



Kanderi v Kiki Investment Limited & 2 others; Nadupa Housing Limited (Interested Party) (Environment and Land Case 21 of 2019) [2025] KEELC 8606 (KLR) (4 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8606 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 21 OF 2019
MD MWANGI, J
DECEMBER 4, 2025**

BETWEEN

NAIRESIAE ENE NEKAANDO KANDERI PLAINTIFF

AND

KIKI INVESTMENT LIMITED 1ST DEFENDANT

GEORGE KARIUKI NGURE 2ND DEFENDANT

THE LAND REGISTRAR, KAJIADO REGISTRY 3RD DEFENDANT

AND

NADUPA HOUSING LIMITED INTERESTED PARTY

JUDGMENT

1. The Plaintiff, Nairesiae Ene Nekaando Kanderi, initially commenced this suit against the 1st, 2nd and 3rd Defendants by way of a Complaint dated 8th March 2019. She subsequently amended her pleadings to join the 4th Defendant, through an Amended Complaint dated 10th February 2020. In the Amended Complaint, the Plaintiff prays for judgment against the 1st, 2nd, 3rd and 4th Defendants jointly and severally for the following orders:
 - a. An order nullifying the entry in the green card for parcel Kajiado/Delalekutuk/3649 and revocation/cancellation of title issued to Kiki Investment Limited.
 - b. An order directing the 3rd Defendant to issue title deed to the Plaintiff bearing her names.
 - c. A permanent injunction prohibiting and restraining the 1st and 2nd Defendants by themselves, their agents, servants, employees or otherwise whomsoever claiming through them from



claiming and interfering with quiet possession, enjoyment and utilization of all that Kajiado/Delalekutuk/3649 and declaration that the Plaintiff is the sole and exclusive owner thereof.

- d. An order of eviction and demolition and or removal of the fence erected by the Defendants on the said parcel of land.
 - e. Cost of this suit.
 - f. Interest to (5) above.
2. The Plaintiff asserts that she is the registered proprietor of Kajiado/Delalekutuk/34, measuring approximately 134.25 hectares, which she had charged to the Agricultural Finance Corporation (AFC), Kajiado Branch, as security for a loan facility. The Plaintiff was however unable to service the loan and it ran into arrears. The Plaintiff then decided to sell a portion of the land to offset the debt.
 3. She avers that around 1992, she was introduced by a mutual acquaintance to the 2nd Defendant who expressed interest in purchasing 100 acres out of the land at a consideration of Kshs. 8,000/= per acre making a total sum of Kshs. 800,000/-. Upon disclosing that the title was still charged to AFC, the parties orally agreed that the 2nd Defendant would pay the outstanding loan of Kshs. 79,000/=, and thereafter retain the title deed upon its release by AFC. The sum of Kshs. 79,000/= was to be considered as part of the purchase price.
 4. The Plaintiff contends that the parties later restructured their oral agreement after the release of the title by AFC. The 2nd Defendant was to pay an additional Kshs. 100,000/= to facilitate the subdivision of the land, while the balance of Kshs. 600,000/= would be payable on or before transfer.
 5. After subdivision, amongst the parcels created was parcel number Kajiado/Delalekutuk/3649 measuring 120 acres. The Plaintiff alleges that she agreed with the 2nd Defendant that the Land Registrar would hold the title to the resultant parcel Kajiado/Delalekutuk/3649 in safe custody pending completion of payment. Once the 2nd Defendant had completed payment of the purchase price, the Plaintiff would excise 20 acres and transfer the remainder to the 2nd Defendant.
 6. The Plaintiff further alleges that in July 2011, the 2nd Defendant and his agents without any colour of right, entered into the suit property and began erecting a fence. This action by the 2nd Defendant prompted the Plaintiff to conduct a search at the Land Registry. She was shocked to discover that the suit property had been transferred to the 1st Defendant, a company in which the 2nd Defendant is a Director and shareholder. She accuses the 3rd Defendant of colluding with the 2nd Defendant to transfer the suit property to the 1st Defendant as particularized at paragraphs 11 and 12 of the amended plaint.
 7. The Plaintiff asserts that she reported the matter to the DCIO Kajiado but not steps were taken to arrest and charge the 2nd Defendant. The Plaintiff proceeded to register a caution against the title to forestall further dealings.
 8. The Plaintiff accuses the 3rd Defendant of fraudulently and irregularly effecting the transfer of the suit property to the 1st Defendant on 27th June 2011, without her consent or a valid Land Control Board consent. She asserts that the 1st and 2nd Defendants forged her signature on the transfer documents and misrepresented facts to the 3rd Defendant in order to facilitate the illegal transfer.

Response by the Defendants

9. The 1st and 2nd Defendants entered appearance on 1st April 2019 through Messrs W.J Ithondeka & Co. Advocates. They filed a Statement of Defence and Counter-claim dated 15th July 2019 seeking the dismissal of the plaintiff's suit with costs. The 2nd Defendant admits that he was introduced to the



- Plaintiff by a third party, one Mr. Ole Nkukuu. It is pleaded that the original title deed for Kajiado/Delalekutuk/34 was retained by the 2nd Defendant for purposes of subdivision based on the terms of the agreement with the Plaintiff.
10. The 1st and 2nd Defendants attribute the breakdown in communication with the plaintiff to the closure of their office in July, 2005 and the Plaintiff's alleged failure to disclose her whereabouts. Further, they claim that the caution registered on the suit property title by the Plaintiff was lifted by the Land Registrar following a successful application by the 1st and 2nd Defendants as it was placed in bad faith.
 11. It is maintained that the 2nd Defendant lawfully and validly took possession of the suit property for it was transferred in favour of its nominees, the 1st Defendant. This is because subdivision of Kajiado/Delalekutuk/34 into Kajiado/Delalekutuk/3649, 3650 and 3651 measuring 120, 60 and 92 acres respectively as well as Kajiado/Delalekutuk/3652 measuring 92 acres was done with full participation of the Plaintiff and her family. In addition, based on the party's agreement, Kajiado/Delalekutuk/3649 was transferred to the 1st Defendant. They contend that the entire purchase price was paid in full. The 1st and 2nd Defendants deny that the variation of the purchase price was Kshs. 600,000/-. They insist that it was Kshs.500,000/- which was paid in full.
 12. Premised on the foregoing, it is averred that transfer of the suit property to 1st Defendant, a nominee of the 2nd Defendant was legal and valid. Additionally, the Plaintiff visited the 1st Defendant office whose Managing Director was the 2nd Defendant. Consequently, the 1st and 2nd Defendants refute the particulars of misrepresentation and fraud levelled against them by inviting the Plaintiff to strictly prove that her signature was purportedly forged.
 13. By way of a counterclaim, the 1st and 2nd Defendants assert that the parties entered into an agreement for sale of a portion measuring 100 acres from the parcel of land known as Kajiado/Delalekutuk/34 in the year 1996 at a cost of Kshs. 800,000/-. The parties however varied the agreement for sale by increasing the total purchase price to Ksh.1,300,000/= for a portion comprising 120 acres.
 14. The 1st and 2nd Defendants reiterate that the mother title Kajiado/Delalekutuk/34 was subdivided and yielded Kajiado/Delalekutuk/3649 containing by measurement 120 acres which was transferred in favour of the 2nd Defendant and a title issued on 27th June 2021.
 15. in their Sale Agreement specified that the purchase price for 100 acres of Kajiado/Delalekutuk/34 was Ksh.800,000/=. Through a further varied agreement, the price for 120 acres was increased to Ksh.1,300,000/=.
 16. The 1st and 2nd Defendants accuse the Plaintiff of trespassing into their land in violation of their right to possession and peaceful enjoyment of their property without any colour of right destroying the property thereon.
 17. In the counterclaim, the 1 and 2nd Defendants prays for the following orders;
 - a. A declaration that the Plaintiff in the counterclaim is the legal proprietor of all that parcel of land known as Kajiado/Delalekutuk/3649.
 - b. A permanent injunction restraining the Defendant in the counterclaim from trespass or in any way interfering with the Plaintiffs quite possession of Kajiado/Delalekutuk/3649
 - c. An order for directing the Defendant in the counterclaim to vacate, the parcel of land known as Kajiado/Delalekutuk/3649 and in default therefore an order for eviction.
 - d. Mesne profits at the rate of Kshs.100,000/- per month.



