

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. 924 OF 2012
FORMERLY HCCC No. 193 OF 2012

NICHOLUS KUNDU WANYAMA
.....PLAINTIFF

-VERSUS-

BENSON KOSGEI BETT1ST DEFENDANT
JANE NYONGESA2ND DEFENDANT

JUDGEMENT

1. The Plaintiff herein filed a Plaint dated 19.09.2012 (hereinafter referred to as **“the present suit”**) seeking the following Orders against the 1st and 2nd Defendants herein; -

(a) A declaration that the Plaintiff is the absolute owner of the whole of that parcel of land known as ELDORET MUNICIPALITY BLOCK 21(KING’ONG’O)1940 and that the Defendants actions amount to an interference with the Plaintiff’s property interest over the suit land.

(b) An Order of Permanent Injunction to permanently restrain the Defendants either acting jointly and severally from trespassing into, wasting, interfering with and or otherwise preventing the Plaintiff from its quite (sic) enjoyment, possession and with all the rights and privileges belonging to and appurtenant thereto.

(c) Costs of this suit.

(d) Any other relief as the court may be pleased to grant.

2. The facts in support of the prayers can be summarised as follows; -
- (i) The Plaintiff purchased the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940(hereinafter referred to as **“the sui property”**) from one STEPHEN NYONGESA KARIBU (now deceased) in the year 1991.
 - (ii) In the year 1998, the Plaintiff and the late STEPHEN NYONGESA KARIBU had a dispute which resulted to the proceedings known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
 - (iii) Upon hearing and determination of the proceeding known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998, the Plaintiff herein was declared to the lawful owner of the suit property herein in the year 2007.
 - (iv) Unfortunately, the STEPHEN NYONGESA KARIBU (now deceased) passed away in June 2008 before the transfer documents would be executed in favour of the Plaintiff herein.
 - (v) In the year 2012, the 2nd Defendant herein who is the wife to STEPHEN NYONGESA KARIBU together with the 1st Defendant encroached into the suit property and began interfering with the quite possession, occupation and ownership of the suit property.

- (vi) In addition to the above, the 1st and 2nd Defendant demolished the Plaintiff's home and thereafter began bring in construction materials with a view of evicting him and taking over possession of the suit property.
 - (vii) It was on the basis of the 1st and 2nd Defendants actions that the Plaintiff herein did institute the present suit seeking the orders sought therein.
3. The present suit was duly served on the 1st and 2nd Defendants.
 4. The 1st Defendant did oppose the present suit by filing a Statement of Defence dated 03.10.2012 on the following facts; -
 - (i) The 1st Defendant pleaded that he was the lawful registered owner of the suit property who is entitled to all the rights and privileges over the same.
 - (ii) The Plaintiff herein did not have any ownership rights over the suit property as alleged and could not therefore claim any protection from the Court over same.
 - (iii) The Plaintiff was not in occupation and/or use of the suit property as alleged.
 - (iv) The 1st Defendant was of the view that the Plaintiff's suit was in fact incompetent and ought to be struck out with costs forthwith.
 5. The 2nd Defendant did also oppose the present suit by filing a Statement of Defence dated 02.11.2012 on the following grounds; -

- (i) The 2nd Defendant first and foremost denied the allegation that there was an Agreement For Sale between the Plaintiff and her late husband STEPHEN NYONGESA KARIBU (now deceased).
- (ii) In the alternative, if such an Agreement For Sale ever existed between the Plaintiff and her late husband STEPHEN NYONGESA KARIBU (now deceased) over the suit property, then the same was a forgery.
- (iii) The 2nd Defendant did proceed to outline various particulars of Forgery against the Plaintiff.
- (iv) The 2nd Defendant did deny the existence of any Judgement and/or Decree emanating from the proceeding known ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
- (v) In essence, the 2nd Defendant pleaded that the Plaintiff did not have any ownership rights over the suit property capable of being protected by the Court through the prayers sought in the present suit.
- (vi) The 2nd Defendant did further plead that the Plaintiff was not in occupation and/or use of the suit property as alleged in the present suit.
- (vii) The 2nd Defendant was of the view that upon the demise of the late STEPHEN NYONGESA KARIBU, she became the beneficial owner of the suit property with the powers, rights to deal with the same including the right to sale.
- (viii) In conclusion, the 2nd Defendant pleaded that the Plaintiff had no cause of action against her and sought the present suit to be dismissed.

6. After the 1st and 2nd Defendants filed their Statements of Defences, the pleadings closed and the matter was fixed for hearing.

