in the year 1998 to find its legal position where they had contributed for survey work. The evidence was as per the receipt he had produced. That he was also not aware that Naivasha Unity Farmers was not a legally registered company but knew that it had been incorporated on 16<sup>th</sup>

May 2000 as per the certificate of incorporation which he marked as DMFI 1. By then, his father was deceased.

37. When he was referred to Pf exh 8, he confirmed that the receipts had been issued from the years 1975 to 1979 by Naivasha Unity Farmers before the incorporation. His response on being referred to his statement at paragraph 9 was that although in the year 1979, his parents were living in South Kinangop yet they had they had fenced and were cultivating the land in Naivasha.
38. That he knew the 1<sup>st</sup> Defendant whose plot was No. 728 and that they had been neighbors since the year 1979. That the said 1<sup>st</sup> Defendant was the one who had been illegally cultivating on plot Nos. 659 and 660. That whilst he had fenced the land between the years 1981 and 1983 when he was 8 years old, the 1<sup>st</sup> Defendants entered the land around the year 2004.
39. When he was referred to Paragraph 10 of his statement, he confirmed that the fence and farm structures had been vandalized by 1<sup>st</sup> Defendant around the year 1983 but where they had not taken immediate action because his father had been unwell. He added that he thought that the 1<sup>st</sup> Defendant had been very happy about that.
40. He confirmed that his father passed away in the year 1987 wherein three years later, they had been asked to pay for the survey fee which they did in the year 2000 and which payment had been received by the Unity company. That they had utilized the land up to the year 1985. He maintained that he was the one who had fenced the land and that Unity farmers had been incorporated in the year 2000.
41. He was categorical that the shares could have been sold but not at Kshs. 20,170/= per share. That 1 (one) share was equivalent to one (1) acre parcel of land. That he was also aware that once a shareholder bought shares, they were issued with share certificates.
42. In reference to DMFI 2, he confirmed that the share had been issued to Stephen Kamau Kairu and that it had a share certificate No. 099 for 3 shares that had been issued in the year 2001. His response in reference to DMFI 3

was that the same was also a Share Certificate No. 0128 by Naivasha Unity Farmers Limited that had been issued on 4<sup>th</sup> February 2003.

43. That they had lodged a dispute with the Tribunal because they did not have the share certificate issued by the 2<sup>nd</sup> Defendant and that the two share certificates had been obtained fraudulently. He confirmed that the land was surveyed in the year 2000.
44. When he was referred to DMFI 3, he confirmed that the same was a letter from QPCAD Surveyors dated 14<sup>th</sup> April 2000 and that he was aware that they were the ones who had undertaken the survey. His response in reference to page 1 (1.1 Planning and approval) was that the method used meant that if there had been a development on the land, the same was left as it was. He however testified that during that year to date, there had been no development made on the two parcels of land.
45. That there were no trees in the year 2000, but that some had been planted in the year 2004 and wherein someone had even blocked the entrance. That the 1<sup>st</sup> Defendant had not been allocated 4 plots after the survey.
46. He reiterated that he did not have the proceedings of the Tribunal despite having personally attended wherein after they had gone to the National Land Management Board, and thereafter written a letter to the District Land Registrar requesting for a members' Register. That subsequently, vide a letter dated 4<sup>th</sup> October 2016, the members' register had been attached and forwarded which register covered plot Nos. 659 - 669. That the said members register had shown that Stephen (1<sup>st</sup> Defendants) had been allocated plots Nos. 656 to 660.
47. He admitted that his father's name did not appear in the Register. That however, the parcels of land Nos. 725 and 726 had been converted to plot Nos. 659 and 660. That the RIM had shown the same and since the land does not move, the 1<sup>st</sup> Defendant's residence had been on parcel No. 728 and was still there. On further probe, he admitted that the RIM was not complete but they had a complete copy. That whereas the same did not have plot Nos. 725 and 726, it contained plot Nos. 660 and 659.

48. That whilst there had been no notes stating the conversion on the RIM, there had been a letter from the Surveyor stating that all numbers had been changed. He however confirmed that he did not have a map showing the position of the land during the balloting and neither was he aware that by the time the matter went before the Tribunal, they had only paid for one share.
49. That whereas they had paid around Kshs. 17,000/=, it was not true that the 2<sup>nd</sup> Defendant had been asked to pay for his mother who was a widow. That people had been given land because they were shareholders not widows. He admitted that the title deeds had been collected from the Tribunal and that they had paid the amounts sought for by the 2<sup>nd</sup> Defendant. That in any case, they could not have been issued with the two titles if they had not fully paid.
50. That had refused to go to the new land because they knew the location of their land. He confirmed that plot Nos. 540 and 607 did not reflect on the RIM in sheet No. 1 although there were other sheets. That nonetheless, they never bothered to locate the new land on the ground because that was not their land. That whereas they had been before the Tribunal in the year 2008, the 1<sup>st</sup> Defendant had entered the land in the year 2004 when he got the title. He confirmed that the fence had been demolished after the year 1985 before which they had been farming on the land.
51. When he was cross-examined by the Counsel for the 4<sup>th</sup> Defendant, he confirmed that the title for plot Nos. 660 and 659 were in the names of one Stephen Kamau. That whereas it was the Bank's position that it was not aware of any fraud, it ought to have conducted due diligence before giving out the loan which had been advanced in the year 2010 in the pendency of an existing caution on the land.
52. Abby Nyamwathi Wamugi, testified as PW2 to the effect that they had jointly filed the instant suit with PW 1 her younger brother. That they had recorded and signed a joint statement with PW1 dated 6<sup>th</sup> April 2023 which statement she adopted as her evidence in chief. That she knew the Defendants. That their complaint was that they had been given titles to land

parcels Nos. Naivasha/Maraigushu Block 18/540 and 607 which land was not on the ground.

53. That the 1<sup>st</sup> Defendant was in occupation of their land. That they had balloted for land parcels Nos. Naivasha/Maraigushu block 18/659 and 660 which balloting had been done by Hiram Ndirangu Ngángá on behalf of their father Mr. Joseph Wamugi James Munuyua who injured after he had been involved in an accident.
54. She testified that Hiram had balloted for plot Nos. 725 and 726 which land they had been shown its position on the ground wherein they had even planted beans from the year 1981 to 1983. That the land had also been fenced with barbed wire and mutarakwa posts wherein they had even built a temporary house out of off-cuts.
55. That they left ploughing on the land, and concentrated on farming in Kinangop where they had been living, because her father was sick and her siblings were in school. That when they went back to the land, it had grown bushes and there was a live fence planted, somebody had blocked the road by digging a long trench thus cutting off access.
56. Upon making inquiries from a neighbour who lived one *shamba* away from their land, they had been informed that one Mr. Stephen Kamau was the one who had trespassed. That he had told them that the land had been allocated afresh wherein he now owned the two parcels of land. That when they approached the 2<sup>nd</sup> Defendant, they had been told that they had no land, despite the fact that they had the ballot and receipt at the time.
57. Her evidence was that they had gone to see the District Officer in Naivasha who had advised them to go to the land Tribunal where the 1<sup>st</sup> Defendant had also appeared and the matter was heard. That Mr. Maina, Chairman and Mr. Wahome, the secretary of the 2<sup>nd</sup> Defendant had also been present. That the Tribunal's award had been that the 2<sup>nd</sup> Defendant gives them the land.
58. That subsequently, the 2<sup>nd</sup> Defendant had processed two titles for plot Nos. 540 and 607 in the name of Naomi Wairimu Wamuge (their mother) which titles (Pf exh 7) had been received by her mother around the year

2013. She explained that her mother had been registered to the title because at the time, their father was deceased and their mother was the administrator.