- e. General damages.
 - f. Costs of the suit.
18. On 9th July, 2020, the Office of the Attorney General through Oscar M. Eredi, State Counsel, filed a Notice of Appointment dated 31st March, 2020 appearing in this suit for and on behalf of the 3rd and 4th Defendants. The 3rd and 4th Defendants responded to the Plaintiff claims through a Statement of Defence dated 31st March, 2020 seeking dismissal of the Plaintiff claims with costs.
 19. In the said Defence, the 3rd and 4th Defendants denied all the accusations levelled against them, alleging that they are strangers to the Plaintiff's allegations thus putting the Plaintiff to strict proof. Specifically, the 3rd and 4th Defendants deny knowledge of the transaction between the Plaintiff and the 2nd Defendant. It is averred that the 3rd Defendant proceeded to effect transfer of the suit property because they genuinely believed all transfer documents presented by parties to the transaction were genuine. In addition, the 3rd and 4th Defendants deny ever being served with any demand nor notice of intention to sue by the Plaintiffs.
 20. The Plaintiff responded to the 1st and 2nd Defendant's statement of Defence and Counter-claim through a Reply to Defence and Defence to Counterclaim dated 21st September, 2020 filed on 23rd September, 2020. The Plaintiff states that the 1st and 2nd Defendants are obligated to give substantive responses to the allegations rather than denials. The plaintiff maintained that a demand letter and notice of intention to sue was issued to the 1st and 2nd Defendants.
 21. The Plaintiff claims that if the 2nd Defendant wanted to meet her, he would have visited her home which he knows to-date. She restated that given the 2nd Defendant's disappearance without a trace, the Plaintiff lodged a caution on the suit property as a matter of right to protect her interest because of the immediate threat of disposition by the 2nd Defendant. She further reiterated that transfer of the suit property to the 1st and 2nd Defendants was unlawful and tainted with illegality, breached verbal contractual agreement neither did the Plaintiff family acquiesce nor participate in transfer of suit property. The Plaintiff further avows that to date, she is yet to receive the remaining purchase price monies totalling Ksh.600,000/= whose payment was to be effected before transfer of the suit property. Further, the Plaintiff denies knowledge of variation of the agreement or receipt of Ksh.500,000/=.
 22. The Plaintiff further alleges that although her agreement was only with the 2nd Defendant, she learned of the 1st Defendant's involvement once she conducted a search at Kajiado Land Registry. She restated that transfer of the suit property to the 1st Defendant was illegal, fraudulent and void as the manner in which it was effected is questionable and suspicious. This is because the oral agreement between the Plaintiff and the 2nd Defendant stipulated that the purchase price for 100 acres was Ksh,800,000/=. In addition, its variation indicated that Kshs.120,000/= was to cater for costs of the subdivision processes.
 23. According to the Plaintiff, the 2nd Defendant deprived her 20 acres since no agreement existed between them in respect of the same. Given this conduct, the Plaintiffs avers that she rightfully placed a caution over the suit property to preserve her rights because transfer of the suit property was subject to payment of the remaining purchase price.
 24. According to the Plaintiff, the 1st and 2nd Defendant cannot claim legal ownership of the suit property as it was obtained through fraudulent means, misrepresentation, blatant violation of statutory obligations and requirements, non-payment of the entire purchase price and evasion of payment of stamp duty and non-remittance. Consequently, they have no right to peacefully possess and enjoy the



suit property nor are they entitled to the reliefs sought. In particular, the Plaintiff claims that the 1st and 2nd Defendants committed illegalities in addition to breach of contractual obligations by;

- a. Forging the Plaintiff signature and using it to effect the transfer of the suit property to the 1st Defendant.
 - b. Fraudulently introducing the 1st Defendant and executing the purported transfer forms on its behalf by false misrepresentation, so as to evade the said transaction being traced to the 2nd Defendant.
 - c. Attempting to corruptly and unjustly enrich himself.
 - d. Attempting to deprive the Plaintiffs of its property contrary to the Laws of Kenya.
 - e. Colluding and or convincing with the 3rd Defendant on an attempt to deprive the Plaintiffs of its land.
25. The Plaintiff therefore prayed for the dismissal of the Counterclaim with costs, judgment be entered as sought in her amended plaint and any other relief since the Counterclaim is bad in law, incompetent and does not disclose any cause of action.
26. The Plaintiff responded to the 3rd and 4th Defendants Defence through a Reply to Defence dated 21st September, 2020 wherein she sought dismissal and striking out with costs of the Defence and entry of judgment in her favour as prayed. The Plaintiffs explanation for dismissal and striking out of the Defences is that they are a sham, dilatory, evasive and incompetent.
27. The plaintiff maintained that enjoining of the 3rd Defendant in these proceedings is a matter of constitutional and statutory duty so that they can present supporting documents availed to them and which they relied upon in effecting the transfer of the suit property. In addition, they would have the opportunity to demonstrate to this court if the documents were genuine and met the legal threshold.
28. According to the Plaintiff, the 3rd Defendant abused its office when it committed an illegality by effecting a transfer and issuance of a title document to the 2nd Defendant. The Plaintiff decries that this action was injurious and grossly prejudicial to her as her proprietary rights were violated since the property was not available for transfer at the time. Further, the 3rd Defendant's failure to ascertain and ensure all prerequisite legal requirements such as clearance, consent, approvals and statutory payment of remittance including stamp duty before transfer of ownership or issuance of title document is effected flouted *the Constitution*, relevant laws and the principles of good governance.
29. The Plaintiff further asserts that the swift, hurried, questionable and suspicious manner in which the 3rd Defendant executed the transfer of the suit property title to the 1st Defendant was calculated to defeat her rights, deny her the balance of the purchase price, and deprive her of 20 acres of land.

Analysis of Evidence

Plaintiff's evidence

30. PW1, Nairesiae Ene Nekaando Kanderi, testified that she had no knowledge of the 1st Defendant at all, as her dealings were solely with the 2nd Defendant. She maintained that she only sold 100 acres of her land to the 2nd Defendant, not 120 acres as alleged. She further stated that she is now seeking to recover her land because, after she released the title to the 2nd Defendant, he caused the property to be transferred to the 1st Defendant.



