



Mutai (Suing as the Administrator of the Estate of John Kimutai Soi) & another v Mwangi (Sued as the Administrator of the Estate of Lily Waruguru Mwangi) & 4 others (Environment and Land Case 14 of 2013 & 60B of 2022 (Consolidated)) [2025] KEELC 7460 (KLR) (3 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7460 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 14 OF 2013 & 60B OF 2022 (CONSOLIDATED)

MAO ODENY, J

NOVEMBER 3, 2025

BETWEEN

SIMON MUTAI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOHN KIMUTAI SOI) PLAINTIFF

AND

DAVID MACHARIA MWANGI (SUED AS THE ADMINISTRATOR OF THE ESTATE OF LILY WARUGURU MWANGI) 1ST DEFENDANT

PETER ITOTIA MWANGI (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL RUGU ITOTIA - DECEASED) 2ND DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE 60B OF 2022

BETWEEN

DAVID MACHARIA MWANGI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF LILIAN WARUGURU MWANGI) PLAINTIFF

AND

SIMON MUTAI (SUED AS THE ADMINISTRATOR OF THE ESTATE OF JOHN KIMUTAI SOI) 1ST DEFENDANT

THE DIRECTORS KALENJIN ENTERPRISES LTD 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR, NAKURU 3RD DEFENDANT



JUDGMENT

1. In ELC Case No 14 of 2013, the Plaintiff sued the Defendants vide a Plaint dated 9th August, 2012, amended on 29th August, 2017, further amended on 30th May, 2019, and further, further amended and received by the court on 16th March, 2023. The Plaintiff sought the following orders:
 - a. A declaration that the plaintiff is the legal lawful owner and proprietor of plot No. Nakuru Municipality Block 29 914.
 - b. An order of eviction against the 1st defendant from the suit land and the demolition of the offending structures thereon within 90 days from the delivery of judgment.
 - c. A temporary order of injunction restraining the 2nd Defendant by either himself, themselves, his agents, their agents, servants, employees from entering, sub-dividing, selling, leasing, occupying and or transferring the suit land.
 - d. An order directing the 4th defendant to cancel the title in the hand of the 2nd defendant and upholding of title to the plaintiff as the rightful owner of the land plot no Nakuru municipality Block 29 914.
 - e. An order compelling the defendant to demolish and pull down all the structures standing on the suit property and in default the Plaintiff to be at liberty to demolish the same and under the supervision of the O.C.S Ronda Police Station for purposes of maintaining peace and order.
 - f. A permanent order of injunction restraining the 2nd defendant by either himself, his agents, servants, employees from entering, sub-dividing, erecting any structure, ploughing, farming, selling, leasing, occupying and or transferring the suit land.
 - g. That the Honourable Court be pleased to order the removal of the illegal caution lodged by the 2nd defendant herein on the previous green card.
 - h. Costs of the suit and interest at court rates.
 - i. Another relief this Honourable Court may grant.
2. In ELC Case No 60B of 2022, the Plaintiff sued the Defendants vide a plaint dated 30th October, 2009, seeking the following orders:
 - a. A declaration that title No. Nakuru Municipality Block 29 (Ronda) 914 belongs to the plaintiff and that the title deed issued to the 1st Defendant be cancelled and the same be registered in her name.
 - b. Cost of the suit plus interest.

Plaintiff's Case

3. PW1 Simon Mutai adopted his witness statement dated 22nd August 2019, as part of his evidence and produced a list of documents dated 29th August 2012, and a further list as PExhb No 1 to 10 respectively.
4. Upon cross-examination by Mr. Ngure, PW1 stated that the 1st Defendant has been on the suit property since 2012, and has fenced and built about ten mud houses, which are in a dilapidated state.