59. That on the way to being shown plot No. 607 and 540, they bypassed plot No. 659 and 660 wherein her mother stopped and said that she did not want to be shown another person's land. That the 2<sup>nd</sup> Defendant did not explain why they did not get their land but just said that it had been a mistake. She confirmed that the new titles were not where plot numbers 659 and 660 were located.
60. That they had subsequently returned the titles to plot No. 540 and 607 to the National Land Commission since that was not their land. That they sought from the court that the same be exchanged with their parcels of land No. 659 and 660 because their land was still available. That in the meantime, titles to land Nos. 540 and 607 which were in the custody of the National Land Commission be given to their owners.
61. Her evidence was that using their titles Nos. 659 and 660, the 1<sup>st</sup> Defendant had taken a loan of Kshs. 500,000/= for one title and another Kshs. 500,000/= from the 4<sup>th</sup> Defendant during the pendency of the land Tribunal dispute. That vide a consent dated 27<sup>th</sup> March 2018 the bank had returned one title, that is No. 660 to the Nakuru Court but retained title No. 659. She confirmed that whereas both titles were still in the name of Stephen Kamau, they would like the land back. That they were not party to the exchange of the land.
62. When she was referred to the rectified letters of administration dated 21<sup>st</sup> July 2022 and rectified certificate of confirmation of grant dated 21<sup>st</sup> July 2022, she explained that the said documents had allowed herself and her brother PW 1 to represent her father's estate and to proceed with the instant matter because their mother could not. She produced them as Pf exh 10 (a) and (b).
63. In referred to registry index map, she confirmed that the same referred to Naivasha/Maraigushu Block 18 Naivasha Unity which was the land that belonged to Unity, the 2<sup>nd</sup> Defendant herein. That she could see where their

land was along the railway, that is plot numbers No. 659 and 660 and that the said land was between Naivasha Maai Mahiu and the railway. She produced the map as Pf exh 11 and stated that the same had been stamped with the government stamp of 8<sup>th</sup> November 2024.

64. When she was cross-examined by the Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, in reference to Pf exh 8, she confirmed that the receipts showed that her father had paid sums to the 2<sup>nd</sup> Defendant in the year 1979 by which time she had been over 18 years old. She confirmed that the receipts had the 2<sup>nd</sup> Defendant's name.
65. That she did not know whether in the year 1979 one Simon Thuku Kairu, the Naivasha MP had been issuing receipts to members of the public. That all she knew was that they used to get the receipts from the 2<sup>nd</sup> Defendant's offices. She acknowledged that there was some money that they were to pay because the company was being registered afresh.
66. When she was shown the 2<sup>nd</sup> Defendant's Certificate of Incorporation (DMFI) she confirmed that the 2<sup>nd</sup> Defendant had been registered on 16<sup>th</sup> May 2000 wherein her father had passed away in the year 1987 before the registration of the 2<sup>nd</sup> Defendant.
67. She confirmed that although balloting by Unity farmers had been done around the year 1979 yet she had not produced any evidence to show that at the time of the balloting in the year 1979, survey had been done on the land. That further, she had not produced a map to show that plot numbers 725 and 726 were on the ground at the time the ballot had been done.
68. That whereas she did not know the survey map that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's counsel was talking about, the survey map that she had was the one whose numbers had been exchanged. She explained that ballot Nos. 725 and 726 had been changed to reflect Nos. 660 and 659 by the surveyor. That however, she could not get the documents to show the said changes as she thought that the said documents were with the Defendants.
69. She confirmed that they had gone to the NLC who had written to the Land Registrar calling for the Company's Register. That subsequently, the Land Registrar had given the NLC an extract of its register vide a letter

dated 4<sup>th</sup> October 2016.

70. Her response on being referred to DMF 5 - the 2<sup>nd</sup> Defendants Register was that the same was a certified copy of the original and that it had the stamp and signature of the Naivasha Land Registrar showing that parcel Nos. 659 and 660 belonged to Stephen Kairu, the 1<sup>st</sup> Defendant herein.
71. She confirmed that she knew nothing concerning Simon Kairu or Aberdare Limited. That she only knew Naivasha Unity to whom she had paid money in July of 2000 on behalf of her father in completion of payments. That whereas her father had completed the payment in the year 2002, they had not been issued with the share certificates.
72. When she was referred to DMFI 2, she confirmed that the Certificate was given to the 1<sup>st</sup> Defendant. That she did not know that one (1) share of the company was equivalent to Ksh. 20,170/=. That whereas they had paid Kshs. 17,000/=, she was not sure of the total amount paid and neither did she know that that the amount paid had not been enough for one share.
73. She confirmed that she used to accompany her mother to the Tribunal where the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were also in attendance. She however denied that her mother had been informed by the Tribunal that she had not completed payment for one share or that the Tribunal had asked the company to give one share to her mother because she was a widow.
74. She contended that her mother would not have been given a title if she owed the company. That the company had agreed that once the titles were out, she would be shown her land. She confirmed that her mother was with the Chairman one Mr. Maina who was taking her to see her plot, when she refused to go further after passing her land.
75. She also conceded that she did not know that the survey had been conducted in the year 2000 and that she would not know whether there had been an agreement with the company to give land where one had built which would then apply to churches, schools etc.
76. She maintained that between the years 1981 and 1983, they had ploughed on the land and had even put up a small house which they found had been demolished when they went back in the year 2011. She explained

that from the year 1983 they used to go to the land but they could not access it because it had been fenced by the neighbour.

77. That they had complained at the Tribunal in the 2008 when the company officials had told them that they had no land. That she was aware that titles Nos. 1 - 500 had been released in the year 2004. That however, it was in the year 2011 that they had known that their titles had been issued in the year 2010. That they did not have any invoice from the company claiming from them its debt of Ksh. 23,696/= otherwise they would have paid upon proof.
78. When she was cross-examined by the counsel for the 4<sup>th</sup> Defendant, she confirmed that the titles herein were registered in the name of Stephen Kairu, the 1<sup>st</sup> Defendant herein.
79. That although at the time that the 4<sup>th</sup> Defendant gave the loan to 1<sup>st</sup> Defendant, the titles did not contain either of their family names, the 4<sup>th</sup> Defendant ought to have conducted due diligence before giving out the said loan.
80. In re-examination, she confirmed that the 4<sup>th</sup> Defendant ought to have known the ground and status before giving out the loan. That in any case, the matter had been in court when the 4<sup>th</sup> Defendant had taken the security.
81. She confirmed that plot Nos. 725 and 726 were related to plot Nos. 659 and 660 because at the time of the ballot, the land had followed in sequence. That the Surveyor had used the ballot papers to make Registry Index Map with Nos. 659 and 660.
82. She confirmed that the Naivasha Land Commission had written a letter to the land Registrar Naivasha who had sent them a register showing them the members of the company. That plot Nos. 659 and 660 was registered to the 1<sup>st</sup> Defendant despite there having been recorded that the land was disputed.
83. She reiterated that they owed the Company nothing as they had paid all the dues wherein, they had been issued with titles. She however maintained that if the 2<sup>nd</sup> Defendant could prove that they had the debt, then they were ready to pay. That the receipts of the year 1979 and the registration of the

company in the year 2000 did not show any difference since it was the same transaction. That further, they did not dispute the receipts at the time the titles were issued.

84. PW 3 one Hiram Ndirangu Nganga adopted his witness statement dated 1<sup>st</sup> November 2023 as his evidence in chief and proceeded to testify that he knew both PW1 and PW2 who were his brother's children. That his brother was called Joseph Wamugi Munyua who was a member of Unity Farmers. That he knew that the said James had shares because James was in Mombasa and would send the money which he would pay for him to the director and he would then be issued with receipts.
85. That he had balloted for his brother whose share was Nos. 725 and 726 which were the numbers on the ballot after which the director at the time had showed him the land on the ground. That the ballot numbers had changed to 659 and 660 in the 1980's. He explained that at the time, his brother had been involved in an accident, wherein he had shown his brother's wife and children their land.
86. That he too was a shareholder in the company and although he could not remember the plot number for his land, it was about 6 parcels of land from his brother's land. That one share was equivalent to 2 acres of land.
87. When he was cross-examined by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, he maintained that Joseph Wamugi was a member and shareholder of the company stating that for one to be a shareholder, one had to pay some money and then be issued with a share certificate. That one could neither be given a ballot paper or land without a certificate. He confirmed that the first receipts had been received in the year 1982 and that he did not know that the company had been registered in the year 2000.
88. He also confirmed that he knew the 1<sup>st</sup> Defendant who was his neighbour and who had lived on his land since the year 1979. That he had three parcels of land in that area wherein he had "joined" them together with his brother's two parcels of land and then fenced them between the years 1980 to 1983, when he heard about the accident, and had been using the land from the time he "joined" them to date.