31. Upon cross-examination, PW1 admitted that the title Kajiado/Delalekutuk/34, measuring approximately 300 acres, had been charged to the Agricultural Finance Corporation (AFC) as security for a loan of Kshs. 50,000/=. When referred to a letter dated 31st August 2005, purportedly indicating that she had acknowledged receipt of a balance of Kshs. 100,000/= in relation to the alleged purchase of 120 acres, she denied ever authoring or receiving such a letter. PW1 reiterated that she never sold 120 acres to the 2nd Defendant and that there was no written agreement documenting the sale of the 100 acres she alleges to have transacted. She insisted that she did not sign any documents nor did she attend the Land Control Board in respect of any transfer. She maintained her position that she was to sell 100 acres to the 2nd Defendant at Kshs. 8,000/= per acre, and that the full purchase price remains unpaid, with an outstanding balance of Kshs. 600,000/=.
32. PW1 informed the Court that she and the 2nd Defendant mutually agreed that, owing to issues of mistrust between them, the title to the suit property would be held in the custody of the 3rd Defendant until the 2nd Defendant fulfilled his contractual obligations. Pursuant to that agreement, she subsequently surrendered the title to the 3rd Defendant.
33. PW1 further testified that the only boundary dispute she ever presented before the elders concerned a disagreement between herself and her neighbour, and not the 2nd Defendant. She also stated that she was unaware of the outcome of the report lodged with the police by Anderson Ntoyian on her behalf.
34. During re-examination, PW1 reiterated that although the 2nd Defendant settled her outstanding loan with AFC, she had no documentary evidence to demonstrate this. She explained that she registered a caution against the title to the suit property because the 2nd Defendant had failed to pay the full purchase price for the 100 acres and because she later discovered that the title had been transferred to the 1st Defendant. PW1 further stated that upon subdivision of her original parcel, Kajiado/Delalekutuk/34, into four portions, it had been agreed that the 2nd Defendant would retain the title to the suit property after excision of 20 acres, which were to be transferred to her daughter.
35. DW1, George Kariuki Ngure, commenced his evidence-in-chief by adopting his witness statements dated 15th September 2019 and the 1st and 2nd Defendants' lists of documents dated 15th July 2019, 23rd January 2020, and 17th January 2022. He testified that the Plaintiff had been introduced to him by her relative or by the area chief. He stated that he purchased 120 acres of the Plaintiff's land and fully paid the purchase price together with all incidental charges, after which a title deed was issued to him. He explained that the title to the suit property resulted from the subdivision of the Plaintiff's original land into four portions. DW1 further informed the Court that despite having purchased the property and facilitating the discharge of the Plaintiff's title which had been charged to AFC, he had never enjoyed peaceful possession due to the Plaintiff's continued interference.
36. During cross-examination, DW1 testified that the sum of Kshs. 960,000/= was paid partly in cash and partly by cheque, at a rate of Kshs. 8,000/= per acre. He stated that he was issued with the title to the suit property after signing transfer documents and paying stamp duty, although he could not confirm the exact amount of stamp duty paid. DW1 conceded that he had no documentary evidence to demonstrate that he purchased 120 acres from the Plaintiff, that he had any agreement with the 1st Defendant, or that the Directors of the 1st Defendant ever appeared before the Land Control Board. He further acknowledged that, despite his sworn testimony that he executed transfer documents, he had none to produce. The Court was additionally informed that the elders who determined the dispute in his favour were neither parties nor witnesses to the Sale Agreement.
37. DW1 further testified that he had been in possession of the title to the suit property since 1991, although he had not paid the agreed sum of Kshs. 800,000/= as at that time. He asserted that the Plaintiff was not permitted to undertake any activities on the land because he held the title deed. Upon



being referred to his witness statement, he stated that the total purchase price was Kshs. 1.3 million. Reference to his letter dated 27th April 2017, addressed to the Kajiado Land Registrar, confirmed that he had sought the Registrar's intervention on grounds that a caution had allegedly been registered against the title by fraudsters. He maintained that there was no animosity between him and the Plaintiff despite her having lodged a caution on the title to the suit property.

38. During re-examination, DW1 conceded that between 2011 and 2017 he had no communication with the Plaintiff, nor could he recall when he first became aware that she had registered a caution against the suit property. He affirmed that the sum of Kshs. 1.3 million stated in his witness statement represented the correct purchase price. He testified that Kshs. 400,000/= was paid through bank cheques dated 10th December 1991, in addition to settling the surveyor's fees. DW1 further informed the Court that he was the one who initiated the meeting before the elders.
39. DW2, Leleta Ole Nkukuu, testified that he was familiar with both the Plaintiff and the 2nd Defendant, having lived at the Plaintiff's homestead and assisted in tending her livestock. He confirmed that the Plaintiff had charged her property in favour of AFC. DW2 stated that he facilitated the introduction of the Plaintiff to the 2nd Defendant, following which she sold her land to him. He testified that the Plaintiff initially received Kshs.10,000, with the balance paid at a later date. DW2 further stated that, pursuant to the resolutions from the chiefs' meeting concerning a dispute over 20 acres, it was determined that these portions had been purchased by the 1st Defendant.
40. During cross-examination, DW2 stated that although the Plaintiff and the 1st Defendant purportedly entered into an agreement, he did not possess a copy of it, nor did he know whether any payments were made by cash or cheque, as he never witnessed any exchange of money. He explained that following the initial meeting, he was not involved in any further dealings between the parties.
41. DW3, Paul Tanui, the Kajiado District Land Registrar, explained to the Court that registration of land is only effected where there exists a transfer form signed by both the seller and buyer, consent from the Land Control Board, surrender of the old title, and payment of the requisite registration fees. He testified that the 1st Defendant was the duly registered proprietor of the suit property. He further stated that the suit property had been subdivided into parcels numbered 15134 to 15205 on 26th September 2019. Although he asserted that documentation supporting the registration of the suit property existed, he did not produce any such documents before the Court.
42. During cross examination, he stated that the suit property, a resultant subdivision of Kajiado/Delalekutuk/34 belonged to the 1st Defendant. However, he did not have any supporting documentation to prove this despite his confirmation that the documents were vital. Irrespective of his further acknowledgment that the green card was the authority of the suit property, he did not produce any mutation forms to prove the suit property was subdivided neither did he know in whose names the titles were issued.
43. DW3 testified that prior to the lifting of the caution registered on the suit property by the Plaintiff, she was duly notified through a letter dated 10th May 2019, sent via registered mail. He further informed the Court that the caution was lifted pursuant to an application filed by the 2nd Defendant seeking its removal.
44. On re-examination, DW3 reiterated that before the caution was removed, the Plaintiff had been notified at the address indicated in the green card. He further informed the Court that he was unaware whether the Plaintiff's Plaint addressed the issue of subdivision of the suit property.
45. Following the conclusion of the trial, the Court, on 22nd September 2021, directed the 3rd Defendant to produce the mandatory registration documents within thirty (30) days. When the matter came



up for mention on 8th March 2022, Miss Nyawira, learned counsel for the 3rd and 4th Defendants, informed the Court that the requested documents could not be traced by the Kajiado Land Registrar. Thereafter, Mr. Nairi, learned counsel for the Plaintiff, stated that he was satisfied with this explanation. On 23rd November 2022, the Court reserved judgment in the matter for delivery on 22nd May 2023, after confirming that learned counsel for all parties had filed their respective submissions.

46. However, the judgment was not delivered as scheduled because an Interested Party filed a Notice of Motion Application dated 4th April 2023, seeking to be enjoined in the proceedings. Upon consideration of the Application ex parte, the trial Court directed that the delivery of judgment be deferred until the Interested Party's Application was heard and determined. Subsequently, through a Ruling delivered on 22nd April 2024, the Interested Party was enjoined into the proceedings, and the pleadings were accordingly reopened.
47. DW4, Johnie Kinaiya Kesholo, testifying for the Interested Party, informed the Court that following the purchase of 80 acres of the suit property from the 1st Defendant through the 2nd Defendant at a consideration of Ksh.32,000,000/=, the Interested Party has been in occupation of the land, constructing houses and keeping livestock thereon. He further testified that they became aware of this suit only when they were summoned to appear before the Alternative Justice System Panel in connection with their occupation of the suit property.
48. On cross-examination, DW4 explained that prior to the purchase and payment of the purchase price in 2016, due diligence conducted by their lawyer indicated that the property was validly owned by the 2nd Defendant. He further stated that the Interested Party has been in possession of the property since the year 2000, amounting to over twenty years. However, he admitted that he did not have a certificate of official search to corroborate this claim. Despite testifying that the Interested Party was a registered entity and that he served as its secretary, he conceded that he did not possess its CR-12 form nor its certificate of incorporation.
49. When referred to the suit property's green card, DW4 admitted that at the time the Interested Party allegedly purchased the said acreage on 13th July 2016, a caution had already been registered on the suit property title, of whose existence he was unaware. He further conceded that the photographic evidence submitted in support of the Interested Party's case was neither accompanied by a Certificate of Electronic Evidence nor did it indicate that it specifically related to the suit property.
50. Notwithstanding DW4's assertion that the title for the 80 acres was transferred to the Interested Party in 2016 and that further subdivision was undertaken, this testimony was unsupported by any title deeds. He also did not produce any documents to substantiate that the purchase price of Ksh.32,000,000/= was paid in instalments. DW4 further informed the Court that his participation in the Alternative Justice System (AJS) meeting was recorded in its minutes, and he presented a copy of the sale agreement to demonstrate that the 80 acres had been purchased.
51. On re-examination, he restated that he owned 80 acres of the suit property.