5. PW1 further stated that his late father had a case at the Land Dispute Tribunal with the 1st Defendant where the 1st Defendant claimed the suit land but did not know the outcome of the Tribunal's decision. It was his evidence that the Tribunal ordered the 1st Defendant to return plot No 419 Block 29 471, but his father neither attended the Tribunal proceedings nor appealed the decision. He also stated that his father was a member of Kalenjii Enterprises, and already had a title to the suit land.
6. Upon cross-examination by Mr. Imbwaga, PW1 stated that he does not know whether the 2nd Defendant had a case with Kalenjii Enterprises, but when shown a document on the list of documents, he confirmed the same. He stated that he knows Kibor Arap Chelogoi and clause No 4 of the Tribunal's decision granted the suit title plot No. Nakuru Municipality Block 29 914 to the 2nd Defendant.
7. PW1 was shown a letter dated 13th June, 2012, addressed to the 2nd Defendant to remove a caution, but denied knowledge of the same, and further that there was a registration of instrument dated 27th March, 2012, which cancelled his father, John Kimutai Soi's title. He also informed the court that he does not have a share certificate.
8. Upon re-examination by Mr. Mutai, PW1 testified that he produced a clearance certificate dated 25th November, 2004 from Kalenjii Enterprises and a letter dated 22nd May, 2012 indicating that the land belongs to John Kimutai Soi. PW1 testified that the letter dated 13th June, 2012, and the registration of the instrument dated 27th March, 2012, are addressed to the 2nd Defendant.

1st Defendant's Case

9. DW1, David Macharia, adopted his witness statement dated 16th April, 2025, as part of his evidence in chief and stated that Lily Waruguru was his late mother. DW1 produced a list of documents dated 16th April, 2025, and a further list of documents filed by the late Waruguru dated 20th September, 2012, as DExhb Nos. 1 to 7, respectively
10. DW1 testified that he is in possession of the suit land and there are semi-permanent houses, which were constructed in the 1980's by his late father, Philip Mwangi Kibiribi, who was the initial allottee of the property. It was his evidence that the Tribunal case No. 13 of 2005, where the claimant was John Kimutai and the Objector was Lily Waruguru, found that the suit property belonged to his parents, which decision was never appealed against. He further stated that the documents issued to his father, by Kalenjii Enterprises were presented at the Tribunal therefore, he does not have them.
11. Upon cross-examination by Mr. Imbwaga, DW1 stated that they are awaiting issuance of a title but is not aware of an existing title to the suit land. He further stated that other than the Tribunal documents, he does not have any other documents to show ownership of the suit land. He was also not aware of the Nakuru HCC No. 300 of 2012 (John Kimutai Soi vs Lily Waruguru Mwangi and Paul Rugu Itotia).
12. Upon cross-examination by Mr. Ratemo, DW1 stated that at the Tribunal, his mother who had letters of Administration dated 27th April 1994, was suing on behalf of his father in 2005. It was his evidence that Lily Waruguru had another parcel of land from Rift Valley Enterprises, Nakuru Municipality Block 29 471 and further that he did not produce a register to show that his father was a member.
13. Upon re-examination, DW1 testified that DExhb No. 1, the grant was issued to him on 11th September, 2024, and he has never seen the title issued to Paul Itotia.