89. That initially his brother's family used to plough the land but after the accident, they stopped using it. He confirmed that his brother had died in the year 1987 and when the 1<sup>st</sup> Defendant took the land, his brother's children were the ones who used to deal with the matter. That between the years 1983 to 2008 they did not know that the land had been taken since they lived far. He maintained that he was a shareholder of the company and had titles to his own parcel of land.
90. That when he had balloted for plot Nos. 725 and 726, he was taken to the land by one Mwangi who was now deceased. That he had a map which had been used in the year 1979 which he could produce if it was not produced as an exhibit. That at the time, there had been two groups one where the 1<sup>st</sup> Defendant belonged and another that was run by the company wherein each had its directors. That whereas they had known that the 1<sup>st</sup> Defendant was buying land from Aberdare, he did not know if he had succeeded.
91. In his cross examination by the Counsel for the 4<sup>th</sup> Defendant, he confirmed that the land that he had been shown was now occupied by the 1<sup>st</sup> Defendant.
92. In re-examination he confirmed that he was shown the land by the director after balloting wherein his brother's children had ploughed it for about 4 to 5 years during which time he was in Nairobi. When he returned in 1985, he discovered that the 1<sup>st</sup> Defendant had dug a ditch that effectively cut off his brother's portion of the land wherein he informed his brother's wife and children about the defendant's action. He confirmed that the map of that land had been printed in the year 1979.

The Plaintiffs thus closed their case.

93. The 1<sup>st</sup> Defendant's case proceeded for hearing with the testimony of Stephen Kamau Kairu, the 1<sup>st</sup> Defendant herein who confirmed that he lived in Naivasha Unity Farmers. He adopted his witness statement as his evidence in chief and confirmed that he would rely on his list of documents. He then proceeded to testify that the case herein was in relation to plot Nos. 660 and 659, land which was sold to him by the former MP for Naivasha called Simon Thuo Kairu who sold to them shares and showed them where

the land was. That thereafter, they would wait for the survey before being issued with the title deed.

94. He explained that the said MP was using the name Naivasha Unit Farmers and would give them receipts. That he had bought one share at a cost of Kshs. 2000/= wherein Kshs 50/= was for registration as per the two receipts dated 11<sup>th</sup> October 1979 which receipts, he produced as Df exh 1 (a) and (b)
95. That on the 20<sup>th</sup> January 1999 he had bought another share from Phillip M. Gichui for plot No. 723 at Ksh. 110,000/= wherein he produced the sale agreement as Df exh 2. That Mr. Phillip had the following receipts; a receipt for registration for Ksh.50/= from Naivasha Unity Farmers dated 1<sup>st</sup> March 1975, a receipt of an even date for Ksh. 150/=:, a receipt dated 18<sup>th</sup> September 1976 for Ksh. 150/= and a receipt dated 3<sup>rd</sup> May 1979 for Ksh. 1550/= which receipts he produced as Df exh 3 (a-d)
96. That he had also bought a third share from Paul Kiarie Wanyoike for Plot No. 727 wherein Paul had given him a receipt dated 13<sup>th</sup> June 1996 for Kshs. 50/= and another receipt for registration fee of Kshs. 50 dated 29<sup>th</sup> December 1974. That he then had transferred the land from Paul vide a receipt dated 2<sup>nd</sup> February 2000 wherein he had paid Kshs. 1,000/= to the new company called Naivasha Unity Farmers. That he was given receipts dated 29<sup>th</sup> February 1974 for Ksh. 150/=:, 12<sup>th</sup> May 1998 for Kshs. 250/=:, 12<sup>th</sup> May 1998 for Kshs. 70/=:, 12<sup>th</sup> May 1998 for Kshs. 100/=: and a receipt dated 12<sup>th</sup> November 1998 for Kshs. 1850/= and which receipts he produced as Df exh 4 (a - h)
97. That in the year 1998, Aberdere Estate had informed them that Simon Kairu had not paid their money and they wanted them to leave their land. That subsequently, they had gone to the District Officer who had told them all to call for a meeting with Aberdere Estate so as to establish the truth. That they complied and it had been during the meeting that Aberdere Estate informed them that Simon had not paid them their money for which they wanted back their land and the buyers should vacate. That it had been then

that he had realized that the money that they had paid prior had been for land that belonged to Aberdere Estate.

98. That a Director of Abedere Estate sent them to his own Advocate, and they, in turn, hired their own Advocate, Elias Ng'ang'a. The two advocates met and decided that they should buy the land for a second time. That conducted an investigation which revealed that "Naivasha Unity Farmers," was not registered as a Company, and there were no related company records.
99. That the old men that they had sent to their advocates then decided to register them so that they could be on the negotiating table. That the Naivasha Unity Farmers Company Limited had then been registered on the 16<sup>th</sup> May 2000 as per the Certificate of incorporation No. C. 89764 which he produced as Df exh 5.
100. That the shareholder of the company who had been given the first priority was the person who had paid the Ksh. 2050/= and had built on the land, these were the people who had been coned and had paid to Simon Thuo. He explained that for one to be a shareholder in the new company, one had to pay Ksh. 20,170/= for one share which was equivalent to 1 acre.
101. That he had bought 3 shares in the new company and after completion of payment, he had been given a Share Certificate No. 099 dated 7<sup>th</sup> March 2001 which he produced as Df exh 6. He explained that the share certificate had no plot number because it was a new company.
102. That thereafter, he had bought another share from Boniface Muturi and paid Kshs. 20,170/= where he was given a Share Certificate No. 1028 dated 4<sup>th</sup> February 2003 which he produced as Df exh 7. That he had paid to the new company through both a cheque and cash wherein he had been issued with the following receipts.

- i. A receipt dated 26<sup>th</sup> October 2011 No. 2725 for Ksh. 12,000/=

- ii. A receipt dated 3<sup>rd</sup> February 2003 No. 2238 for Ksh. 1,000/=
- iii. A receipt dated 8<sup>th</sup> March 2001 No. 987 for Ksh. 520/=
- iv. A receipt is for 13<sup>th</sup> March 2002 No. 2041 for Ksh. 12,400/=
- v. A receipt dated 15<sup>th</sup> May 2001 No. 230 for Ksh. 500/=
- vi. A receipt dated 15<sup>th</sup> September 200 No. 456 for Ksh. 3,000/=
- vii. A receipt dated 11<sup>th</sup> December 2000 No. 757 for Ksh. 6,400/=
- viii. A receipt dated 15<sup>th</sup> May 2000 No. 205 for Ksh. 5,100/=
- ix. A receipt dated 24<sup>th</sup> January 2001 No. 921 for Ksh. 750/=.

The said receipts were produced as Df exh 8 (a - j)

103. That the survey of the land had been conducted between the years 2001 to 2003 by surveyors whom he could not remember. That he took possession of his land- Naivasha Unity in the year 1980 wherein he constructed built and took occupation. That at the time the land was going for 1 (one) acre for share. He explained that the two parcels of land that he had bought later bordered his land wherein he had fenced all the three parcels of land and had since been utilizing all of them. That later on, he had added a fourth parcel of land which he had bought from Boniface Muturi and which was also adjacent to his plots of land. That he was still in occupation and utilization of the said parcels of land.

104. That prior he did not know the deceased Joseph James Munyua, his wife Naomi Wairimu or their children, but in the year 2016 the children had gone to his shop and introduced themselves asking him whether he knew where their land was for which he had told them that he did not know because he was not interested. That was when he knew them. That nonetheless, he did not know whether they had built on plot Nos. 726 and 725 because he did not see any building or fence but it had been recently that he had seen them when they had gone to see the land.

105. That during the survey of the years 2001 to 2003, the surveyor had taken note of one's shares, and whether one had built or fenced the land. That after the survey had been done, he had been given his land but there was a wayleave where one could get into two titles in one share.
106. His evidence was that he had subsequently sub-divided one of his shares resulting into 5 titles being Nos. 656, 657, 658, 659 and 660. That plot numbers 658 and 659 were the small parcels of land measuring approximately 0.245 hectares wherein plot No. 660 measured 0.295 hectares and which plots had been registered to himself on 16<sup>th</sup> November 2004. He produced the titles as Df exh 9, 10 and 11 respectively.
107. He testified that he had also filed some photographs that depicted the trees and the fence in plot No. 650, 659 and 658 which photographs he produced as Df exh 12 (a - b). That he was cultivating on the 5 portions of land as he had stopped developing them when the instant case was filed. He confirmed to have been living in one portion of land since the year 1980. He denied having gone to the land District Tribunal and that it had been after the case had been filed that the Chairman of the Tribunal had informed him that Naomi Warium had been given 2 shares.
108. His testimony was that the title deeds to Plot Nos. 650 and 660 had been deposited with the 4<sup>th</sup> Defendant as security for a loan he had taken from the bank of Ksh. 500,000/= for each plot. That whereas he had completed repaying the said loan, the title deeds had not been returned to him because the 4<sup>th</sup> Defendant had informed him that there had been a dispute regarding the same.
109. During his cross examination by Counsel for the Plaintiff, he confirmed that he was the 1<sup>st</sup> Defendant and that his first plot was No. 598. That in total, he had 3 (three) plots which numbers ranged from left to right in a series that decreased. That he had constructed on plot No. 657 and that whereas the shares were issued using the old numbers, the land had been registered by the new numbers.