Analysis of Submissions

52. Through submissions dated 21st November, 2022, the Plaintiff's counsel framed three primary issues for determination: (i) whether the terms of the sale agreements between the Plaintiff and the 1st and 2nd Defendants were varied, (ii) whether the purchase price was fully paid, and, (iii) whether the transfer of the suit property from the Plaintiff to the 1st Defendant was lawfully effected.
53. It was argued that the Plaintiff's testimony established that the 2nd Defendant colluded fraudulently with the 3rd Defendant to transfer the suit property title to the 1st Defendant, notwithstanding his



failure to fulfil his contractual obligations under the oral agreement regarding payment of the purchase price. The Plaintiff submits that the 1st and 2nd Defendants have not substantiated their claim of having paid Ksh.1.3 Million for the purportedly varied agreement concerning 120 acres, the existence of which the Plaintiff refutes.

54. Counsel relied on Section 3(3) of the Law of Contract Act, Cap. 23, and County Government of Migori v Hope Self Help Group [2020] eKLR, to contend that any alleged variation of the initial agreement must have been in writing. Further, the absence of consideration vitiates the purported contract, rendering it null and void, as the 2nd Defendant has not demonstrated payment for the additional 20 acres, the sale of the initial 100 acres being undisputed. Sections 107, 108, and 109 of the Evidence Act were cited in support of this argument.
55. According to the Plaintiff, the transfer of the suit property title to the 2nd Defendant was conditional upon his fulfilment of contractual obligations. As the Plaintiff denies executing any transfer instruments, it was incumbent upon the 2nd Defendant to prove that such transfer was valid. The 1st, 2nd, and 3rd Defendants also failed to produce the requisite transfer documents evidencing that execution by the Plaintiff was properly witnessed and attested as required by law. Further, the minutes of the Land Control Board purportedly approving the transfer, attendance to which the Plaintiff denied, were not produced in accordance with Sections 109 and 110 of the Registered Land Act (Repealed), which governed the matter at the relevant time.
56. The Plaintiff further contends that the testimony of the Land Registrar, the custodian of land records, raises serious doubts regarding the registration of the suit property in the 1st Defendant's name. According to his testimony, no records were available to support the registration of the 1st Defendant's title. He also could not satisfactorily explain the procedure followed to notify the Plaintiff prior to the lifting of the caution she had registered. DW4's testimony similarly failed to provide justification for the non-production of the suit property's green card, despite his claim that the property had been subdivided.
57. In conclusion, the Plaintiff urges the Court to dismiss the 1st and 2nd Defendants' counterclaim and grant the orders sought, asserting that she never executed any transfer instruments in favour of the 1st Defendant. Consequently, the purported transfer was ineffective, and the 1st Defendant's title to the suit property cannot confer any proprietary rights, having been obtained fraudulently and is therefore null and void.

1st and 2nd Defendants Submissions

58. In their submissions dated 31st May, 2022, the 1st and 2nd Defendants raised several issues for the Court's determination, namely: (i) whether the Plaintiff sold Kajiado/Delalekutuk/3649 to the 2nd Defendant; (ii) who is the lawful proprietor of the suit property; (iii) whether a permanent injunction should issue against the Plaintiff; (iv) whether a permanent injunction should issue restraining the 1st and 2nd Defendants; and (vi) who should bear the costs of the suit.
59. With regard to the first issue, the Defendants submitted that the Plaintiff's own evidence established that she sold the suit property to the 2nd Defendant following her inability to repay a loan advanced by the Agricultural Finance Corporation (AFC), which the 2nd Defendant cleared on her behalf. It was contended that the Plaintiff had not fully disclosed to the Court the sale of the property as acknowledged in her witness statement and cross-examination. Accordingly, the 1st and 2nd Defendants argued that the allegations of fraud and misrepresentation levelled against them should fail. The Plaintiff's act of placing a restriction on the suit property, despite having received the purchase price, was described as dishonest, as it reflected an attempt to retain both the land and the monies paid.



60. The 1st and 2nd Defendants referred to Section 26(1) of the *Land Registration Act*, which provides that a proprietor's certificate of title is challengeable only if it is shown to have been acquired illegally, through procedural irregularities, or by corrupt means. Judicial authorities, including *Mutiria Karumbai Macaw v James Njagi Makembo & 3 Others* [2018] eKLR and *Ratil Patel v Lalji Makanji* [1957] EA 195, were cited to underscore that allegations of fraud, once pleaded, must be strictly proven.
61. It was further submitted that all elements of a valid contract — offer, acceptance, and consideration — were satisfied. The 2nd Defendant accepted the Plaintiff's offer by paying the purchase price, and the agreement was witnessed by DW2, Mr. Ole Nkukuu. The Defendants urged the Court to uphold their counterclaim and dismiss the Plaintiff's prayer to cancel the title to the suit property, noting that payment had been made and corroborated by village elders' minutes from a meeting held on 30th June, 2017 at Inkiwanjani Village, convened to resolve disputes over the property. On the evidence, the Defendants claimed to be bona fide purchasers for value, and that the transfer of the suit property was lawfully executed.
62. Regarding the issue of an injunction, the Defendants submitted that the permanent injunctive orders sought in their counterclaim were justified, as the 2nd Defendant is the lawful proprietor of the suit property. The Plaintiff's actions, including trespass and destruction of fences, violated his right to peaceful and quiet enjoyment of the land. The Defendants further contended that the Plaintiff's rights were never infringed, as she no longer had any legal interest in the property.
63. Finally, with respect to costs, the Defendants submitted that the Plaintiff should bear the expenses of the suit. They argued that she was aware that the 2nd Defendant had lawfully acquired the property following the sale and transfer, yet she initiated litigation in spite of this knowledge, thereby abusing the Court process. The Court was accordingly invited to dismiss the Plaintiff's suit and grant the reliefs sought in the Defendants' counterclaim.

3rd and 4th Defendants submissions

64. In their submissions dated 16th June, 2022, the 3rd and 4th Defendants raised a singular issue for determination, namely, whether the transfer of the 120 acres from the Plaintiff to the 2nd Defendant was conducted in accordance with law. They contended that the central issue in the matter concerns whether the 1st Defendant paid the full purchase price of Ksh.800,000 for the 100 acres out of Kajiado/Delalekutuk/34 allegedly sold by the Plaintiff. This arises from the Plaintiff's own admission that the agreement between her and the 2nd Defendant provided for only 100 acres to be excised and transferred to the 1st Defendant.
65. Given the conflicting claims — the Plaintiff asserting that only 100 acres were sold while the 1st Defendant allegedly acquired 120 acres — the 3rd and 4th Defendants submitted that, based on the terms of the agreement, the 1st Defendant is entitled only to 100 acres. They further relied on the testimony of DW1, which established that Ksh.98,500 was paid to offset the Plaintiff's loan, Ksh.400,000 was paid via bankers' cheques to the Plaintiff, and Ksh.120,000 was intended for subdivision costs. DW1 also confirmed that the Plaintiff acknowledged receipt of Ksh.100,000 in cash, while Ksh.718,000 related to the purchase price of the suit land, in addition to monies allegedly paid to the Plaintiff's son, which could not be substantiated.
66. On the basis of this evidence, the 3rd and 4th Defendants urged the Court to enter judgment recognizing the Plaintiff's entitlement to 20 acres of the suit property, while the 1st Defendant is entitled only to 100 acres, which it acquired in accordance with the procedures governing the transaction. With respect to costs, the 3rd and 4th Defendants submitted that each party should bear its own costs.