2nd Defendant's Case

14. DW2, Peter Itotia Rugu, adopted his late father's witness statement dated 15th October 2012, together with a list of documents which he produced as D2Exhb Nos. 1 to 16. It was his evidence that he is the son of the late Paul Itotia.
15. DW2 testified that his father is the one who built the iron sheet houses on the suit land, which he found out that had been repaired recently. According to DW2, he saw the Kalenjin Enterprises register which confirmed that his father had bought shares, a transfer done and a titled issued on 10th October, 2012. It was his testimony that there was a Tribunal case No. 25 of 2008 where his father was given the suit land.
16. It was DW2's testimony that the father was issued with receipts from Kalenjin Enterprises, including a share certificate of Kibon Cheligi, who sold to his father. He further stated that the Plaintiff had been ordered to surrender the title to the Registrar which he never.
17. Upon cross-examination by Mr. Ngunjiri, DW2 stated that there are people living on the two units, whereby one is occupied by a church and another was brought down by wind. DW2 stated that he once talked to the late Lily Waruguru who had rented the houses to tenants.
18. DW2 stated that Lily Waruguru was not a party to CM's court land dispute No 25 of 2008 between Paul Itotia vs Director of Kalenjin Enterprises, and that he has receipts that were issued in 2011 and not before that period. Further that they were issued after the 2008 case.
19. DW2 has confirmed that the share certificate for Kibon was for parcel No 895, and that the Surveyor's report dated 24th August, 2007, which was produced at the Tribunal did not touch on plot No 914 as the ownership status was yet to be determined. DW2 further stated that his father bought shares from Kibon as he was not a member of Kalenjin Enterprises. DW2 further stated that it is not true that Kibon had been given land in Molo and whether the title was issued while there were cases pending in court. DW2 confirmed that case No 13 of 2005 between John Soi and Lily Waruguru, the conclusion was that the plot belongs to Lily Waruguru.
20. Upon cross-examination by Mr. Ratemo, DW2 stated that his father bought the share from Kibon Cheligi and he does not know that Mr. Kibon had been given plot No Molo Langwenda BLOCK 11 672 (Kewamoi) by Kalenjin Enterprises.
21. Upon cross-examination by Mr. Mutai, DW2 referred to DExhb No 5 which is in respect of the allocation letter to Kibon Arap Cheligi, and DExhb No 15, a judgment of the tribunal claim No 25 of 2007, which stated that parcel 914 is 0.6 acres. He stated that the Plaintiff's acreage and his were supposed to tally, and when referred to PExhb No.1, the Plaintiff's title for 0.0948 hectares, stated that the two do not tally.
22. DW2 informed the court that John Kimutai Soi was not a party to the Tribunal case, and stated that by the time of the judgment in case No 25 of 2007 between Paul Rugu Itotia vs Kalenjin Enterprises, he had a title in his name but was not a party to this suit.
23. Upon re-examination by Mr. Imbwaga, DW2 testified that Tribunal case No 13 of 2005 was concluded on 16th August, 2008 and the survey report was used in the tribunal proceedings. DW2 testified that the 1st Defendant does not have a title to the suit land and the search attached indicates that the land belongs to Wilson and not Kibon. DW2 testified that he does not know plot No 672 Molo measuring 0.2397 hectares.



3rd Defendant's Case

24. DW3, Kipkemoi Koskei adopted his witness statement dated 7th July 2025, as part of his evidence and stated that he is one of the directors and the current Chairman of Kalenjin Enterprises. DW3 testified that he is conversant with the dispute before the court in respect of Nakuru Municipality Block 29 914 (Rhonda) and does not know Lily Waruguru as she does not appear in their records as a shareholder.
25. It was DW3's testimony that the suit parcel of land was allocated to John Kimutai Soi and later to the estate of the deceased. Further that the company was sued in Tribunal case No, 13 of 2005, and that Kibon Chelegoi was a member of Kalenjin Enterprises but was not given land as he had sold his shares to Paul Itotia.
26. DW3 further testified that initially, Kibon's shares were allocated parcel No. 895, (old Number) and was not given a new number, which fell in an area which was acquired by the government for the expansion of the river Njoro sewage plant. DW3 testified that the company made a decision that all people whose land had been taken by the government, were allowed to ballot for any other land that belonged to the company.
27. DW3 further testified that the late Paul Rugu Itotia agreed to ballot and balloted for a parcel of land in one of the farms in Langwenda Molo South 672 (Kewamoi) farm measuring 1.8 acres and took possession of the whole land. DW3 testified that therefore, Paul Itotia cannot claim that the suit land was No 914. DW3 testified that it is their position that the company allocated the land to the Plaintiff John Kimutai Soi.
28. Upon cross-examination by Mr. Imbwaga, DW3 stated that they have all the documents together with the register but did not produced them. DW3 stated that he is aware of Tribunal case No. 25 of 2008, where it ruled that the land belonged to Itotia and John Kimutai Soi was to surrender the title for cancellation. He admitted that the receipts were issued by their office together, with the transfer of shares from Kibon to Itotia.
29. Upon cross-examination by Mr. Ngure, DW3 stated that in his statement, he indicated that the plot belongs to the Plaintiff but they have not produced the documents. He further told the court that they were sued by Lily Waruguru Mwangi in the Tribunal whose decision was adopted in the Chief Magistrate's court, where the land was given to John Soi. DW3 also confirmed that there was a taskforce for verification of parcels and that the findings of the task force were reflected in the decision of the tribunal.
30. Upon cross-examination by Mr. Mutai, DW3 stated that there was a Tribunal case against the Kalenjin Enterprises and that there was no clearance by the company to get a title to plot No 914. DW3 further stated that he is not aware of any court order cancelling the Plaintiff's title.
31. Upon re-examination by Mr. Ratemo, DW3 testified that they became aware that there were two decisions in respect of the same parcel of land.