110. That the old number was 728 which numbers would decrease from 728, next 727 and then 723. That Plot No. 723 had become No. 657 when it was registered as Naivasha/Maraigushu/Block 18/657, that therein after he had got plot Nos. 727 and 723 and that plot No. 728 followed plot No. 727 from the left to right.
111. He explained that he purchased plot No 727 from Paul Wanyoike vide a sale agreement in a year he could not remember. That from plot No. 728 on the left side, he had bought plot No. 731 from Boniface Isaack Muturi which plot had become land parcel No. Naivasha/Maraigushu/Block 18/656. That thereafter, from Plot No. 728 to the right side was plot No. 727 which upon registration had become land parcel No. Naivasha/Maraigushu Block 8/658.
112. He clarified that the next plot was not No. 726 but 723 and that it was not true that on the left side of plot No. 726 was plot No. 725 and he did not have another plot after 723. That on the left of plot No. 728 was plot no. 731.
113. He explained that plot No. 727 had been subdivided twice before titles were issued because they contained a wayleave. That he had not produced any document evidencing that he had sought consent from the land Board Consent to sub-divide the Plot although the company also had the mandate to seek for the consent. That Phillip Gichuhi sold to him plot No. 723 which was not four (4) plots away from plot No. 727.
114. When he was referred to Pf exh 11, he confirmed that he could see the railway above plot Nos. 659 to 656. That from the left side of his Map, the plots begin at No. 656 wherein the last plot to the right is No. 660. He explained that plot Nos. 658 and 659 were a subdivision of one plot although the original map he had did not reflect the sub-division.
115. He further confirmed that he had bought plot No. 728 then 731, 727 and 723 wherein plot No. 727 and 723 had been bought during Kairo's time. That he had constructed on plot No. 728 in the year 1999. That the new company started in the year 2000 after he had bought plot Nos. 728, 727

and 723.

116. That the people who had been given the land and who had received their shares from the company had shown him the land. He confirmed that Naivasha Unity Farmers Company Limited, the 2<sup>nd</sup> Defendant herein was the new company and that the plots remained as they were before its incorporation. That he was a member/share holder of the new company.
117. That they had been given a Notice of Eviction by Aberdare Estate Limited who were the original owners of the land together with Malaika Enterprises (Simeon Thuo Kariru). That nonetheless, Malaika Enterprise had not paid the money they had agreed with Aberdare Estate.
118. That whereas the Plaintiff had stated that his plots were Nos. 726 and 725, the same were non-existence. That when the new company came, they did not take plot No. 728. That if indeed the owner of plot Nos. 726 and 725 was given the plots, he ought to have been shown where they were on the ground.
119. He confirmed that PW 1 had shown the court the ballot papers for Plot Nos. 726 and 725 and had also produced receipts for payment for the said plots. That however, he did not produce a register of the plots showing that his father was one of the shareholders. That further, whilst he had claimed that Plot No. 726 and 725 followed each other with plot No. 727, the same was not true.
120. That although Plot No. 723 had been shown to him by Gichuhi, plot No. 727 did not follow plot Nos. 726 and 725. That he did not know the Plaintiffs in the years 1981 to 1995 when they claim to have been ploughing plot Nos. 726 and 725 and it was not correct that they had fenced the said plots with cider posts.
121. On further probe, he confirmed that the deceased's children might have slept at his place in the years 1981 to 1995 but the person who would be in a better position to know was his wife because he used to leave home in the

morning and return at night. That it was not correct that the 2<sup>nd</sup> Defendant had illegally brought him to the land.

122. That he did not know how the Plaintiffs got their plot as he had only come to know about their plots when they filed a suit against him. He confirmed that he had heard the Plaintiffs testifying that after they had received the titles to plot No. 607 and 540-Pf exh 5 (a-b) they had surrendered them to the National Land Commission.

123. He confirmed that he had taken the title deed to plot Nos. 660 and 659 and charged them for a loan. That plot No. 727 had been sub-divided resulting into titles No. 659 and 658. He maintained that plot No. 660 had been sold to him by Mr. Gichuhi. That whereas one of the titles had been returned to court by the 4<sup>th</sup> Defendant, he did not know the specific title. That it had been the Plaintiffs who had sought for the title to be deposited in court.

124. He stated that title to plot No. 660 was not No. 723 confirming that the titles that had been charged to the 4<sup>th</sup> Defendant were not the Plaintiff's titles. He confirmed that he had been given title No. 659 by the 4<sup>th</sup> Defendant who had discharged the Charge over the same. He however maintained that plot Nos. 726 and 725 were non-existence and that he was only claiming the titles that were available. That he had produced two certificates for the 3 parcels of land wherein whereas one Certificate was for three (3) parcels of land, one certificate was for one parcel of land. That the certificated had been issued by the company between the years 2000 and 2003.

125. That they had been given ballot papers in the year 1999. He explained that the certificates did not contain the numbers of the land he owned because at the time, they only considered where one had developed. That plot Nos. 727, 728 and 731 were issued according to one's share.

126. That after taking plot Nos. 728 and 731, the 2<sup>nd</sup> Defendant found that he had planted trees and fence and had already developed the land. That the

company would not have given him the land if he had not bought the shares.

127. During cross-examination by the Counsel for the 4<sup>th</sup> Defendant, he confirmed that the bank had charged plot Nos. 660 and 659 and had given him a discharge of charge for plot No. 659 wherein they had returned the title. That for title to land No 660, the Plaintiff had sought that it be deposited in court.

128. That there was no fraud that had been committed by the bank since he had taken a loan like any other person. That whereas it had been the Plaintiffs' view that there had been fraud, they had no evidence of the same.

129. In re-examination he confirmed that when Simeon Thuo Kairo sold the plots in the year 1970s there had been no map and that the survey had been done around the years 2001 to 2002. That at first, Simoen Theuri's company had just measured the land the traditional way using their feet (footsteps) but after the survey had been done, the measurements differed. That the survey had been conducted after the 2<sup>nd</sup> Defendant had been registered and that the whole land had been surveyed.

130. That it was when the new company had brought the surveyor that he had asked if they could sub-divide his land No. 727 during which time, they only had ballot papers.

131. That they had bought shares from the new company where one (1) share was equivalent to Kshs. 20,170/=

The 1<sup>st</sup> Defendant thus closed his case.

132. The 2<sup>nd</sup> Defendant's case proceeded with the testimony of Peter Mwangi Maina, who lived Naivasha Unity who confirmed that the 2<sup>nd</sup> Defendant herein had been registered on the 16<sup>th</sup> May 2000 as per the certificate of incorporation herein produced as Df exh 5.

133. That he was the Vice Chairman in the year 1996 wherein after the death

of the previous chairman he became the Chairman a title he still held to date.

134. That in the year 1974 there was an MP in Naivasha called Simeon Thuo Kairu who was the Assistant Minister-Labour and who had opened an office in Naivasha for reason that he wanted to buy land for the citizens. By then the registration was Ksh. 2050/= per share measuring 1 acre. That after he had taken the money from the citizens, he had gone to the owner of the land being Aberdare Estates Ltd wherein he entered into an agreement with them (a Whiteman) wherein they had agreed that he would buy the land measuring 333 hectares for Kshs. 750,000/= That he had been asked to raise 10% of the price for which he had raised Kshs. 75,000/= That he was given a copy of the said Agreement dated the year 1974 by the owner of the land Mr. Aberdare Estate who was still alive and which Agreement he produced as Df exh 13. That his lawyer had been Davis & Figgs Advocates.

135. His evidence was that between the years 1978 and 1979 after the death of the 1<sup>st</sup> President of Kenya, Mzee Jomo Kenyatta, during an election year, Mr. Simeon Thuo had told the members of the public to go to the *shamba*. That subsequently, those who had paid him had gone to the land to build/construct. That unfortunately, he did not win the elections.