Interested Party Submissions

67. In its submissions dated 27th October, 2025, the Interested Party raised three issues for determination: (i) whether the 1st and 2nd Defendants validly acquired Kajiado/Delalekutuk/3649; (ii) whether the Interested Party validly acquired 80 acres from the 1st Defendant; and (iii) whether the Alternative Justice System (AJS) report of 18th March, 2024 determined the ownership of the suit land.
68. The Interested Party contended that it validly acquired 80 acres from the 1st Defendant because the 1st Defendant's title was absolute, indefeasible, and lawfully obtained. The acquisition was formal, free of encumbrances, and supported by due process. It was further submitted that the Plaintiff failed to substantiate her allegations of fraud against the Defendants to the required standard. Evidence confirming the sale of the suit property to the 1st Defendant was also provided by the Village elders during their meeting held on 30th June, 2017 at Inkiwanjani Village, as well as by Leleta Ole Nkukuu, a key witness to the oral agreement and the person who introduced the Plaintiff to the 2nd Defendant.
69. On the validity of the 1st and 2nd Defendants' acquisition of the suit property from the Plaintiff, the Interested Party urged the Court to examine the evidence on record alongside the conduct of the parties. It was not disputed that the Plaintiff and the 2nd Defendant mutually agreed that she would sell 100 acres of her Kajiado/Delalekutuk/34 parcel, contingent on the clearance of her outstanding loan arrears with AFC. The Plaintiff admitted that the loan was repaid and the title deed for Kajiado/Delalekutuk/34 was released to the 2nd Defendant. It was further submitted that the 2nd Defendant paid Ksh.1,300,000 for the purchase of 120 acres after a variation of the original agreement.
70. Regarding the Interested Party's acquisition, it was submitted that as a bona fide purchaser for value, it conducted due diligence, which confirmed that the suit property belonged to the 1st Defendant. Accordingly, the Interested Party paid Ksh.32,000,000 under an agreement dated 13th July, 2016. Subsequently, it took possession, fenced, developed, and even subdivided and sold portions of the 80 acres to third parties. Judicial authorities, including *Dina Management Limited v County Government of Mombasa & 5 Others* (Petition No. 8 E010 of 2021), *Katende v Haridar & Company Ltd* (2008) 2 EA 173, and *Samuel Kamere v Lands Registrar, Kajiado* (Civil Appeal No. 28 of 2005, 2015 eKLR), were cited to reinforce the position that the Interested Party is a bona fide purchaser for value of 80 acres of the suit property.
71. On the final issue, the Interested Party submitted that the AJS report dated 18th March, 2024 recommended dismissal of the Plaintiff's suit, having established that the 2nd Defendant legally acquired the suit property title. The Interested Party argued that the report constitutes a constitutionally recognized alternative dispute resolution mechanism under Article 159(2)(c) of *the Constitution*. Consequently, the Interested Party's purchase of 80 acres was lawful.
72. In conclusion, the Interested Party submitted that the Plaintiff approached the Court with unclean hands, seeking to benefit twice by retaining both the land and the purchase price. The court was urged to dismiss the Plaintiff's claims and to recognize the Interested Party's proprietary rights over 80 acres of the suit property under Article 40 of *the Constitution*, as it satisfied all elements of a bona fide purchaser for value without notice. The Plaintiff, it was contended, failed to establish any fraud, illegality, or defect in the Interested Party's acquisition.

Plaintiff further submissions

73. In response to the Interested Party's submissions, the Plaintiff raised three issues for determination: (i) whether the Interested Party is a bona fide and innocent purchaser of 80 acres for value from the 1st Defendant, (ii) whether the Interested Party is in occupation or possession of the 80 acres of the



suit property, and (iii) whether the Alternative Justice System (AJS) Report dated 18th March, 2024 is credible.

74. The Plaintiff submitted that, although a bona fide purchaser for value generally enjoys absolute and unqualified protection against claims by prior equitable owners; the Interested Party does not qualify for such protection. This is because it failed to prove when, how, or whether it paid the full purchase price for the 80 acres. Beyond the purported sale agreement, no evidence was presented to show that Land Control Board consent was obtained, stamp duty was paid, or transfer forms were executed.
75. The Plaintiff further noted that at the time the Interested Party and the 1st Defendant allegedly entered into the sale agreement on 13th July, 2016, a caution had already been registered on the suit property title on 29th July, 2011, as evidenced by the green card, and the 2nd Defendant subsequently registered a restriction on the title on 15th September, 2016. The Plaintiff argued that the Interested Party was therefore aware—or ought to have been aware—of these encumbrances, and that a proper search would have revealed the caution, preventing a lawful purchase. Consequently, any title purportedly held by the Interested Party is claimed to have been fraudulently acquired, as good title could not pass from the 2nd Defendant who lacked valid ownership.
76. Regarding the Interested Party’s alleged occupation of the suit property, the Plaintiff challenged the photographic evidence relied upon, noting that it was not accompanied by a Certificate of Electronic Evidence, as required under Section 106B of the *Evidence Act*. Judicial authority was cited in support, including *Equity Traders Limited v John & 2 Others; Bazalel (Plaintiff); Mukinda & Another (Defendant) (2024) KEELC 1668 (KLR)*, and the Plaintiff requested that the photographs be expunged from the court record.
77. The Plaintiff also questioned the validity of the AJS Committee Report dated 18th March, 2024. It was argued that the report did not specify whether any evidence was presented to the Committee regarding the land transaction, and none of the Committee members were called to testify. The Plaintiff contended that the report appears to be a scheme by the 1st and 2nd Defendants, in collusion with the Interested Party, to mislead the Court into recognizing the 1st and 2nd Defendants’ claim to the suit property. The Plaintiff further observed that, as the Interested Party was not a party to the original proceedings, it was irregular for it to rely on the report.
78. In essence, the Plaintiff urged the Court not to recognize the Interested Party as a bona fide purchaser for value, challenged its claim of possession, and disputed the credibility and admissibility of the AJS Committee Report, asserting that it was procured to prejudice the determination of the suit property title in favour of the Defendants and Interested Party.

Issues for determination

79. Upon careful consideration of the pleadings, evidence adduced during the hearing, submissions as well as the entire court’s record, I find that the following are the key issues that arise for determination:
 - a. Whether the Delalekutuk Alternative Justice System Section findings contained in its report dated 18th March, 2024 can or should be adopted as an order of the court;
 - b. Whether a valid contract existed between the Plaintiff and 2nd Defendant for disposition of Kajiado/Delalekutuk/34 and whether the same was breached;
 - c. Whether the title for Kajiado/Delalekutuk/3649 was lawfully effected and transferred favour of the 1st Defendant;



- d. Whether the 1st and 2nd Defendants' are entitled to the orders as sought in the counter-claim; and
- e. What orders should issue as regards the costs of the suit and the counter-claim

Determination

(a) Whether the Delalekutuk Alternative Justice System Section findings contained in its report dated 18th March, 2024 can or should be adopted as an order of the court

80. Courts and tribunals are mandated under Article 159(2)(c) of *the Constitution* to promote alternative forms of dispute resolution in the hearing and determination of cases. Among the forms identified by *the Constitution* are reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms. Article 159(3) further provides that the application of traditional dispute resolution mechanisms is subject to three conditions: they must not contravene the Bill of rights; they must not be repugnant to justice or morality; and they must not be inconsistent with *the Constitution* or any written law.
81. Recognizing the diversity of traditional dispute resolution mechanisms across Kenyan communities, the then Chief Justice Emeritus Hon. (Dr.) Willy Mutunga appointed a multi-stakeholder Taskforce led by Hon. Justice Joel Ngugi (Prof.) through Gazette Notice No. 1339 of 2016. The Taskforce was tasked with formulating an appropriate judicial policy on Alternative Justice Systems (AJS), assessing the methodology and feasibility of mainstreaming AJS, and proposing concrete ways of doing so. Upon conclusion of its mandate, the Taskforce submitted its report to the Chief Justice Emeritus (Rtd) David Maraga on 17th August, 2020, culminating in the launch of the Alternative Justice System Baseline Policy on 27th August, 2020.
82. The Court takes judicial notice that the Kajiado Autonomous AJS Model was launched by Her Ladyship, Chief Justice Martha Koome, on 19th October, 2021. During the pendency of this suit, the Court, on 17th July, 2024 and 19th November, 2024, advised the parties to attempt resolution of their dispute through AJS. However, given the absence of an amicable resolution, the matter proceeded to full hearing.
83. The Plaintiff has challenged the validity of the AJS Report dated 18th March, 2024, arguing in her submissions that its findings were not supported by any documentation. She asserts that the documents relied upon were neither disclosed nor did any members of the committee testify before this Court to clarify the basis of the report. Through an affidavit sworn on 5th August, 2024, the Plaintiff deposes that she was surprised that a meeting was held and a report issued concerning her land in her absence. She further denies attending such meetings and contends that the AJS report was a deliberate scheme by the 1st and 2nd Defendants, in collusion with the Interested Party, to mislead and influence this Court in favour of the 1st and 2nd Defendants.
84. In *Kamau v County Government of Trans-Nzoia & another* (Environment & Land Petition E003 of 2020) [2025] KEELC 4328 (KLR) (9 June 2025), the learned Judge C.K. Nzili J observed with respect to the adoption of AJS findings that:

“The Alternative Justice System is aimed at settling disputes amicably and with finality. Decisions made therein cannot be imposed on any party in case of a disagreement. Bearing this in mind, the respondents have expressed their reservations about implementing the recommendations, and thus, it would be injudicious to impose or adopt the Alternative Justice System-Kitale Museums Assessors resolutions. The court also observes that some



of the recommendations touch on the constitutional functions and powers of the 1st respondent.”

85. According to the Delalekutuk AJS Section report regarding the meeting held on 18th March, 2024, concerning the land dispute between Nairesiae Nekaando and George Kariuki, the Committee resolved that the entire 120 acres had been genuinely sold to Kariuki. The minutes, however, indicate that neither the Plaintiff nor the 2nd Defendant were listed as having been present. Furthermore, in a letter dated 21st March, 2025, the Chairperson of the AJS Delalekutuk Section urged the Court to dismiss the Plaintiff’s suit based on the report’s findings.
86. A careful examination of the AJS Delalekutuk Section report reveals that the rules of natural justice were violated. The importance of these rules was emphasized by the Court of Appeal in *JMK v MWM & another* [2015] KECA 524 (KLR), where the Court held that: “The courts of this land have been consistent on the importance of observing the rules of natural justice and in particular hearing a person who is likely to be adversely affected by a decision before the decision is made.”
87. In view of the foregoing, this Court declines to adopt the findings of the AJS Delalekutuk Section, as the Plaintiff was absent during the deliberations, thereby depriving her of the right to a fair hearing.

(b) Whether a valid contract existed between the Plaintiff and 2nd Defendant for disposition of Kajiado/Delalekutuk/34 and whether the same was breached

88. The Plaintiff has approached this Court seeking, among other reliefs, an order vesting the suit property title in her name, a permanent injunction restraining the 1st and 2nd Defendants from interfering with her peaceful possession and enjoyment of the suit property, and an order directing the cancellation of the 2nd Defendant’s name from the relevant land register.
89. It is undisputed that the Plaintiff, as the registered proprietor of Kajiado/Delalekutuk/34, had used the property’s title as security for a loan from AFC. When she became unable to repay the loan, she sought to sell the land to raise the necessary funds. At that juncture, a friend introduced her to the 2nd Defendant, who expressed interest in purchasing 100 acres of the Plaintiff’s land for Kshs. 800,000 in 1992. Pursuant to an oral agreement between the Plaintiff and the 2nd Defendant, it was agreed that upon settling the Plaintiff’s outstanding loan arrears with AFC, the 2nd Defendant would retain the title after its release by the Bank. It is also undisputed that all the arrears were fully paid to AFC and the title was indeed discharged.
90. While both the Plaintiff and the 2nd Defendant concede that the original oral agreement was varied, each party presents a different account of its terms. Notably, the 2nd Defendant contends that the modification of the purchase price was by Kshs. 500,000 resulting in a total consideration of Kshs. 1.3 million for the 120 acres. According to the Plaintiff, the varied oral agreement required the 2nd Defendant to pay an additional Kshs. 120,000 to cover subdivision costs, while the outstanding purchase price of Kshs. 600,000 was to be settled before the suit property title could be transferred to him. Pending full payment, the title was to be held in safe custody by the 3rd Defendant. Another condition, as stated by the Plaintiff, was that she would retain 20 acres of the suit property for herself, with the remaining portion being transferred to the 2nd Defendant.
91. The Plaintiff strongly disputes the 1st and 2nd Defendants’ assertion that the full purchase price of Kshs. 1.3 million was paid, maintaining that she never received the outstanding balance of Kshs. 600,000. She explained that her motivation for registering a caution on the suit property title was to safeguard her proprietary interest from potential disposal by the 2nd Defendant, who had disappeared for a period before reappearing in 2009. Further the Plaintiff allegedly discovered that the title had been issued in favour of the 1st Defendant, as confirmed by the certificate of official registration.



Records from the Registrar of Companies further indicated that the 2nd Defendant was a director of the 1st Defendant. Taken together, these circumstances prompted her to lodge the caution on the suit property.

92. As a result of the foregoing, the Plaintiff questions how the suit property title was registered in the name of the 1st Defendant when she had not executed any dealings to that effect. In response, the 2nd Defendant asserts that, the 1st Defendant was its nominee.
93. According to the 1st Defendant's CR2 as at 11th March 2019, the company's directors and shareholders are George Ngure Kariuki, Kariuki Jane Njoki, Joseph Kariuki Ngure, Eliud Wambu Kariuki, and Juliet Barabiu Kariuki. The 2nd Defendant's claim that he and the 1st Defendant are identical entities is unfounded, as they are separate and distinct. This distinction is reinforced by the well-established principle that a company is a separate legal entity from its directors.
94. It is undisputed that the suit property title, being one of the four parcels resulting from the subdivision of Kajiado/Delalekutuk/34, is registered in the name of the 1st Defendant under a title deed issued on 27th June 2011. Given that the agreement between the Plaintiff and the 2nd Defendant was oral, it is necessary first to assess its validity, considering the evidence on record as well as the conduct of both the Plaintiff and the 2nd Defendant.
95. The determination of the oral agreement's validity will in turn guide the Court in ascertaining the parties' respective obligations under the Agreement, whether any contractual terms were breached, the identity of the party responsible for any breach, and the appropriate remedy for the aggrieved party. This approach aligns with the 1st and 2nd Defendants' submissions, which correctly highlight that the essential elements of a valid contract include offer, acceptance, and consideration.
96. A contract involving the transfer of an interest in land is enforceable only if it is reduced to writing, signed by the parties, and properly attested. This requirement is expressly provided under Sections 3(3) and 3(7) of the Law of Contract Act (Cap. 23), a provision which came into force on 1st June 2003.
97. At the time the Plaintiff and the 2nd Defendant entered into their oral land agreement in 1992, however, the statutory requirement for written contracts did not exist. As guided by the Court of Appeal decision in Peter Mbiri Michuki vs Samuel Mugo Michuki [2014] KECA 342 (KLR), a claim cannot be dismissed solely for the absence of a written contract. In addressing the enforceability of oral contracts for the sale of land, the Court of Appeal held in its judgment that:
- “It is our view that Section 3 (7) of the Law of Contract Act makes exception to oral contracts for sale of land coupled with part performance. We find that Section 3 (3) of the Law of Contract Act came into effect in 2003 and does not apply to oral contracts for sale of land concluded before Section 3 (3) of the Act came into force.” (emphasis)
98. Similar sentiments were also adopted by Olola J in Anderson Omondi Owandho (suing as the legal rep. of the Estate of Thomas Owandho Rajwai (Deceased) v Augustinos Ondiek [2017] KEELC 1149 (KLR) where the learned judge held as follows:
- “It is further my view that Section 3(7) of the Law of Contract Act makes exception to oral contracts for sale of land coupled with part performance. Section 3(3) of the Law of Contract Act having come into effect in 2003 does not apply to an oral contract for sale (or exchange) of land concluded before it came into effect.”
99. The existence of an oral agreement between the Plaintiff and the 2nd Defendant is undisputed, as reflected in the pleadings, submissions, and testimonies of all parties. However, the question of the



varied agreement's validity hinges on whether it must be in writing, in light of the provisions of the Law of Contract Act cited above is immaterial.

100. The 2nd Defendant's decision to purchase 100 acres of Kajiado/Delalekutuk/34 was prompted by the Plaintiff's offer to sell her land in order to raise funds to settle her loan arrears. Under the parties' agreement, the agreed consideration for the 100 acres was Ksh.800,000/=. The Plaintiff's acceptance of the offer was conditional upon the 2nd Defendant settling the outstanding loan arrears. This condition appears to have been met, as evidenced by the notification of discharge of the property title issued on 19th August 1992, reflecting settlement of the Plaintiff's AFC loan. What remains unclear, however, is whether the funds used originated from the 2nd Defendant, since the AFC deposit slip of Ksh.94,800 in the Plaintiff's name indicates it was for instalment and interest payments. Notably, this sum differs from the Ksh.79,000/= stated in the Plaintiff's amended Plaint.
101. In support of his claim that the full purchase price was paid, DW1 produced a banker's cheque dated 10th December 1991 in favour of the Plaintiff. During cross-examination, DW1 testified that a total of Ksh.960,000/= was paid to the Plaintiff through a combination of cash and cheque. Additionally, a letter dated 31st August 2005 from the Plaintiff acknowledging receipt of Ksh.100,000/= for the sale of 120 acres was tendered as evidence, though the Plaintiff denied authoring this letter.
102. In their submissions, the 3rd and 4th Defendants contended that the Plaintiff is only entitled to recover 20 acres from the 1st Defendant. They argued that Ksh.98,500/= was applied to offset her AFC loan, Ksh.400,000/= was paid via banker's cheque, the Plaintiff acknowledged receipt of Ksh.100,000/= in writing, while Ksh.718,000/= purportedly paid to the Plaintiff and her sons was not substantiated. On this basis, the 3rd and 4th Defendants assert that a total of Ksh.1,316,500/= was paid as the purchase price for the land.
103. From the foregoing, it is apparent that the parties have presented the court with differing accounts regarding the exact purchase price, the amounts paid, and the balance outstanding, each relying on their own version of events.
104. Having carefully considered the prolonged nature of this dispute, it is to be expected that some documentary evidence of payment may no longer be readily available due to the lapse of time. The payment of the purchase price was inherently tied to the transfer of the property, and the transactions between the Plaintiff and the 2nd Defendant indicate that the obligations under the agreement were substantially fulfilled. In particular, the payments made—comprising amounts to settle the Plaintiff's outstanding AFC loan, the subdivision fees, and the principal purchase consideration—collectively demonstrate that the Plaintiff received the full benefit contemplated under the parties' agreement.
105. While the Plaintiff maintains that an outstanding balance remained, a detailed scrutiny of the evidence reveals that the purported arrears are not supported by credible proof and, in fact, overlap with payments already made for legitimate obligations associated with the sale. The Court, therefore, finds no persuasive evidence to conclude that the 2nd Defendant failed to honour his contractual obligations.
106. It follows, as a matter of law, that no breach of contract has been established. The Plaintiff's claim, viewed in this context, amounts to an afterthought, seeking to challenge a transaction that was, in essence, fully executed. The Court is guided by the maxim "Dura Lex, sed lex"—the law may be stern, but it must be applied. Accordingly, the Court finds that the 2nd Defendant lawfully performed his duties under the agreement, and no further payment is due to the Plaintiff.



(c) Whether the Plaintiff has established, to the required legal standard, that the 1st, 2nd, and 3rd Defendants engaged in fraudulent conduct in the acquisition and transfer of the suit property, and if so, the legal consequences thereof.

107. The Plaintiff has accused the 1st, 2nd and 3rd Defendants of fraudulent conduct in relation to the transfer of the suit property. The particulars of the alleged fraud are that the 3rd Defendant irregularly effected registration and issued the title deed to the 1st Defendant on 27th June, 2011, without the Plaintiff's consent or a valid Land Control Board approval, and that the 1st and 2nd Defendants forged the Plaintiff's signature on transfer documentation and misrepresented material facts to the 3rd Defendant to secure registration. These are grave allegations which, if established, will nullify a registered title. Accordingly, they must be approached looked into with utmost care.

108. It is necessary at the outset to identify and state the governing statutory legal framework. The operative law governing issuance of title at the time the 1st Defendant's title was issued was the Registration of Titles Act (Cap. 281) (Repealed). The Act conferred security of title and limited avenues of attack on registered proprietorship. Of particular relevance is section 23(1) of that Act which provides:

“23.

- (1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

109. Section 23(1) therefore enshrines the principle of indefeasibility of title: a registered proprietor's title is conclusive, and may only be impeached on the ground of fraud or misrepresentation to which the proprietor is proved to be a party. The practical implication is twofold: first, the stakes of any allegation of fraud against a registered proprietor are high; and second, the legal burden resting on the party who alleges fraud is correspondingly high.

110. The law on proof of fraud in civil matters is well established. Fraud must not be left to conjecture or suspicion; it must be distinctly alleged and strictly proved. In the Case of Mutiria Karumbai Macaw v James Njagi Makembo & 3 Others [2018] eKLR, the court opined that:

“It is trite law that fraud must not only be pleaded, but the particulars of fraud must be particularized by the party pleading fraud. The allegations must be strictly proved. In the case of GUDKA VS DODHIA, CIVILAPPEAL NO 21 OF 1980 it was held:- “the respondent was in effect being accused of fraudulent conduct and allegations of fraud must be strictly proved. The fraudulent conduct must be strictly proved more than on a mere balance of probabilities as required in R. G. Patel Makanji (1957) EA – 314.” The allegations of fraud are weighty and the party pleading it must strictly prove.”

111. In *Ratilal Gordhanbhai Patel vs. Lalji Makanji* (1957) EA 314, the Court of Appeal established the threshold on the burden of proof required in civil cases founded on fraud. The long-standing authority



in the East African Courts confirms that where fraud is alleged the burden on the claimant is heavier than the ordinary civil standard. The court observed:

“There is one preliminary observation which we must make on the learned Judge’s treatment of this evidence: he does not anywhere in the judgment expressly direct himself on the burden of proof or on the standard required. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required...”

112. Taken together, these authorities dictate the legal standard to be applied: allegations of fraud affecting a registered title must be proved by evidence which is clear, cogent and convincing — such that the court is left with no reasonable doubt that fraud occurred and that the registered proprietor was party to it.
113. First, the Plaintiff’s pleaded particulars of fraud are largely assertive rather than evidential. She alleges forgery of her signature and collusion between the 2nd and 3rd Defendants, yet she adduced no independent expert evidence (for example, handwriting comparison or forensic examination) to demonstrate that the signature on the transfer form was forged. In cases of alleged forgery, the decisive proof is frequently expert comparison or other direct evidence demonstrating non-authenticity; absent such evidence, the allegation remains an untested assertion.
114. Secondly, the Plaintiff has not produced evidence to show procedural irregularity in the registration process amounting to statutory contravention or deliberate concealment. The 3rd Defendant (the Land Registrar) gave evidence on procedure and asserted that the documents presented were in order. Although the Registrar’s failure to produce certain underlying documents on demand is unfortunate and raises questions, absence of production alone — without affirmative proof that documents were forged, falsified, or that consent was fabricated — does not, of itself, establish the high standard of proof required for fraud. Moreover, section 23(1) places the onus on the Plaintiff to show that the certificate was obtained by fraud or misrepresentation to which the registered proprietor was a party; it is not sufficient to raise suspicion of irregularity by the custodian alone.
115. Thirdly, the documentary and oral evidence that does exist — though disputed — tends to support the legitimacy of the transaction rather than prove dishonest collusion. There is evidence of payments and of meetings (village elders’ minutes, payment instruments, bankers’ cheques and correspondence) which, taken together, indicate that a sale transaction took place and that the title issued reflected the result of that transaction. The 2nd Defendant and supporting witnesses testified to payments, to subdivision and to steps taken towards registration. While some documents were contested (for example, the Plaintiff’s denial of having authored the 31st August 2005 letter), the existence of documentary indicia of a sale — and the absence of affirmative proof of fabrication — render the Plaintiff’s fraud allegations fragile when measured against the strict standard required. The Court cannot, on the basis of suspicion and conflicting accounts alone, set aside a registered title.
116. Fourthly, the factual record demonstrates material inconsistencies in the Plaintiff’s version which affect the credibility and cogency of her allegations. She accepts that she entered into transactions with the 2nd Defendant and that the title was discharged from AFC; she also accepts having received certain sums. A party who complains of forgery yet previously accepted payments and engaged in the transaction places herself in a difficult evidential position.
117. Fifth, where a registered title has been issued, the presumption of regularity and indefeasibility attaches strongly. The Registration of Titles regime under Cap. 281 was designed to protect certainty of ownership, and section 23(1) reflects a policy choice to secure registered proprietorships except in clear cases of fraud. The Plaintiff bears the burden to overthrow that presumption.



118. Sixth, as to the allegation that the Land Control Board consent was absent: if that had been the decisive point to vitiate the transfer, the Plaintiff was obliged to tender clear proof that no consent existed or that the consent was fabricated. The Plaintiff did not produce minutes of the Land Control Board showing that consent was refused or that the purported consent was forged; nor did she call any Board official to contradict the documentary record.
119. Seventh, the Court is conscious of the settled principle that allegations of fraud put the claimant in a precarious evidential position: when one alleges fraud, one must be prepared to prove it with precision and weight.
120. Having regard to the totality of the evidence, and applying the strict standard required, I am not persuaded that the Plaintiff has discharged the heavy burden of proof incumbent upon her. The allegations of forgery, collusion and misrepresentation remain unproven. There is no cogent, clear, and convincing evidence that the 1st Defendant's certificate of title was obtained by fraud or misrepresentation to which the 1st Defendant was a party. On the contrary, the available testimonial and documentary material points towards a sale and administrative process that, albeit disputed in parts, was not shown to be fraudulent in the precise legal sense required to impeach a registered title under the Registration of Titles Act.
121. Accordingly, the Court finds that the transfer was properly effected and that the 1st, 2nd and 3rd Defendants were not shown to have engaged in fraudulent conduct in relation to the registration of the suit property.
122. Having found that the 1st Defendant's title to Kajiado/Delalekutuk/3649 was lawfully, regularly and procedurally acquired, it follows as a matter of law that any subsequent dealings with the property founded upon that valid title are equally unimpeachable. The Interested Party purchased 80 acres out of the suit property. There exists no legal or equitable basis upon which this Court may interfere with or disturb the Interested Party's ownership, and its title remains fully protected under the doctrine of the indefeasibility of title and the principle of finality of registered interests.

SUBPARA (d) Whether the 1st and 2nd Defendants' are entitled to the orders as sought in the counter-claim

123. Having found under the preceding issues that the Plaintiff failed to prove fraud, that the impugned transfer was properly effected, and that by virtue of Section 23(1) of the Registration of Titles Act (Cap 281) (Repealed) the 1st Defendant's title is conclusive and indefeasible, the Court now turns to consider whether the 1st and 2nd Defendants are entitled to the remedies sought in their counter-claim. These remedies are:
 - i. A declaration that the Plaintiff in the counter-claim is the legal proprietor of all that parcel of land known as Kajiado/Delalekutuk/3649;
 - ii. A permanent injunction restraining the Defendant in the counter-claim from trespassing upon or interfering with the Plaintiff's quiet possession thereof;
 - iii. An order compelling the Defendant in the counter-claim to vacate the said parcel, failing which an order of eviction do issue;
 - iv. Mesne profits;
 - v. General damages; and
 - vi. Costs of the suit.



124. Given the Court’s determination that the Plaintiff failed to discharge the strict burden of proving fraud or misrepresentation and that the transfer and registration in favour of the 1st Defendant was lawful, the declaratory relief naturally follows. Having found no legal basis for impeaching that title, the Court is satisfied that the 1st Defendant is the lawful proprietor of the suit property. The declaration sought is therefore merited.
125. The evidence demonstrates that the Plaintiff continues to occupy or assert claims over the suit property notwithstanding the 1st Defendant’s registered ownership. A registered proprietor is entitled to quiet possession and enjoyment of their land unless displaced through lawful process.
126. In *Samuel Kipketer Komen v Commissioner of Lands & Others* [2018] eKLR, the Court emphasised that once title is found to be valid and indefeasible, the registered owner is entitled to protection of their possessory rights and to orders restraining trespassers.
127. Accordingly, having upheld the validity of the 1st Defendant’s proprietorship, the Court finds that a permanent injunction is appropriate to prevent continued interference, intrusion or trespass by the Plaintiff.
128. Following the finding that the Plaintiff has no enforceable legal or equitable interest in the suit property, her continued occupation amounts to unlawful possession. The remedy of vacant possession is therefore appropriate.
129. Where a party unlawfully remains on land belonging to another, the Court is empowered to order eviction. See *Kihu v Karimi* [2016] eKLR, where the Court held that upon dismissal of a claim impeaching title, an order for eviction is the natural consequence. The Plaintiff is therefore ordered to vacate the suit property within the period specified in the final orders, failing which eviction shall issue.
130. Although the 1st and 2nd Defendants sought mesne profits, the record does not contain evidence quantifying the loss, income, rental value, or profit that the Defendants allege to have suffered or been deprived of during the period of the Plaintiff’s occupation.
131. Mesne profits are awarded only where specifically pleaded and strictly proven. The law is settled that they cannot be granted in the abstract or on the basis of assumption.
132. In *Attorney General v Halal Meat Products Ltd* [2016] eKLR, the Court of Appeal affirmed that:

“A claim for mesne profits must be strictly proved. It is not enough to merely allege that one has been deprived of use of land; the claimant must demonstrate actual loss and provide evidence of the income or profits lost during the material period.”
133. To the same effect is the persuasive statement by Mativo J (as he then was) in *Rajan Shah T/A Rajan S Shah & Partners v Bipin P Shah* [2016] eKLR, where he held that:

“The term ‘mesne profits’ relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The Mesne profits are nothing but compensation that a person in the unlawful possession of others property has to pay for such wrongful occupation to the owner of the property. It is settled principle of law that wrongful possession is the very essence of a claim for mesne profits and the very foundation of the unlawful possessor’s liability therefore. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits. Mesne profits are awarded in place of rents, where the tenant remains in possession after



the tenancy agreement has run out or been duly determined. A landlord claiming for mesne profits is claiming for the profits intermediate from the date the tenant ought to have given up possession and the date he actually gives up possession.”

134. Neither valuation reports, comparable rental assessments, tenancy evidence, nor accounting computations were produced in this case. In the absence of such proof, the Court cannot engage in speculation or estimation. The claim for mesne profits therefore fails.
135. Costs ordinarily follow the event as provided under Section 27 of the *Civil Procedure Act*. The 1st and 2nd Defendants, having succeeded in their counter-claim and defended the suit successfully, are entitled to costs.
136. Accordingly, I enter judgement on the following terms:
- I. The Plaintiff's claim dated 8th March 2019 (as amended) is dismissed in its entirety.
 - II. The registration of the title of parcel Kajiado/Delalekutuk/3649 in favour of the 1st Defendant is affirmed and declared valid, binding and indefeasible.
 - III. It is declared that the 1st Defendant is the lawful and absolute proprietor of Kajiado/Delalekutuk/3649.
 - IV. A permanent injunction is issued restraining the Plaintiff, her agents, servants, employees or any person claiming under her, from entering upon, remaining on, trespassing, cultivating, erecting structures, alienating, disposing of, or otherwise interfering with the peaceful possession, occupation or use of Kajiado/Delalekutuk/3649 by the 1st Defendant.
 - V. The Plaintiff is ordered to vacate Kajiado/Delalekutuk/3649 within ninety (90) days from the date of this judgment.
 - VI. Should the Plaintiff fail to vacate within the time prescribed, the 1st Defendant is at liberty to evict her and the area OCS or relevant authority over whose jurisdiction the suit property falls under shall assist to ensure eviction is carried out peacefully and in accordance with law.
 - VII. The claim by the 1st and 2nd Defendants for mesne profits is dismissed for lack of proof.
 - VIII. The claim for general damages is dismissed.
 - IX. The 1st and 2nd Defendants are awarded costs of the suit and counter-claim.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF DECEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Lesire h/b for Mr. Nairi for the Plaintiff

Ms. Ithondeka for the 1st and 2nd Defendants

N/A for the 3rd Defendant

Mr. Kuria h/b for Mr. Taliti for the Interested Party



Court Assistant: Mpoye