Plaintiff's Submissions

32. Counsel for the Plaintiff filed submissions dated 14th August 2025 and identified the following issues for determination:
 - a. Who is the lawful proprietor of the suit land?
 - b. What reliefs ought to be issued in the circumstances?



- c. Who should pay the costs?
33. On the first issue, counsel submitted that at all material times, John Kimutai Arap Soi held a valid title deed issued on 13th January, 2005 which remains unchallenged. Counsel submitted that the 1st and 2nd Defendants claim to be entitled to the ownership of the suit land by virtue of awards made by a defunct Land Disputes Tribunal, and relied on Section 4 of the Land Disputes Tribunals Act (No 18 of 1990) and submitted that the tribunal was not conferred with the jurisdiction to determine ownership or to cancel registered titles. Counsel also relied on Sections 24 (a), 25 (1) and 26 (1) of the *akn ke act 2012 3 Land Registration Act*.
34. Counsel further relied on the cases of Republic vs Chairman, Land Disputes Tribunal Kirinyaga District & Another ex parte Kariuki [2005] eKLR, Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd (1989), Macfoy vs United Africa Co Ltd [1961] 3All ER 1169, Virginia Edith Wambui Otieno vs Joash Ochieng Ougo & Another [1987] eKLR and Elijah Makeri Nyangw’ra vs Stephen Mungai Njuguna & Another [2013] eKLR.
35. On the second issue, counsel urged the court to issue the orders sought with costs and relied on the cases of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd.

1st Defendant’s Submissions

36. Counsel for the 1st Defendant filed submissions dated 3rd September, 2025, and identified the following issues for determination:
- a. Who is the lawful owner of land parcel number Nakuru Municipality Block 29 914 (ronda)?
- b. Who pays costs of the suit?
37. Counsel submitted that the 1st Defendant relies on the decision of the Tribunal (Nakuru Municipality Lands Disputes Tribunal in claim No. 13 of 2005 whose decision was adopted in Nakuru Chief Magistrate’s court Land Dispute Case No 47 of 2005. .
38. It was counsel’s submission that it has not been contested that the 1st Defendant has been in possession of the suit property which was developed forty-three years ago. Counsel submitted that the 2nd Defendant knew that the 1st Defendant was in occupation of the suit property but he deliberately omitted to make him a party in Land Disputes Tribunal Claim No 25 of 2007.

2nd Defendant’s Submissions

39. Counsel for the 2nd Defendant filed submissions dated 28th August, 2025, and identified the following issue for determination:
- a. Who is the lawful proprietor of the suit land, LR No. Nakuru Municipality Block 29 914 (Ronda)?
40. Counsel submitted that the 2nd Defendant holds the original and lawful title to the suit property, which was issued by the District Land Registrar. It was counsel’s submission that during the hearing, the Plaintiff’s witness Mr. Bernard Koskei, the Chairman of the Kalenjin Enterprise, testified and unequivocally acknowledged that Mr. Paul Rugu Itotia (deceased) had properly acquired the parcel in dispute.