136. That on the other hand, people took any portion of land they wanted and started ploughing despite the fact that when people got into the land, Simeon had created the ballots. That he had a man called "Wa Beth" who had subdivided the land using sisal rope but there was no survey that had been done neither was there any map. That he also lived on that land.

137. That in the year 1998, Mr. Aberdare had asked them to vacate from the land as they were all squatters. That upon approaching the District Officer, he had advised them to go to court wherein they had taken Otieno Kajwang Advocate (Former MP) as their Advocate. That the matter had proceeded but Aberdare called their counsel and requested that they resolve the matter out of court. That accordingly, their lawyer had gone to the land together

with Aberdare Estate, the District Officer Mr. Samoei and Chief Mr. Kamuthu where members of the public had also been present. That Aberdare Estate had informed the gathering that he had only received Kshs. 75,000/= and that he had repudiated his contract with Mr. Simeon Kairu. That thereafter, the members of public had asked the Aberdare Estate to sell to them the land a second time.

138. That in the same year, they had another meeting at the District Officer's office where Mr. Aberdare had agreed to sell the land a second time. That they had agreed that he would sell the land to the people in occupation of the same, at a purchase price of Kshs. 4,150,000/=.

139. That after the election, the committee members had been given an office by the District Officer, (by which time he was the vice chairman,) who had then asked them to collect money from the members of the public since Aberdare Estate had given them only 6 months to pay the amount. That after collecting some money, they had been given an Administration Police to escort them to bank to deposit it. However, after the 6 months, the money had not been enough since they had only collected a sum of Kshs. 3,150,000/= leaving a balance of Kshs. 1,000,000/= which was paid by Fai Amario to enable them pay Mr. Aberdere.

140. That they then registered the company wherein after collecting the money, they had entered into an agreement on the 28<sup>th</sup> May 2001 between Aberdere Estates Limited and Naivasha Unity Company Limited for the purchase of LR 10855/4 measuring approximately 35.8 hectares at Ksh. 4,150,000/=. That he had been among the people who had signed the said Agreement which he produced as Df exh 14. He also produced copies of the bankers' cheques for Kshs. 3,150,000/= and the second one for Kshs. 1,000,000/= as Df exh 15 (a - b).

141. His evidence had been that when they formed the company, it was to sell shares wherein 1 share went for Kshs. 20,170/= and equivalent of 1 acre wherein once one bought a share, he/she would be given a certificate.

142. When he was referred to Df exh 6 and 7, he confirmed that the first one was the Company's share that had been given to Stephen Kamau Kairu for 3 shares. While the second exhibit was a certificate for 1 share.

143. His evidence was that after buying the land, they had looked for a surveyor and found Top Card Surveyors whom they had asked to sub-divide the land. That they had entered into an agreement with them wherein they had written a letter dated 14<sup>th</sup> April 2002 stating the terms of the survey. He produced the said letter as Df exh 16 and then testified that surveyors' charge was Kshs. 8,600/= per portion.

144. That the Surveyors were to plan and approve which included picking of any existing structure such as buildings, roads, water points as per the physical planning rules. That the land had no roads hence they were to accommodate roads, that in case one had built a house the same was not to be demolished save for if one had built near the road. People who were already in occupation were left where they were. That beacons were placed on public utilities and costed Kshs. 3,500 per land. Subsequently, the survey was done and completed.

145. That the 1<sup>st</sup> Defendant had been given land upon which he had developed and planted trees. He reiterated that if one had developed the land, he was left there. He proceeded to testify that after the survey had been done, there was a RIM of the year 2004 comprising of 2 sheets. That whereas he did not know the plot number the 1<sup>st</sup> Defendant had been given, yet they were below the railway line. That at the time, one could direct the surveyor on how to sub-divide his land.

146. That during that time, many people did not pay for their shares wherein subsequently, they had published Kenya Gazette No. 2688 of 17<sup>th</sup> April 2003 asking all members to pay for their shares in default their shares would be sold to satisfy the company's debt. He produced the said Gazette Notice as Df exh 17.

147. That at the time they bought the land, it had been leasehold wherein he

had surrendered the title deed to the Commissioner of lands after which he had been given a letter to take to the land registrar Nakuru. There had been a change of user wherein the land had now become freehold. He produced the surrender as Df exh 18.

148. That whereas he did not know Naomi Wairimu wa Mugii, he had later been summoned by the Land Disputes Tribunal Naivasha wherein he had been informed about her and the Chairman asked that he “remembers” her because she was a widow. That at the time, there was a problem as she had not received her land despite having paid Kshs. 16,000/=, as per the receipts Pf exh 8(a-r) wherein she lay claim to 2 shares in the name of Joseph Wamugi.

149. That in July 2000 “Joseph Wamugi” had paid into the office a sum of Kshs. 2,940/= twice, Kshs. 4,200/= and 7,060/= for the plot title wherein “he ‘had been issued with receipts. That at the Tribunal, he had been asked to help the widow by giving her two portions of land because she had no husband which he did and it had been agreed that after taking the titles, they should pay the balance. That he had been asked to take the titles to the chairperson of the Tribunal to which he obliged.

150. That it had been the Chairman who was to follow up on the balance of Ksh. 23,696/=. That he proceeded and processed the titles to parcel No. Naivasha/Maraigushu/Block 8/540 and. 607 in the name Naomi Wairimu wherein he had handed both titles to the Chairman. That he had recently conducted the search on 11<sup>th</sup> May 2017 which official searches he produced as Df exh 19 (a-b)

151. That he did not know whether Naomi had taken the titles or taken possession of the land, after having been shown the same, since the balance had not been paid to the company.

152. He clarified that Naomi’s Children had taken the title deeds without paying the debt and that the 2<sup>nd</sup> Defendant had a counter claim seeking to be paid the balance of Ksh. 23,696/=.

153. That Mr. Kairu had defrauded more than 3,000 people by giving them ballot papers, which had not been used during the survey. That as he prepared to take up the issue with Mr. Kairu, he had committed suicide.

154. In his cross examination by Counsel for the Plaintiff, he confirmed that he was the current chairman of Naivasha Unity Farmers Company Limited and that he had not bought shares during the time of "Kairu". That however, before coming up with the new company, he had bought the land and had been living therein. That his initial land had been No. 4 which he bought pursuant to the numbers that had been issued by Mr. Kairu.

155. He testified that he had never met the Plaintiff's father, one James Wamugi Munywa. That nonetheless, whereas he did not know him, the records had shown that he was a shareholder during Mr. Kairu's time. He explained that when their company took over, they did not have anything in relation to Mr. Kairu because they did not get any documents.

156. That it was when the members had come with the receipts of the payments that had been made before, that he had come to find out that James Wamugi was a shareholder. That they had come up with a new register on the receipts that they had been given not the old receipts showing payments of Ksh. 100 or 50/=.

157. That when they opened their company, the Plaintiff's father having already paid some money, they had included him in the new register, although he had not completed the payment. That they did not consider the old receipts where payment had been for Ksh 100/= or 50/= and neither did he know whether James' ballot numbers were No. 725 and 726 because he had not written it down and there had been new numbers issued by the surveyor.

158. That they did not conduct fresh ballots because people had already constructed their homes, and had been registered according to the developments on the ground wherein they had been given title deeds. He confirmed that he too had been given a title deed, with another number,

pursuant to the position of the land where he had built during Kairu's time.

159. He maintained that James Munyua had not completed payment for plot Nos. 540 and 607 wherein according to receipts issued by Kairu, he had two acres of land for two shares. That he had not shown him the land because he had not paid the whole amount.

160. That he would not know if Munyua had been showed his land parcels Nos. 725 and 726 during Kairu's time. That when they took over, they gave people their parcels of land where they had built or developed. That he did not know where Mr. Munywa had built.

161. That he knew Mr. Munyua had died, in the year 2010, when his wife went to their office to inform them that she was following up with his land. He confirmed that Naomi had lodged a land dispute with the Tribunal, on allegations that she had not received her land, wherein he had also appeared. That however, he had not been there when the Tribunal visited the place she claimed her land was.

162. That the officials of the company included himself, James - Chair, Secretary - Charles and Lucy - Clerk. That anyone of them could represent the company. That he spoke at the Tribunal as the vice chair wherein he had been asked by the chair to give Naomi Wairimu her land wherein he processed Naivasha Maraigushu Block 18/540 and 607 in the year 2011, at which time the Chairman had died.

163. That he took the titles to the Chair of the Tribunal as directed because there had been a balance to be paid. That nothing had been recorded with the Chairman of the Tribunal who was to receive the titles and call Naomi and hand them over.

164. That he knew that Naomi got the titles although she did not pay the balance because the Tribunal chairman did not notify him that the payment had not been made. He explained that at the time they had no laws in the company that titles would be given without payment although the same

existed at the Tribunal.

165. That there were no minutes where they had sat down as a company and decided to give Naomi her land. He admitted that although Naomi had not paid the balance, he had not written to her demanding for the same. He also confirmed not having brought the records to court. That he also did not know whether she had later complained that the titles did not correspond to the position of her husband's land and neither did he know that she had filed a complaint with the National Land Commission.

166. He confirmed that although he knew the 1<sup>st</sup> Defendant – Stephen Kairu, he did not know whether he too had also gone to the National Land Commission, but he knew where he had built his home and that he was a shareholder in their company.

167. He clarified that their company did not stop any shareholder from subdividing their land but had no minutes to that effect. That any subdivision was in accordance with the Surveyors agreement with the owner and therefore he did not know if the 1<sup>st</sup> Defendant had sub-divided his land.

168. That Naomi did not complain at the Tribunal that they had allowed the 1<sup>st</sup> Defendant to take some portions of her husband's land (726 & 726). That he did not know if Naomi's complaint was that the 1<sup>st</sup> Defendant's number had been superimposed on her land since he was not at the Tribunal when she talked about it. That whereas they were seeking more that Kshs. 23,000/= from the Plaintiffs, they had not written to her before the instant matter had come to court.

169. He explained that the Notice in the Kenya Gazette had been in relation to the people who had not paid. That he did not know if Naomi had surrendered the titles to the National Land Commission. That indeed, if Naomi or her husband had built a house on plot Nos. 726 or 726, nobody would have interfered with the same.

170. When he was cross-examined by the Counsel for the 4<sup>th</sup> Defendant, he

confirmed that he had been in a position of leadership of Unity farm from the year 2000 and had extensive knowledge of the suit land since he knew who was and who was not the owner.

171. He confirmed that the suit lands herein belong to Stephen Kairu, the 1<sup>st</sup> Defendant who had lived therein for many years. He maintained that one could deal with his or her land as he or she pleased hence the 1<sup>st</sup> Defendant could change his land as he pleased. That the 4<sup>h</sup> Defendant was not at fault to charge the land.

172. He confirmed that whereas they had given two titles to Naomi, he still was in possession of title deeds of other people who had not collected them. That whereas Naomi had been given a parcel of land that was equivalent to two shares in the 2011, she wanted the shares held by 1<sup>st</sup> Defendant which was not right.

173. In re-examination and in reference to Pf exh 1, he confirmed that Joseph James Wamugi died on 31<sup>st</sup> July 1987. When referred to Df exh 5, he confirmed that the 2<sup>nd</sup> Defendant herein had been incorporated in May 2000 long after the death of James.

174. He confirmed that the receipts that had been issued on 20<sup>th</sup> July 2000 had been in the name of Joseph Wamugi his family members having requested as such. He confirmed that Naomi had lodged the complaint against the company at the Tribunal and maintained that there were no laws against issuance of titles without full payment. He reiterated that the titles had been given to the Chairman of tribunal despite none payment by Naomi.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants closed their case.

175. The 4<sup>th</sup> Defendant's Counsel having indicated that he did not intend to call any witness, by consent, the Consent dated 27<sup>th</sup> March 2018, the Charge and the Title Deed to block 18/660 were produced as Df exh 20, 21 and 22 wherein the 4<sup>th</sup> Defendant also closed his case

176. Parties took directions to file their written submissions which I shall herein summarize as follows

**The Plaintiffs written submissions.**

177. The Plaintiffs sought the **cancellation of title deeds** for parcels 659 and 660, which are currently registered in the 1<sup>st</sup> **Defendant's name**, and thereafter they be re-registration in the their names as they allege that these parcels were fraudulently registered.

178. They framed their issues for determination as follows:

- i. Whether the Plaintiffs proved that Land Parcels 659 and 660 were required to have been their late father's land.
- ii. Whether the Two lands were registered in the name of the 1<sup>st</sup> Defendant as a result of fraud and misrepresentation.
- iii. Whether, in the circumstances of fraud having been pleaded, the Plaintiff's case is statute barred (time-barred).
- iv. Whether the Plaintiffs are required to pay the 2<sup>nd</sup> Defendant a sum of Kshs. 23,696/ as claimed by the 2<sup>nd</sup> Defendant in the Counter-claim.

179. Their argument was that land legally belongs to their deceased father, Joseph James Wamugi, a fully paid-up member of the 2<sup>nd</sup> Defendant (Naivasha Unity Farmers Company Limited), who was allocated Ballot Nos. 725 and 726, which they contend became the disputed parcels. They claim proof of prior physical possession and development between 1981 to 1983.

180. The registration of the plots to the 1st Defendant resulted from fraudulent collusion between the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. They argue the 1st Defendant failed to produce evidence of lawful acquisition, such as balloting proof or Land Control Board Consent for the alleged sub-division. They rejected the 2<sup>nd</sup> Defendant's post-Tribunal offer to substitute the plots with parcels 540 and 607, arguing the 2<sup>nd</sup> Defendant had no right to re-allocate land already rightfully belonging to their father.

181. The suit is not time-barred. Although the 1st Defendant was registered in 2004 and the suit was filed in 2017, the limitation period for fraud cases

runs from the date of discovery. They claim they discovered the fraud on 9<sup>th</sup> April 2019, when they obtained official certified Green Cards detailing the illegal registration and charge. Reliance was placed on the decision of a Ruling in **Kericho ELC CASE NO. 78 OF 2016 Tecla Cheronno Sirma vs Peter Kiplagat Kimetto & Another.**

182. Lastly that the court should reject the 2<sup>nd</sup> Defendant's counter-claim for Kshs. 23,696/= in outstanding share fees. They submitted this claim is an afterthought as the 2<sup>nd</sup> Defendant had previously accepted payments (totaling Kshs. 17,144) in 2000 without demanding arrears, and no demand notice was issued.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Submissions.**

183. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Submissions raised the following issues for determination:

- i. Whether the Plaintiffs' suit is statute time barred.
- ii. Whether the Plaintiffs have proved fraud and misrepresentation against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- iii. Whether the Plaintiffs owe the 2<sup>nd</sup> Defendant the sum of Kshs. 23,696/=
- iv. Costs of the suit and counterclaim.

184. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants sought for the **dismissal of the Plaintiffs' suit** and the allowance of the 2<sup>nd</sup> Defendant's counter-claim with costs stating that the Plaintiffs' suit is statute time-barred. That the 1<sup>st</sup> Defendant was registered to the suit properties on 16<sup>th</sup> November 2004, whereas the suit was filed on 4<sup>th</sup> April 2017 which was 13 years later. They placed reliance on the provisions of Sections 7 and 26 of the Limitation of Actions Act as well as the decisions in the cases of **Mtana Lewa v Kahindi Ngala Mwagandi [2015] eKLR** and **Margaret Wairimu Magugu v Karura Investment Limited & 4 others [2019] eKLR.**

185. They argue that the Plaintiffs failed to plead or specify a date of fraud discovery, as required by law. Further, they contended that the Plaintiffs' own witnesses contradicted their evidence when they mentioned years like 1983, 1985, 2000, and 2004 regarding knowledge of the 1st Defendant's

occupation which showed that they knew or could have, with reasonable diligence, discovered the alleged fraud earlier. That the Plaintiffs failed to prove fraud and misrepresentation to the required standard which was higher than a balance of probabilities. Reliance was placed in the decided case of **Elizabeth Kamene Ndolo v George Matata Ndolo (1996) eKLR** as well as the provisions of Section 26 of the Land Registration Act and Sections 107, 108 and 109 of the Evidence Act on the burden of proof for fraud and misrepresentation.

186. They argued the deceased could not have been a shareholder of the 2<sup>nd</sup> Defendant company, as it was incorporated *after* his death. They suggested the deceased was one of many who had been conned by a Simon Kairu Thuo before the company's incorporation. They noted the lack of evidence by the Plaintiffs to link the deceased's ballot numbers 725 and 726 to the title numbers 659 and 660, or to prove any survey had been done. They contended that the 1<sup>st</sup> Defendant was rightfully allocated his plots during a survey as a developed/occupied plot, based on a member resolution, while the Plaintiffs admitted their previous structure was vandalized and they had not settled on the land in 2000.

187. They also pointed out that the Plaintiffs' mother had previously accepted and collected two other title deeds to parcels No. 540 and 607, processed by the 2<sup>nd</sup> Defendant after a Tribunal Dispute but she had not paid the required balance. That it was for this reason that the court should allow the counterclaim for Kshs. 23,696/=.

188. They argued that the 2<sup>nd</sup> Defendant had processed two title deeds for the deceased's widow, but she had only paid Kshs. 16,644/= towards the required Kshs. 40,340/= for two shares at Kshs. 20,170/= per share, leaving a balance of Kshs. 23,696/= They submitted that the Plaintiffs' mother/former administrator had collected the titles but failed to pay the balance, thus abusing the grace extended by the 2<sup>nd</sup> Defendant.

189. On costs, they submitted that the same followed the event and were at the discretion of the court. they urged the court to dismiss the Plaintiffs' case and allow the counterclaim with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

190. The 4<sup>th</sup> Defendant on the other hand vide his written submissions dated 27<sup>th</sup> June 2025, sought the dismissal of the Plaintiffs' case against it with costs, arguing that the Plaintiff had no known cause of action against it.
191. That whereas Plaintiffs had alleged that the 4<sup>th</sup> Defendant fraudulently conspired with the 1<sup>st</sup> Defendant in charging the suit properties, it had acted in good faith by conducting due diligence and registering a charge after being satisfied with the security offered by the registered owner, the 1<sup>st</sup> Defendant. That there had been no registered caution or caveat on the titles to indicate a dispute at the time of charging. That the Plaintiffs had failed to dislodge the allegation of fraud against it. Reliance was placed on the decision in the cases of **Orieny & another v National Bank of Kenya (Civil Appeal E016 of 2023) [2024] KEHC 6002 (KLR)** and **Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR**.
192. That Furthermore, the suit properties had since been fully discharged, and the 4<sup>th</sup> Defendant had no remaining interest in the land wherein the titles had since been returned to the 1<sup>st</sup> Defendant, one of them having been deposited in court in adherence to a court order. That the Plaintiffs case against the 4<sup>th</sup> Defendant be dismissed with hefty costs.

**Determination.**

193. I have considered the evidence herein adduced, the Defence, the submissions and the authorities cited. I have also considered the applicable law herein. In brief, the Plaintiffs, as administrators of the estate of Joseph James Wamugi, claim ownership of parcels 659 and 660, arguing they correspond to their father's original ballot numbers 725 and 726 from 1979. They allege the land was fraudulently registered to the 1<sup>st</sup> Defendant Stephen Kamau and subsequently charged to the 4<sup>th</sup> Defendant (KCB). The Plaintiffs sought the cancellation of titles 659 and 660 and their re-registration, along with the cancellation of the charge and the two rejected substitute titles to parcels No. 540 and 607.
194. The Plaintiffs evidence was that their Deceased father, Joseph Wamugi who died 1987, bought two shares in 1975–1979 from Naivasha Unity Farmers Company and balloted for Plots Nos. 725 and 726 in 1979. That

they had farmed, fenced, and built a temporary house on the land from the year 1981 to 1985. That subsequently plots No. 725 and 726 were converted to Parcels of land Nos 660 and 659 following the 2010 RIM wherein the 1<sup>st</sup> Defendant, their neighbor, illegally acquired the titles in 2004 after the 2<sup>nd</sup> Defendant refused to issue them with title deeds to their two parcels of land. That prior in the year 1983 the 1<sup>st</sup> Defendant had also vandalized their fence and structures.

195. That in the year 2008, they reported the matter, leading to a 2010 disputes Tribunal instruction for the 2<sup>nd</sup> Defendant to issue two titles to their mother. That they had rejected the two new titles, Nos. 540 and 607, as these were not their original land, and later surrendered them to the National Land Commission (NLC) in 2016 for cancellation.

196. That even after the 1<sup>st</sup> Defendant had illegally acquired titles to their land, he had charged them to the 4<sup>th</sup> Defendant (Bank) who failed to conduct due diligence and advanced him a loan of Ksh. 1,000,000/= in 2010 despite them having placed a caution on the land. The Plaintiffs thus sought for the court; to revoke the title deeds for Parcel Nos. 659 and 660, which are currently registered to the 1<sup>st</sup> Defendant, and have them registered to their mother, Naomi Wairimu, recall and cancel the two rejected titles (Nos. 540 and 607) held by the NLC and lastly to cancel the charge on plot No. 659 in favour of the 4<sup>th</sup> Defendant (KCB).

197. The 1<sup>st</sup> Defendant's case on the other hand had been that he had initially bought one share in 1979 (Plot 728), a second (Plot 723) in 1999, and a third (Plot 727) in 1999. That around the year 1998, they learned that Simon Thuo Kairu, to whom they had bought the land from, had not paid the original landowner, Aberdere Estate his money for which Aberdere Estate had then threatened to evict them. They being squatters/buyers had then been advised to buy the land a second time which led to the formation and registration of Naivasha Unity Farmers Company Limited on 16<sup>th</sup> May 2000 and he bought four shares at Ksh. 20,170/= each in the newly formed Naivasha Unity Farmers Company Limited.

198. The land was surveyed in the year 2001-2003 and allocated according to

shares held by members and/or the existing occupation/development on the ground. That his initial parcels, including Plot 727, were subdivided due to a wayleave into five titles being No. 656, 657, 658, 659, and 660 and registered in his name in the year 2004. He contended that the Plaintiffs' old ballot numbers 725 and 726 were non-existent under the new company's registration and denied any fraud.

199. The 2<sup>nd</sup> Defendant, through its chairman, confirmed that the Plaintiffs' father, Joseph Wamugi, was a shareholder under the old, fraudulent scheme of Simeon Thuo Kairu. He explained that Simeon Thuo Kairu had collected money from citizens for land in the 1970s, but only paid a Ksh. 75,000/= as a deposit to Aberdere Estate Ltd, who later repudiated the contract and in 1998 asked the the occupants to vacate. The occupants thus agreed to buy the land a second time for Ksh. 4,150,000/= wherein Naivasha Unity Farmers Company Limited was registered in May 2000 to facilitate this purchase. The purchase agreement with Aberdere Estate for LR 10855/4 was signed in 2001 and the new company sold shares for Ksh. 20,170/= per acre. That the new company's survey was conducted from 2001–2003 had disregarded old ballot numbers and allocated land based on occupation and development. He supported the legitimacy of the 1<sup>st</sup> Defendant's titles and confirmed that the Plaintiff's mother had filed a complaint at the Tribunal, leading to the processing of substitute titles to plot Nos 540 and 607 in her name in 2011, despite there being an outstanding balance of Kshs. 23,696/= which was never paid. In its counterclaim, it admitted to not demanding the balance before the suit, but maintained the Kshs. 23,696/= debt was owed for the processed titles.

200. The 4<sup>th</sup> Defendant called no evidence, resting its case entirely on the legal submissions that the Plaintiffs had failed to prove fraud and that the bank acted legitimately on the strength of the 1<sup>st</sup> Defendant's registered title.

201. From the evidence herein adduced, it is not contested that the receipts issued to Joseph Wamugi, the Plaintiffs' father had been issued before Naivasha Unity Farmers was legally incorporated in May 2000.