PLAINTIFF'S TESTIMONIES & DOCUMENTARY EVIDENCE

7. The first witness called to the stand was the Plaintiff who was marked as PW 1.
8. The Plaintiff did inform the Court that he had prepared a witness statement dated 24.05.2013 of which he adopted as his evidence in chief.
9. The Plaintiff informed the Court that he purchased the suit property from the late STEPHEN NYONGESA KARIBU (now deceased) way back in 1991.
10. The Plaintiff then relied on the following documents in support of his testimony which were produced before the Court;-

PW 1 EXHIBIT 1- A Copy of the Agreement For Sale dated 22.07.1991

PW 1 EXHIBIT 2-(a)-(g)- A bundle of receipts for various payments made on the suit land.

PW 1 EXHIBIT3- A receipt from the Municipal Council Serial No. 7096 dated 21.3.2001 showing that he was doing business on the land.

PW 1 EXHIBIT 4- A copy of the Register and/or Green Card of the suit property.

PW 1 EXHIBIT 5- Copy of a Demand letter

11. According to the Plaintiff, the suit property was sold to him by the late STEPHEN NYONGESA KARIBU in the year 1991.
12. The Plaintiff did inform the Court that he took possession and use of the suit property but later on, the late STEPHEN NYONGESA KARIBU altered the boundary.
13. On realising that the late STEPHEN NYONGESA KARIBU had interfered with the boundary, the Plaintiff proceeded to file the suit known ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
14. The Plaintiff testified that the proceeding known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 was heard and concluded in the year 2007 with an Order that the suit property belonged to him and the late STEPHEN NYONGESA KARIBU was directed to transfer the same.
15. Unfortunately, the late STEPHEN NYONGESA KARIBU died before he could comply with the Judgement pronounced in the proceeding known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
16. In an effort to protect his interest on the suit property, the Plaintiff did record a Caution of the Register and/or Green Card which was reflected as Entry No. 4.
17. However, later on, the Plaintiff's Caution recorded as Entry No. 4 was unprocedurally removed without his knowledge through the Entry No. 6. On the Register and/or Green Card.

18. The Plaintiff stated that on the 12.07.2012, he received a Letter directing him to vacate the suit property within 30 days from the date of receipt.
19. Similarly, the Plaintiff got a second letter from the firm of LIMO R.K & COMPANY ADVOCATES dated 06.09.2012 directing him to hand over vacant possession to the 1st Defendant herein.
20. The Plaintiff sought to rely on PW 1 EXHIBIT 7 which was the Judgement and Decree in the proceedings known ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
21. The Plaintiff did contend that the Caution registered on the suit property was removed based on the Judgement and Decree issued in ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 yet no such orders had been issued.
22. The Plaintiff did reiterate that he occupied the suit property for a period of 21 years before he was evicted and his house demolished.
23. On cross-examination, the Plaintiff did admit that the 1st Defendant was currently registered as the owner of the suit property.
24. The Plaintiff confirmed that there was a storey building of the suit property developed by the 1st Defendant.
25. The Plaintiff nevertheless insisted that at the time the 1st Defendant was acquiring the suit property, there was a Judgement and Decree to the effect that he was the lawful owner pursuant to the proceeding known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 and a

Caution recorded on the Register and/or Green Card to indicate his interest.

26. Consequently therefore, the Plaintiff stated that the removal of the Caution on the Register and/or Green Card of the suit property based on the Judgement and Decree in the proceeding known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 was erroneous as no such orders had been issued.
27. The Plaintiff clarified that in the Judgement and Decree of the proceeding known as ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998, the property under litigation was LR.NO.ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17.
28. However, the Plaintiff confirmed that the portion which he acquired is what was later registered as the suit property after LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 was sub-divided.
29. The Plaintiff did inform the Court that the late STEPHEN NYONGESA KARIBU filed an Appeal against the Judgement and Decree pronounced in ELDORET SENIOR PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 but died before it was prosecuted and concluded.
30. The Plaintiff indicated that the Receipts he had produced were to show his possession and use of the suit property.
31. The Plaintiff did testify that he was never a member of EMITIM FARM but stated that it was PARCEL NO. 10492 which upon sub-division created the property known as LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17.

32. The Plaintiff did reiterate that the purchase price of the suit property was paid to the late STEPHEN NYONGESA KARIBU while the payments for Survey were paid to one DAVID KIPCHIRCHIR MUTAI.
33. The Plaintiff admitted that he had not executed the Judgement and Decree pronounced on the 10.09.2007 in the proceeding known as ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 because there was an Appeal by the late STEPHEN NYONGESA KARIBU.
34. The Plaintiff confirmed that it was more than 12 years since the Judgement and Decree dated 10.09.2007 in the proceeding known as ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 had been issued.
35. On re-examination, the Plaintiff averred that the suit property was a sub-division of LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 as demonstrated in the Register and/or Green Card.
36. The Plaintiff did point out that according to the Letters of Administration in relation to the late STEPHEN NYONGESA KARIBU, he died on 05.07.2008 and the Administrators were appointed on 23.01.2013.
37. However, based on the Register of the suit property, the 1st Defendant was registered as the owner on the 30.05.2012.
38. The Plaintiff did conclude his testimony by stating that he had no claim whatsoever against one DAVID KIPCHIRCHIR MUTAI.
39. At the end of this re-examination, the Plaintiff was discharged from the witness box thereof.

40. The Plaintiff's second witness was one MOSES WAFULA who was marked as PW 2.
41. PW 2 did inform the Court that he had prepared a witness statement dated 24.05.2013 of which he adopted the same as his evidence in chief.
42. According to PW 2, he had purchased a portion of land from one DAVID KIPCHIRCHIR MUTAI in the year 1998.
43. At this time, DAVID KIPCHIRCHIR MUTAI still had more land to dispose of and he sought the help of PW 2 to get more purchasers.
44. It was at this point that PW 2 introduced the late STEPHEN NYONGESA KARIBU to DAVID KIPCHIRCHIR MUTAI.
45. Indeed, STEPHEN NYONGESA KARIBU did purchase a portion of Quarter an Acre from DAVID KIPCHIRCHIR MUTAI but was not able to pay the purchase price thereof.
46. The late STEPHEN NYONGESA KARIBU (now deceased) then sold an Eighth of An Acre to the Plaintiff herein.
47. The Plaintiff herein upon acquisition of the Eighth of an Acre from the late STEPHEN NYONGESA KARIBU did take possession by establishing his home thereon and occupying the same for a period of about 10 years.
48. PW 2 however clarified that he was not present when the Plaintiff and the late STEPHEN NYONGESA KARIBU signed the Agreement For Sale or the purchase price was exchanged.
49. PW2 similarly admitted that he had not seen the Mutation of the property known LR.NO ELDORET MUNICIPALITY BLOCK 21

(KINGONGO)/17 and/or the resultant properties that came out of it.

50. On cross-examination, PW 2 stated that at the time he and the late STEPHEN NYONGESA KARIBU were purchasing their portions from DAVID KIPCHIRCHIR MUTAI, the property was known LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 and not PLOT.NO.109492 EMITIM FARM.
51. According to PW 2, the Plaintiff herein did settle the purchase price to the late STEPHEN NYONGESA KARIBU in instalments but the full purchase price was ultimately settled.
52. PW 2 did confirm that the late STEPHEN NYONGESA KARIBU had informed him about a dispute with the Plaintiff that had been taken to Court but was not aware of the outcome thereof.
53. On re-examination, PW 2 reiterated that he was never involved in the Agreement For Sale between the Plaintiff and the late STEPHEN NYONGESA KARIBU.
54. Similarly, PW 2 denied any involvement in the proceeding known as ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
55. At the end of this re-examination, PW 2 was discharged from the witness box thereof.
56. The Plaintiff's third witness was one ELIZABETH MORAA who was marked as PW 3.
57. PW 3 did introduce herself as a Land Registrar currently stationed at Eldoret Land Registry.

58. PW 3 did confirm to the Court that she was in possession of the Parcel file that had the relevant documents about the properties known LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 and LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940.
59. According to PW 3, the property known as LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 measured approximately 8.276 Hectares and was registered in the name of KIPCHIRCHIR MUTAI ON THE 21.02.1997.
60. Thereafter, the property known as LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 was sub-divided into properties known as LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1865 to 1941.
61. Consequently therefore, the suit property is a creation of the property known as LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17.
62. PW 3 thereafter did produce the following documents to assist the Court; -

PW 1 EXHIBIT 11- A Copy of the Register and/or Green Card with respect LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17.

PW 1 EXHIBIT 12 - A copy of the Caution dated 7.10.2002 lodged by the Plaintiff.

PW1 EXHIBIT 13-A copy of the Caution of 24.10.2007 lodged by the 2nd Defendant.

PW 1 EXHIBIT 14 - A copy of an Application for Consent that is undated.

PW 1 EXHIBIT 15 - A Copy of the Letter of Consent dated 26.04.2012.

PW 1 EXHIBIT 16 - A Copy of the Transfer Form dated 30.5.2012

PW 1 EXHIBIT 17- A Copy of the Register and/or Green card for LR.NO ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940.

PW 1 EXHIBIT 18- A Copy of the cancelled title

PW 1 EXHIBIT 19 - Original transfer file from the Government of Kenya

63. Upon production of the above documents, PW3 informed the Court that suit property was initially registered in the name of DAVID KIPCHIRCHIR MUTAI who did transfer the same to the late STEPHEN NYONGESA KARIBU.
64. After the late STEPHEN NYONGESA KARIBU was recorded as the owner, the Plaintiff lodged a Caution on 07.10.2002 claiming a purchaser's interest while the 2nd Defendant registered the second Caution on the 24.10.2007 as the lawful wife of the registered owner.
65. However, the Plaintiff's Caution recorded on 07.10.2002 was subsequently removed on the basis of a Court Order from the proceeding known ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
66. Unfortunately, the said Court Order emanating from ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 used to remove the Plaintiff's Caution was not in the Parcel file and could not be traced in the registry.
67. Similarly, PW3 could not confirm if the Plaintiff had been notified for the decision to remove the Caution but based on the fact that there was a Court Order, there was no requirement to notify the Plaintiff.

68. PW 3 averred that after the Caution by the Plaintiff was removed, the suit property was sold to one BENSON KOSGEY KIBET.
69. However, the Application For Consent to Transfer from the late STEPHEN NYONGESA KARIBU to BENSON KOSGEY KIBET was never executed by the registered owner and also was not signed.
70. On cross-examination, PW3 reiterated that the Register of the suit property was opened on 21.02.1997 and the suit recorded in the name of the late STEPHEN NYONGESA KARIBU on 01.10. 2002.
71. According to PW 3, the Caution lodged by the Plaintiff was removed by virtue of a Court Order while the Caution lodged by the 2nd Defendant was withdrawn on 10.05.2012.
72. PW 3 stated when the suit property was transferred from the late STEPHEN NYONGESA KARIBU to the 1st Defendant, there was no Caution on the Register.
73. However, on the 04.09.2012, a Restriction was recorded by the Land Registrar on the Register after discovering that there was a pending litigation.
74. In concluding her cross-examination, PW 3 reiterated that the suit property was currently registered in the name of the 1st Defendant herein.
75. On re-examination, PW3 could not confirm whether there was an Agreement For Sale which had accompanied the Caution lodged by the Plaintiff in the Land Registry.

76. At the end of this re-examination, PW 3 was discharged from the witness box.
77. The Plaintiff's fourth witness was one ANDREW KOMEN KIBET who was marked as PW 4.
78. PW 4 did introduce himself as a Senior Court Assistant currently serving in Eldoret Law Court.
79. PW 4 informed the Court that he had come to produce the file containing the proceedings known as ELDORET ENVIRONMENT & LAND COURT APPEAL NO. 11 of 2013 between STEPHEN NYONGESA KABIRU-VERSUS- NICHOLAS KUNDU WANYAMA.
80. PW 4 did inform the Court that the Appeal was lodged on the 09.10.2007 and admitted for hearing on 04.11.2011. before a single judge.
81. PW4 stated that although the Memorandum of Appeal was served, the record of Appeal was never filed.
82. According to PW4, the Appeal known as ELDORET ENVIRONMENT & LAND COURT APPEAL NO. 11 of 2013 emanated from the Judgement and Decree of ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998 between NICHOLAS KUNDU WANYAMA-VERSUS-STEPHEN NYONGESA KABIRU.
83. In concluding his testimony, PW4 stated that the file known ELDORET ENVIRONMENT & LAND COURT APPEAL NO. 11 of 2013 was never heard and determined and therefore the binding decision is the Judgement and Decree of ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.

84. On cross-examination by the Defendants, PW 4 stated the 1st Defendant was never a party in the Lower Court file or the Appeal before this Court.
85. PW 4 could not explain the nexus between the property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 and the suit property.
86. PW 4 further confirmed that the 2nd Defendant was never a party in the lower court proceeding and similarly was not a party in the Appeal before this Court.
87. According to PW 4, the Agreement for Sale produced in the Lower Court dated 22.07.1991 was referring to PLOT.NO.10492 EMITIM FORM and not the suit property.
88. At the end of this cross-examination, there was no re-examination for PW 4 and he was discharged from the witness box.
89. Thereafter, the Plaintiff did close his case.

DEFENDANTS TESTIMONIES & DOCUMENTARY EVIDENCE

90. The Defence first witness was one DIANA CHELAGAT MELLI who was marked as DW 1.
91. DW 1 introduced herself as a Valuer working with the entity known as HIGHLAND VALUERS, ELDORET OFFICE.
92. DW1 then did produce the following documents which she sought to rely upon in her testimony; -

DW 1 EXHIBIT 1 - A Copy of the Valuation Report dated 30.04.2013

DW 1 EXHIBIT 2- A Copy of the Valuation Report dated 15.12.2016

93. According to DW 1, both Valuation Reports were done by one S.K. CHEMELIL on instruction of the 1st Defendant.
94. The term of reference was to undertake a Valuation of the suit property before the Court.
95. DW 1 stated that the suit property was approximately 0.04 Ha and registered to the 1st Defendant who was issued with title on 30.05.2012.
96. According to DW 1, the valuation of the suit property in accordance to the Valuation dated on 30.04.2013 was about Kenya Shillings Three Million Two Hundred Thousand (KShs.3,200,000/-) made up of Kenya Shillings Two Million (KShs.2,000,000/) being the value of the land and Kenya Shillings One Million Two Hundred Thousand (KShs.1,200,000/-) being the value of the improvements.
97. In the second Report dated 15.12.2016, the Value had improved to about Seventeen Million (KShs.17,000,000/-) keeping in mind that the valuation of the suit property was now at Kenya Shillings Five Million (KShs.5,000,000/-) while the developments thereon were valued at Kenya Shillings Twelve Million (KShs.12,000,000/-).
98. On cross-examination, DW 1 stated that the first valuation had been undertaken before she joined the entity but both Valuation Reports had been prepared by S.K. CHEMELIL.

99. DW 1 confirmed that according to the Valuation Reports, the registered owner of the suit property was the 1st Defendant.
100. DW1 did inform the Court that he was a qualified Valuer but was not yet licensed.
101. DW 1 admitted that both Valuation Reports had been prepared way before she had joined Valuer firm and she was not the maker thereof.
102. DW1 testified that the 1st Defendant bought the land in 2012, but she did not know or tell the value of the land in 2012.
103. DW 1 similarly was not familiar with the structures that were demolished on the suit property as alleged by the Plaintiff.
104. DW 1 clarified that the suit property was not on a road reserve or public utility although there was no official search attached to the Valuation Reports to confirm the ownership of the same.
105. DW 1 in her testimony confirmed the suit property was a sub-division of the property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17.
106. On re-examination, DW 1 reiterated that by the time the Valuations were being done, the developments being undertaken were of a permanent nature.
107. DW 1 could however not state what was on the ground before the 1st Defendant began developing the suit property.
108. At the end of this re-examination, DW 1 was discharged from the witness box and the 1st Defendant proceeded to close his case.

109. The 2nd Defendant opted not to offer any evidence and/or documents save for her Defence.

110. As such, the Court did close the 2nd Defendant's case.

111. At the close of the hearing, the Court directed the parties to file their final written submissions.

112. The Plaintiff did file his submissions dated 17.06.2025, the 1st Defendant's filed his submissions dated 18.07.2012 whereas the 2nd Defendant's submissions were dated 28.07.2025.

113. Based on the pleadings, testimony of the witnesses and the documents produced before Court, the issues for determination are as follows; -

ISSUE NO. 1 - WHETHER THE 2ND DEFENDANT HAD BEEN WRONGLY SUED AND LACKED CAPACITY OR LOCUS TO SUE OR DEFEND THIS SUIT?

ISSUE NO. 2- WHETHER THERE IS ANY NEXUS BETWEEN PARCEL NO. 10492/EMTIM/FARM AND THE SUIT PROPERTY HEREIN?

ISSUE NO. 3 - WHETHER THE 1ST DEFENDANT ACQUIRED VALID TITLE OF THE LAND SOLD TO HIM BY THE 2ND DEFENDANT?

ISSUE NO. 4 - WHETHER THE PLAINTIFF IS ENTITLED TO THE PRAYERS SOUGHT IN THE PLAINT?

ISSUE NO. 5 - WHO SHALL BEAR THE COSTS OF THIS SUIT?

114. The Court having duly identified the above issues for determination, the same will now be discussed below.

**ISSUE NO. 1 - WHETHER THE 2ND DEFENDANT HAD BEEN
WRONGLY SUED AND LACKED CAPACITY OR
LOCUS TO SUE OR DEFEND THIS SUIT?**

115. The first issue for determination has been raised by the 2nd Defendant herein.
116. The 2nd Defendant's contention is that the proceeding instituted were in her own capacity and not as the representative of the estate of STEPEHN NYONGESA KARIBU.
117. The 2nd Defendant was of the considered view that she did not have any privity of contract with the Plaintiff herein over the suit property.
118. The only reason the Plaintiff could sue her is by virtue of being an administer in the estate of the late STEPHEN NYONGESA KARIBU.
119. As such, the 2nd Defendant sought her name to be struck out of the present suit as it contravenes the provisions of Section 2 of the Law of Succession.
120. However, the Court has perused the Certificate of Death relating to STEPHEN NYONGESA KARIBU which confirms that he died on the 05.07.2008.
121. Similarly, according to the Grant of Letters of Administration issued in favour of the 2nd Defendant, they are dated 23.01.2013.

122. The question then that arises is whether the 2nd Defendant between 05.07.2008 and 23.01.2013 had the authority of the Court to deal with the estate of STEPHEN NYONGESA KARIBU.

123. The answer to the above question is to the negative.

124. Once the STEPHEN NYONGESA KARIBU died on the 05.07.2008, his estate including the suit property could only be dealt with by the appointed Administrators of the Court.

125. Consequently therefore, the 2nd Defendant's actions between 05.07.2008 to 23.01.20123 were in her own capacity and not on behalf of the estate of STEPHEN NYONGESA KARIBU.

126. As such, the 2nd Defendant is properly sued to explain the manner in which she dealt with the suit property notwithstanding the Plaintiff's interest on the same as pronounced in the Judgement and Decree issued in the proceedings known as ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.

**ISSUE NO. 2 - WHETHER THERE IS ANY NEXUS
BETWEEN PARCEL NO. 10492/EMTIM/FARM
AND THE SUIT PROPERTY HEREIN?**

127. The second issue for determination is whether the portion of land purchased by the Plaintiff herein is the same as the suit property before the Court.

128. According to the Plaintiff, the portion purchased from the late STEPHEN NYONGESA KARIBU in the Agreement For Sale dated 22.07.1991 produced as PW 1 EXHIBIT 1 is the same as the suit property.

- 129.The Plaintiff pleaded and testified that originally, one KIPCHIRCHIR MUTAI was the lawful recorded owner of the property known as PLOT.NO.10492 Within EMITIM FARM.
- 130.This property known as PLOT.NO.10492 EMITIM FARM was later registered as LR.NO.ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)17.
- 131.The property known as ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)17 was then sub-divided to create the suit property amongst other sub-divisions.
- 132.The Plaintiff further relied on the proceedings known as ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.
- 133.In answering the above issue, the first question that this Court asks itself is how many parcels of land did the late STEPHEN NYONGESA KARIBU have within the property known as LR.NO. ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17 which was owned by KIPCHIRCHIR MUTAI.
- 134.The answer is rather straight forward as the late STEPHEN NYONGESA KARIBU had only purchased one portion of land from KIPCHIRCHIR MUTAI who was the owner of the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/17.
- 135.Based on the above finding, the sub-division that was transferred to the late STEPHEN NYONGESA KARIBU by KIPCHIRCHIR MUTAI was the suit property measuring approximately 0.04 of a Hectare.
- 136.According to the Judgement and Decree pronounced on 17.07.2007 in the proceedings known as ELDORET PRINCIPAL

MAGISTRATE CIVIL CASE NO. 1031 OF 1998, the Court made a finding that the Plaintiff was lawfully the owner of a portion of land measuring 30 Feet by 105 Feet which is equivalent to 0.04 of a Hectare as is contained within the late STEPHEN NYONGESA KARIBU'S property known as LR.NO. ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940.

137. In essence therefore, this Court is of the considered view and finding that the portion of land purchased by the Plaintiff from the late STEPHEN NYONGESA KARIBU is either the whole or a portion of it LR.NO. ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940 and there is a direct nexus between the Plaintiff's portion of land and the suit property.

ISSUE NO. 3 - WHETHER THE 1ST DEFENDANT ACQUIRED VALID TITLE OF THE LAND SOLD TO HIM BY THE 2ND DEFENDANT?

138. The third issue is whether the 1st Defendant acquired lawful title to the suit property to oust the Plaintiff's ownership on the same.

139. According to the Plaintiff, the late STEPHEN NYONGESA KARIBU has lawfully sold him a portion of land measuring approximately 30 Feet by 105 feet on the suit property.

140. The legitimacy of the Plaintiff's ownership of the portion measuring 30 feet by 105 feet was confirmed by the proceedings known as ELDORET PRINCIPAL MAGISTRATE CIVIL CASE NO. 1031 OF 1998.

141. However, before the late STEPHEN NYONGESA KARIBU could transfer the portion purchased by the Plaintiff herein, he had passed away.

142. Unknown to the Plaintiff, the 2nd Defendant in the 2012 sold the entire suit property to the 1st Defendant who was then issued with a title deed on the 30.05.2012.
143. According to the Plaintiff, the actions by the 2nd Defendant to dispose of the suit property to the 1st Defendant without considering his ownership rights over the portion measuring 30 feet by 150 feet was unlawful irregular and illegal.
144. The 1st Defendant in response to the above allegations stated that he purchased the suit property from the 2nd Defendant lawfully and had the same transferred to his name procedurally.
145. The 1st Defendant consequently stated that his ownership was proper and he enjoyed all the rights and privileges of a registered owner in accordance to the law.
146. According to the 1st Defendant, there was no privity of contract between the Plaintiff and himself hence the prayers sought by the Plaintiff could not be granted against him.
147. The 2nd Defendant on the other hand pleaded that she was the beneficial owner of the suit property after the demise of STEPHEN NYONGESA KARIBU on the basis that she was the lawful wife.
148. The 2nd Defendant did plead that she had all the rights to deal with the suit property including lawfully selling the same to the 1st Defendant.
149. The 2nd Defendant denied the knowledge of the Plaintiff's ownership over the suit property and stated that if there was any Agreement For Sale between the late STEPHEN NYONGESA KARIBU and the Plaintiff, the same was fraudulent.

150. During the hearing, both the 1st and 2nd Defendants failed to attend Court and give testimony to the allegations that had been pleaded in their Statements of Defence.
151. Instead, the 1st Defendant called a Valuer (DW1) who came to present a Valuation Report for the developments that had been undertaken by the 1st Defendant.
152. The assumption by the Court was that the 1st Defendant based on the Title Deed issued in his name felt protected by the law as the registered owner of the suit property.
153. The 1st Defendant in fact cited the case of CHEMEI INVESTMENTS LIMITED-VERSUS- THE ATTORNEY GENERAL & OTHERS, NAIROBI PETITION NO. 94 OF 2005 in support of this position.
154. Indeed, it is settled law that where a title has been issued procedurally, the law and by extension the Court must protect the ownership of the entity or person recorded as the legitimate owner thereof.
155. However, Section 26 of the Land Registration Act, No. 3 of 2012 also gives various circumstances that the ownership of an entity and/or person can be impeached in a Court of law.
156. The circumstances within which a title can be impeached is if the same was obtained through fraud, misrepresentation and/or corrupt manner.
157. In the present suit, it is not in contest that the suit property belonged to the late STEPHEN NYONGESA KARIBU having been registered the lawful owner on the 01.10.2002.

- 158.It is also not in dispute that the late STEPHEN NYONGESA KARIBU rested on the 05.07.2008.
- 159.In essence, the suit property after the demise of STEPHEN NYONGESA KARIBU became the property of the Estate and could only be dealt with in line with the Succession Act.
- 160.However, according to the Register of the suit property produced in Court, it is clear that the same was transferred to the 1st Defendant on the 30.05.2012.
- 161.The County Land Register, Uasin Gishu did produce the Application for Consent to Transfer, the Letter of Consent to Transfer dated 26.04.2012 and the Transfer Form dated 30.05.2012 as PW 1 EXHIBIT 14, 15 and 16 respectively.
- 162.From a close perusal of the documents produced as PW 1 EXHIBIT 14,15 AND 16, it is clear that the person who was transacting as the owner of the suit property was the 2nd Defendant.
- 163.The question then that arises is whether the 2nd Defendant had the capacity, authority and/or mandate to deal with the suit property which was an asset of the Estate of STEPHEN NYONGESA KARIBU.
- 164.The answer to the above question is in the proceeding known as ELDORET HIGH COURT SUCCESSION NO. 306 OF 2012.
- 165.In the proceeding known as ELDORET HIGH COURT SUCCESSION NO.306 OF 2012, the 2nd Defendant was appointed as the Administrator of the Estate of STEPHEN NYONGESA KARIBU on the 23.01.2013.

166. This being the scenario, the 2nd Defendant did not have any powers, mandate and/or authority to deal with any asset in the Estate of STEPHEN NYONGESA KARIBU without the express authority of a competent Court or the same being vested in her name upon determination of Succession proceeding thereof.
167. As such, the 2nd Defendant's actions of selling and transferring the suit property to the 1st Defendant as demonstrated by the documents produced as PW 1 EXHIBIT 14, 15 and 16 was fraudulent and a misrepresentation of the true facts.
168. The true facts are that the suit property was an Asset of the Estate of STEPHEN NYONGESA KARIBU which the 2nd Defendant could not alienate without undertaking Succession and the same being vested in her name.
169. In essence, the documents namely the Application For Consent To Transfer submitted by the 2nd Defendant to the Land Control Board was a fraudulent, irregular and a nullity as the Applicant therein was not the lawful and/or registered owner of the suit property.
170. Similarly, the Letter of Consent to Transfer the suit property issued by the Land Control Board dated 26.04.2012 from the 2nd Defendant to the 1st Defendant was issued irregularly based on a fraudulent and illegal Application.
171. Lastly, the Transfer Form dated 30.05.2012 was Fraudulent as the Vendor STEPHEN NYONGESA KARIBU who is purported to have executed the same on the said date and his picture affixed on the Transfer had since died on 05.07.2008 and could not possibly affix his signature on the 30.05.2012.

172. This Court is therefore clear in its mind that the documents used to transfer the suit property from the 1st Defendant to the 2nd Defendant were fraudulent in nature, irregular and illegal hence could not pass any legitimate and/or lawful title to the 1st Defendant.

ISSUE NO. 4 - WHETHER THE PLAINTIFF IS ENTITLED TO THE PRAYERS SOUGHT IN THE PLAINT?

173. Based on the findings of this Court in Issues No.1, 2 and 3 hereinabove, this Court is of the considered view and finding that the Plaintiff herein is entitled to the reliefs sought in the present Plaint and others that will facilitate justice to be done in this file.

ISSUE NO. 5 - WHO SHALL BEAR THE COSTS OF THIS SUIT?

174. As regards costs, the Plaintiff herein has been successful in prosecuting its case and the 1st and 2nd Defendants are therefore condemned to pay costs.

CONCLUSION:

175. In conclusion therefore, the Plaint dated 19th September, 2012 is determined by the following Orders: -

A. A DECLARATION BE AND IS HEREBY MADE THAT THE PLAINTIFF IS THE ABSOLUTE OWNER OF THE WHOLE OF THAT PARCEL OF LAND KNOWN AS ELDORET MUNICIPALITY BLOCK 21(KING'ONG'O)1940.

B. THE TRANSFER AND REGISTRATION OF THE 1ST DEFENDANT AS THE OWNER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940 WAS FRAUDULENT, UNLAWFUL, IRREGULAR AND A NULLITY.

- C. THE LAND REGISTRAR, UASIN GISHU COUNTY BE AND IS HEREBY DIRECTED TO RECALL AND CANCEL THE TITLE DEED ISSUED ON THE 30.05.2012 IN THE NAME OF THE 1ST DEFENDANT HEREIN WITHIN 21 DAYS FROM THE DATE OF THIS JUDGEMENT.**
- D. THE LAND REGISTRAR, UASIN GISHU COUNTY BE AND IS HEREBY DIRECTED TO CANCEL, DELETE AND/OR REMOVE THE NAME OF THE 1ST DEFENDANT AS THE REGISTERED OWNER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940 AS CONTAINED IN ENTRY NUMBER 8 & 9 OF THE REGISTER AND/OR GREEN CARD WITHIN 21 DAYS FROM THE DATE OF THIS JUDGEMENT.**
- E. THE ESTATE OF THE LATE STEPHEN NYONGESA KARIBU BE AND IS HEREBY DIRECTED TO TRANSFER THE PROPERTY KNOWN AS LR.NO.ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940 TO THE PLAINTIFF HEREIN WITHIN 60 DAYS FROM THE DATE OF THIS JUDGEMENT.**
- F. IN THE EVENT THE ESTATE OF THE LATE STEPHEN NYONGESA KARIBU FAILS TO COMPLY WITH ORDER NO. E HEREINABOVE, THE DEPUTY REGISTRAR OF THE ENVIRONMENT & LAND COURT ELDORET BE AND IS HEREBY DIRECTED TO EXECUTE THE RELEVANT DOCUMENTS TO FACILITATE THE TRANSFER OF THE SUIT PROPERTY TO THE NAME OF THE PLAINTIFF HEREIN.**
- G. AN ORDER OF PERMANENT INJUNCTION BE AND IS HEREBY ISSUED TO PERMANENTLY RESTRAIN THE DEFENDANTS EITHER ACTING JOINTLY AND**

SEVERALLY FROM TRESPASSING INTO, WASTING, INTERFERING WITH AND OR OTHERWISE PREVENTING THE PLAINTIFF FROM HIS QUITE ENJOYMENT, POSSESSION ON THE PROPERTY KNOWN AS LR.NO.ELDORET MUNICIPALITY BLOCK 21 (KINGONGO)/1940.

H. THE PLAINTIFF SHALL HAVE THE COSTS OF THIS SUIT TO BE BORNE BY THE DEFENDANTS.

DATED, SIGNED & DELIVERED Virtually at **ELDORET ELC** this **3RD DAY OF DECEMBER 2025.**

EMMANUEL.M. WASHE
JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: MR. BRIAN

PLAINTIFF: MR. OGONGO

DEFENDANT: MR. KIBII FOR THE 1ST DEFENDANT
MR. KIBOI FOR 2ND DEFENDANT (N/A).