41. Counsel relied on Section 26 of the *akn ke act 2012 3 Land Registration Act*, Section 23 of the repealed Registration of Titles Act and the cases of *Lwanga vs Registrar of Titles*, Misc Cause No 7A of 1977 (1980) HCB 24, *Wreck Motors Enterprises Ltd vs Russet Co. Ltd vs Commercial Bank of African Ltd & Another* [1986] KLR 633 and *E.M.M vs H.K.M* [2013] eKLR, and urged the court to uphold the title deed held by the 2nd Defendant, dismiss the plaintiff's suit and award the 2nd Defendant costs of the suit with interest.

2nd Defendant's Submissions (in ELC 60b Of 2022)

42. Counsel for the 2nd Defendant filed submissions dated 22nd September, 2025 and identified the following issues for determination:
- a. Whether the Directors of Kalenjini Enterprises are non-suited?
 - b. Who is entitled to the suit land?
43. On the first issue, counsel submitted that a suit has been brought against directors of a limited liability company who are distinct from the company. Counsel submitted that the directors are agents of Kalenjini Enterprises; a land buying company and anything done in; their capacity as directors is done for and on behalf of the company. It was counsel's submission that Kalenjini Enterprises is a disclosed principal and being agents, the directors are non-suited and the suit against the directors should be dismissed with costs.
44. Counsel relied on the cases of *Friendship Container Manufacturers Ltd vs Mitchell Cotts (K) Ltd* [2001] 2EA 338, *Victor Mabachi & another vs Nurtun Bates Limited* [2013] KECA 204 (KLR), *Steel Formers Limited vs SGS (Kenya) Limited & another* [2020] KEHC 4509 (KLR), *Agolla & Another vs Manager Housing Finance Co-operation Limited Kisumu Branch (Miscellaneous Civil Case E157 'A' of 2012 [2022] KEHC 10215 and Geoffrey M Asanyo & 3 others vs Attorney General* [2020] eKLR.
45. On the second issue, counsel submitted that John Kimutai Soi is entitled to the suit land as the Tribunal decisions are illegal as the jurisdiction of the then Land Disputes Tribunal did not include determination of disputes over ownership of land. Counsel submitted that it follows that the claims to the suit land by David Macharia Mwangi and Peter Itotia Rugu stemming from the decisions of the said Tribunal have no legal basis.
46. Mr. Ratemo, relied on the cases of *Hubert L Martin & 2 others vs Margaret J Kamar & 5 others* [2016] KEELC 1092 (KLR), *James Njoroge Gitau vs Lucy Chepkurui Kimutai* [2018] KEELC 291 (KLR), *Makula International Ltd vs His Eminence Nsubuga and Another* [1982] HCB II and *Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others* [2014] eKLR.

Analysis And Determination

47. This judgment is in respect of two cases in respect of the suit land, LR No. Nakuru Municipality Block 29 914 (Ronda) ELC No. 14 of 2013 and ELC No. 60 B of 2022, which were consolidated and ELC No 14 of 2013 made the lead file. The single issue for determination, is who is the lawful proprietor of the suit land, LR No. Nakuru Municipality Block 29 914 (Ronda)?
48. The Plaintiff gave evidence and stated that he is the registered owner of the suit parcel, of which the 1st Defendant has occupied a portion and has refused to vacate. The Plaintiff also testified that the 2nd Defendant also in collusion with the 4th Defendant, who issued the 2nd Defendant with a title and a new fraudulent green card.