202. It is also not in contention that Joseph Wamugi's name did not appear in Members' Register covering plots 659 to 669 from 2016, which showed the 1<sup>st</sup> Defendant (Stephen) had been allocated plots No. 656 to 660.
203. Further it is also not contested that after the process of balloting, the Plaintiffs and their family had farmed on parcels of land Nos. 725 and 726, which measured about 1 acre from the year 1981 up to the year 1983 when they went back to Kinangop after which the fence they had put up was demolished and the 1<sup>st</sup> Defendant entered into the land around the year 2004 and took possession.
204. It is also not in contention that with the registration of the new Company, the Tribunal had asked that the Plaintiff's mother be allocated two plots of land No. 540 and 607 which they rejected because they were not their original land. No ruling and/or proceedings of the Land Tribunal had however been availed in evidence.
205. The Defendants' argument is that the 1<sup>st</sup> Defendant is the lawful and legal owner to the land by virtue of his continuous occupation and formal acquisition through the new, legally registered company that repurchased the land from the original owner. That the Plaintiffs' claim to the initial plot numbers 726 and 725 are non-existent under the new scheme. That they had been allocated new plots No. 540 and 607, despite not having completed the required payment.
206. Having summarized the matter herein, I thus find the matters arising for my determination being as follows;
- i. Whether the Plaintiff's suit is statutory time barred if not;
  - ii. Whether the Plaintiffs proved fraud against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for which title in respect of Naivasha/Maraigushu Block 18/660 and 659 should be cancelled and reverted to the Plaintiffs.
  - iii. Whether the creation of the charge over land parcels No. Naivasha/Maraigushu Block 18/660 and 659 was fraudulent.
  - iv. Whether the Plaintiffs should pay the 2<sup>nd</sup> Defendant Kshs. 23,696/= as claimed in the counter-claim.

v. Who should pay costs of the suit.

207. In reference to the first issue for determination, as to whether the Plaintiff's suit is time barred. The Plaintiffs' claim is that the transfer, registration and issuance of the title deeds in respect of Naivasha/Maraigushu Block 18/660 and 659 in favour of the 1<sup>st</sup> Defendant and subsequent creation of the charge was fraudulent and therefore null and void and the limitation period did not begin to run until the fraud was discovered.

208. The Plaintiffs' only basis for overcoming the time bar is pleading fraud, which, under Section 26 of the Limitation of Actions Act, allows the limitation period to run from the moment the fraud was discovered. Looking at the Plaintiffs' last amended Plaint of 6<sup>th</sup> April 2023, the same did not state the date/time when they discovered the alleged fraud, despite this being a material fact that needed to be pleaded. The Plaintiffs' own witnesses gave different years being 1983, 1985, 2000, and 2004 as the time when they first knew of the 1<sup>st</sup> Defendant's alleged trespass and occupation on the suit lands and therefore the period of limitation would be deemed to have begun to run in one of those earlier years of 1983, 1985, 2000, or 2004.

209. A look at the orders sought for by the Plaintiffs in this matter, points irresistibly to the fact that they had filed suit to recover land for which Section 7 of the Limitation of Actions Act explicitly states that a suit to recover land cannot be brought after 12 years from the date the right of action accrued. This 12-year period is an absolute time bar. The law assumes that a landowner who fails to take action after 12 years, to remove a trespasser or an unauthorized occupant for such a long period has effectively slept on their rights.

210. Section 17 of the Act further solidifies this position by stating that at the end of the 12-year limitation period, the title of the original owner is extinguished. This means the rightful owner loses their legal ownership, and the adverse possessor can then claim title to the land. This is a deliberate legal policy to ensure that land titles, which are foundational to economic

and social stability, are not perpetually challenged. The integrity of land ownership is protected by this strict time limit. Once the 12-year statutory period for adverse possession has run out, their right to recover the land is lost forever.

211. There was no dispute that 1<sup>st</sup> Defendant was registered as proprietor of parcels of land No's Naivasha/Maraigushu Block 18/659 and 660 on the 16<sup>th</sup> November 2004 although the evidence on record had been to the effect that he had in possession and occupation of the same between 1983- 2004. The Plaintiffs' original suit to recover the land from the 1<sup>st</sup> Defendant was filed much later on 4<sup>th</sup> April 2017. Clearly there had been a lapse of approximately 13 years between the registration of the title in the 1<sup>st</sup> Defendant's name and the filing of the suit, exceeding the typical statutory limitation period for land claims.

212. The Court of Appeal in **Mukuru Munge vs. Florence Shingi Mwawana & 2 others [2016] eKLR** held that:

*“The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions.”*

213. The Plaintiffs needed to commence their claim within the time prescribed under Section 7 of the Limitation of Actions Act. It follows therefore that by the time they filed this suit, the claim was already statute barred.

214. In the case of **Bosire Ongero vs Royal Media Services [2015] eKLR** the court had held that the issue of limitation went to the jurisdiction of the court to entertain claims and therefore if a matter was statute barred the court had no jurisdiction to entertain the same.

215. The locus classicus on jurisdiction is the celebrated case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** where Justice Nyarangi of the Court of Appeal had held as follows;

*'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'*

216. Clearly, this Court lacks jurisdiction over the matter which is at its end. I will have to down my tools and take no further step in determining the other issues herein above crafted. The Plaintiff's suit herein is thus dismissed.

217. The 2<sup>nd</sup> Defendant (now the Plaintiff) in its counterclaim against the Plaintiffs (now Defendants) was for a sum of Kshs. 23,696/= on account of outstanding balance on share capital, fees and disbursements with regard to parcels of land known as Naivasha/Maraigushu Block 18/540 and 607 which it had paid on their behalf.

218. In support of his claim, the 2<sup>nd</sup> Defendant's (now Plaintiff) representative testified that although he did not initially know Naomi Wairimu wa Mugi, he had been summoned to the Naivasha Land Disputes Tribunal, where the Chairman informed him about her, stressing that she was a widow who had not received her land despite her husband Joseph Wamugi (deceased) having paid approximately Kshs. 17,140/= for two shares. That he had then been asked to "help the widow" by allocating her two portions of land. He

agreed, and it was resolved that she should pay the balance upon collection of the titles. The titles to parcels No. Naivasha/Maraigushu/Block 8/540 and 607 were subsequently processed and issued in the name of Naomi Wairimu despite she having an outstanding balance of Kshs. 23,696/=. That the titles were collected by Naomi's children (the Plaintiffs) without paying the debt which he now sought in his counterclaim.

219. The Plaintiffs confirmed to having picked the titles which they had handed over to the National land Commission because those were different parcels of land which were not their land. They sought from the court that the same be exchanged with their parcels of land No. 659 and 660 because their land was still available and, in the meantime, titles to land Nos. 540 and 607 which were in the custody of the National Land Commission be given to their owners or be cancelled.

220. I find that in order for the 2<sup>nd</sup> Defendant to succeed in its counterclaim, it must establish that there had been a resolution or agreement by which the Plaintiffs (or their mother/administrator) were obligated to pay Kshs. 20,170/= per share, totalling Kshs. 40,340/= for the two parcels (540 and 607) wherein they had only paid Kshs. 16,644/=, leaving the claimed balance of Kshs. 23,696/=. No documentary evidence in the form of the Tribunal award or written agreement or even a demand notice for the outstanding dues, if any, was produced by the 2<sup>nd</sup> Defendant who bore the burden of proving, on a balance of probabilities, that a debt obligation had been legally created between the parties.

221. To substantiate their debt, the 2<sup>nd</sup> defendant relied solely on oral testimony about a Tribunal suggestion. Without the Tribunal's written decision or a signed agreement, the court cannot rely on the 2<sup>nd</sup> Defendant's testimony that it had been resolved that the Plaintiff's mother should pay the balance after taking the titles, more so since the Plaintiffs rejected the parcels and handed the titles to the NLC. The consideration for the payment failed after the Plaintiffs rejected the titles and therefore, the corresponding obligation to pay may have been extinguished.

222. Given the lack of supporting evidence to its counter claim, I am afraid I

cannot establish what kind of relationship existed between the 2<sup>nd</sup> Defendant and the Plaintiffs mother, whether by processing of titles to plot Nos 540 and 607, there had been completed sale for which the debt for the purchase price would have been owed, and the Plaintiffs' rejection become irrelevant to the debt or whether there had been conditional offer of settlement for which the Plaintiffs' clear rejection of the land would have meant that the condition was not met, and the debt was not payable.

223. Section 109 of the Evidence Act provides that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. In the instance case, no evidence had been led support the 2<sup>nd</sup> Defendants counter claim. To this effect, I find the counterclaim against the Plaintiffs herein fails as the 2<sup>nd</sup> Defendant has not established its claim to the required standards of probabilities and I herein proceed to dismiss the counterclaim.

224. Each party shall bear its own cost save for the 1<sup>st</sup> and 4<sup>th</sup> Defendants whose cost shall be borne by the Plaintiffs.

**Dated and delivered via Microsoft Teams at Naivasha this 30<sup>th</sup> day of October 2025.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT - JUDGE**