49. In ELC Case No 60B of 2022, it is the Plaintiff's case that Lilian Waruguru Mwangi (the deceased) was the lawful owner of Nakuru Municipality Block 29 (Ronda) 914 having inherited the same from her deceased husband Philip Mwangi who acquired it through the 2nd Defendant when he was a member and had shares. It is the Plaintiff's case that in 2005, the 1st Defendant alleged that the said property was his and filed a claim before the Nakuru District Land Dispute Tribunal (No 13 of 2005- John Kimutai Soi vs Lilian Waruguru Mwangi) where the tribunal ruled in favour of Lilian Waruguru, which decision was adopted as the order of the court vide Nakuru Chief Magistrate Court Land Dispute No 47 of 2005.
50. It is the Plaintiff's case (In ELC 60 B OF 2022) that in a bid to execute the judgment of the Tribunal, the deceased did a search at the land's office and discovered that parcel No Nakuru Municipality Block 29 Ronda is registered in the 1st Defendant John Kimutai Soi.
51. This is a case where three people are claiming to be the owners of the suit parcel of land, John Kimutai Soi, Paul Rugu Itotia and David Macharia Mwangi on behalf of Lucy Waruguru. All the three claim to have been allocated or bought from the original allottees of Kalenjin Enterprises Limited the 2nd Defendant. This calls for the establishment of the root or origin of the title to the suit land. Land buying companies have had issues of either double allocation of the same parcels of land or fraudulent dealings by the directors who sell land to unsuspecting non-members.
52. The Court of Appeal, in *Munyu Maina Vs. Hiram Gathiha Maina* 2013 eKLR held:
- “We state that when a registered proprietors root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register”.
53. The source of information to establish the root of the title must come from the land buying company, Kalenjin Enterprises Limited, who allocated the land to its members who had qualified vide payment of subscription for the shares. Luckily, the Chairman of the company, DW3 gave evidence and clarified on who had been allocated the suit land and what had transpired.
54. It was DW3's testimony that the suit parcel of land was allocated to John Kimutai Soi and later to the estate of the deceased. He also clarified that Kibon Chelegoi was a member of Kalenjin Enterprises but was not given land as he had sold his shares to Paul Itotia. The testimony of DW3 was very important as it stated that initially, Kibon's shares was allocated parcel No. 895, (old Number) and was not given a new number, as it fell in an area which was acquired by the government for expansion of river Njoro sewage plant.
55. DW3 further testified that the late Paul Rugu Itotia agreed to ballot and balloted for a parcel of land in one of the farms in Langwenda Molo South 672 (Kewamoi) farm measuring 1.8 acres and took possession of the whole land and therefore Paul Itotia cannot claim that the suit land was No 914. He confirmed that the company's position is that the suit land was allocated to the Plaintiff John Kimutai Soi.
56. It is not in dispute that the suit land belonged to the Plaintiff before the decision of the Tribunal in Nakuru District Land Dispute Tribunal (No 13 of 2005- John Kimutai Soi vs Lilian Waruguru Mwangi). It is further not disputed that the Plaintiff has a title to the suit land registered in his name.



57. The Plaintiff produced a letter dated 22nd May 2012, by the company to the District Land Registrar, copied to Paul Rugu Itotia asking for the removal of a caution on Nakuru Municipality Block 29 914 (Ronda) indicating that the Paul Itotia was allocated all his shares which he bought from Kibor Arap Chelogoi in Langwenda Molo South Block 11 672, hence he was wrongly given a clearance certificate. It confirmed that the land was allocated to John Kimutai Soi. The letter urged the Registrar to remove the caution which was one of the orders the Plaintiff is seeking.
58. As a follow up, the District Land Registrar, wrote a letter dated 13th June 2012 issuing a notice for the removal of a caution under Section 133 (c) of the *akn ke act 2012 6 Land Act* to Paul Itotia, that the caution will be removed within 30 days unless the Registrar receives a written objection. The Plaintiff also produced a share Certificate and searches that show that he is the registered owner of the suit land.
59. The Defendants did not produce any documentation to show their ownership status. The 1st Defendant relied on the outcome of the Tribunal but was not able to produce any ownership documents. He stated that all the documents were left in the Tribunal file. This was not enough to prove the root of the title as required by law when such root is in question.
60. In the case of *James Njoroge Gitau v Lucy Chepkurui Kimutai* [2018] KEELC 291 (KLR), the court faced with a similar case had this to say:

“This evidence is coming from the company itself, and cannot be taken lightly. It is the company which knows its members and which knows what land it has assigned to the members. If the company refutes that one is a member, then that person needs to rebut this, through cogent evidence. I am afraid that the defendant had not delivered any evidence to me that Kimutai held any shares at Kalenjin Enterprises. She has not delivered any share certificate, nor any receipt for payment for survey so as to be assigned the suit land. All that the plaintiff had was a document, titled “Rift Valley Enterprises (Koel Farm) List of Allottees” as proof that the suit land was assigned to the deceased.”

61. DW3 stated that he does not know Lucy Waruguru and that the land was allocated to John Kimutai Soi and further that Paul Rugu Itotia had been allocated alternative land in Langwenda Molo South which has not been controverted.
62. It should be noted that this court is not dealing with the issue whether the Tribunal was clothed with the jurisdiction to handle registered land with title deeds, more so, to order cancellation of titles, it would not be in order for the court not to mention this.
63. The Plaintiff’s counsel relied on Section 4 of the Land Disputes Tribunals Act (No 18 of 1990) and submitted that the tribunal was not conferred with the jurisdiction to determine ownership or to cancel registered titles, as was held in the case of *Joseph Malakwen Lelei & another v Rift Valley Land Disputes Appeals Committee & 2 others* [2014] eKLR which restated the law relating to jurisdiction of Land Disputes Tribunal when it comes to ownership of registered land as follows:

“On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the Land Disputes Tribunal to handle claims in the following matters only:

“3(1) subject to this Act, all cases of a civil nature involving a dispute as to:-

- (a) The division of, or the determination of boundaries to land, including land held on in common,



- (b) A claim to occupy, or work land or
- (c) Trespass to land.”

Evidently the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land... Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void. It then follows that every other proceeding, decision, or award that results from such a process must be construed as a nullity....”

- 64. Jurisdiction of the tribunal was provided for at Section 3 (1) of the Land Disputes Tribunals Act, 1990 to determine cases of a civil nature involving disputes as to the division of land, the determination of boundaries to land, including land held in common and claims to occupy or work land or trespass to land. The Tribunal’s jurisdiction did not include determination of title to or ownership of registered land.
- 65. In the case of *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, the court stated that a void act is a nullity in law and every proceeding founded on it is incurably defective.
- 66. This court is also cognizant of the fact that the award has not been set aside either by a judicial review or an Appeal as was held in the Court of Appeal case of *Florence Nyaboke Machani vs Mogere Amosi Ombui* (2014) eKLR.
- 67. I have considered the pleadings in the consolidated suits, the evidence of the parties, the submissions by counsel and find that the Plaintiff in ELC Case No 14 of 2013, Simon Kimutai, the administrator of the Estate of John Kimutai Soi has proved his case and I therefore issue the following orders:
 - a. A declaration is hereby made that the plaintiff is the legal lawful owner and proprietor of plot no Nakuru Municipality Block 29 914.
 - b. An order of eviction is hereby issued against the 1st defendants from the suit land and the demolition of the offending structures thereon within 90 days from the delivery of judgment and in default the Plaintiff to be at liberty to demolish the same and under the supervision of the O.C.S Ronda Police Station for purposes of maintaining peace and order.
 - c. A permanent order of injunction is hereby issued restraining the 2nd defendant by either himself, his agents, servants, employees from entering, sub-dividing, erecting any structure, ploughing, farming, selling, leasing, occupying and or transferring the suit land.
 - d. The Land Registrar is hereby directed to remove the caution lodge on the suit parcel of land by the 2nd Defendant within 14 days.
 - e. Costs of the suit to the Plaintiff.
 - f. ELC Case No 60B of 2022 is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 3RD DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE

