

**REPUBLIC OF KENYA**

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

**ELC CASE NO. E001 OF 2022**

**[FORMERLY MERU ELC CASE NO. 7 OF 2019]**

JAPHET MUTHEE NAMAN..... PLAINTIFF

VERSUS

EVERLYN NGUTA NAITORE MUTHURI.....1<sup>ST</sup> DEFENDANT

DAVID MWITI MWARANIA .....2<sup>ND</sup> DEFENDANT

ISIOLO COUNTY GOV ERNMENT .....3<sup>RD</sup> DEFENDANT

**JUDGMENT**

1. On the **12<sup>th</sup> February 2019**, Honourable Justice F. Gikonyo, Judge, rendered a Judgment *vide* MERU HCC SUCCESSION NO. 463 OF 2011 concerning the Estate of NAAMAN MWARANIA DECEASED. The Decision under reference touched on various properties of the named Deceased. In particular, the Learned Judge addressed the question of ownership in respect of PLOT NO. 14 – KULAMAWE- ISIOLO and stated thus:

***“The dispute on Plot No. 14 Kulamawe Isiolo ownership which should be resolved completely and effectually by the Environment and Land Court will abide by the decision thereof. Therefore, I hereby set aside the said property for determination by ELC of the dispute thereto. The Administrator, David Mwiti, and Japheth Muthee shall be parties in the said suit. And subject to the ELC, any other person claiming any interest, beneficial or otherwise in the said property, may be a party in the said suit. In the***

***meantime, I order that the current status in the property shall remain until otherwise determined by the ELC.”***

2. Arising from the foregoing holding/direction[s] of the High Court, the Plaintiff approached this Court *vide* **Plaint** dated the **26<sup>th</sup> February 2019** and wherein same has sought the following reliefs:

i. A declaration that Plot No. 147 – KULAMAWE ISIOLO COUNTY is the property of the Plaintiff.

ii. An Order of rectification of the register of Plot No. 14 – KULAMAWE and have the same registered in the name of the Plaintiff.

iii. Costs and interests.

iv. Any further and better relief this Honourable Court may deem fit to grant.

3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants duly entered appearance and filed a Statement of Defence dated the **25<sup>th</sup> March 2019** and wherein the named Defendants denied the claims by/on behalf of the Plaintiff. In particular, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant denied that the Plaintiff is the lawful owner of the suit property. Moreover, it was contended that the suit property lawfully belonged to NAAMAN MWARANIA, now Deceased. Additionally, it was contended that the Plaintiff had attempted to fraudulently transfer the suit property into his name but the fraud did not materialize.

4. Furthermore, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant have also contended that the Plaintiff's claim is premised on fraudulent minutes which do not lawfully exist with the County Government of Isiolo.
5. The 3<sup>rd</sup> Defendant similarly entered appearance and filed a Statement of Defence dated the **10<sup>th</sup> April 2019** and wherein the 3<sup>rd</sup> Defendant disputed the claim by the Plaintiff. Additionally, the 3<sup>rd</sup> Defendant posited that the suit property is registered in the name of NAAMAN MWARANIA – DECEASED.
6. It was the further contention by the 3<sup>rd</sup> Defendant that the suit beforehand does not disclose any reasonable cause of action as against the 3<sup>rd</sup> Defendant. To this end, the 3<sup>rd</sup> Defendant intimated that same shall raise and canvass a Preliminary Objection to have the suit struck out.
7. The instant suit was subjected to the usual pre-trial directions whereupon the parties confirmed that same had filed and exchanged the requisite pleadings, List and bundle of documents, List of witnesses and the witness statements. In addition, the parties confirmed that the suit was ready for hearing.
8. The Plaintiff's case is premised on the evidence of 4 witnesses, namely: JAPHET MUTHEE NAAMAN, BEVOR ORIOKI, ELIZABETH NAAMAN and SHADRACK MWITHALII ITURU, respectively. Same testified as PW1, PW2, PW3 and PW4.
9. It was the testimony of PW1 [JAPHET MUTHEE NAAMAN] that same is the Plaintiff in respect of the instant matter. Moreover, the witness averred that by virtue of being the Plaintiff, same is familiar and conversant with the facts of the case. Additionally, the witness intimated

to the Court that same had filed a Witness statement dated the **25<sup>th</sup> February 2019** and which witness statement, the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

10. The witness further referenced the list and bundle of documents dated the **26<sup>th</sup> February 2019** and thereafter sought to tender and produce the documents before the Court. However, an objection was taken to the production of documents 1 and 2 and which documents were thereafter marked for Identification awaiting production by an Officer from the 3<sup>rd</sup> Defendant, namely; the County Government of Isiolo.
11. On the other hand, the rest of the documents were tendered and admitted in evidence. For good measure, the rest of the documents were admitted as exhibits P3 – P8, respectively on behalf of the Plaintiff.
12. On cross examination by Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness testified that his name is JAPHET MUTHEE NAAMAN and not JOSEPHAT MUTHEE NAAMAN. The witness testified that he has his Identity card before the Court. Nevertheless, and upon being invited to show the Identity Card to the court, the witness changed tune and indicated that the Identity Card had been left at the gate/entrance of the Court.
13. It was the further testimony of the witness that same is a Son of NAAMAN MWARANIA, now Deceased. Furthermore, the witness testified that his Father, now deceased, is the one who transferred the suit Plot to him. In addition, the witness testified that his late Father and

himself had an agreement in respect of the suit plot. However, the witness testified that the agreement was not reduced into writing.

14. While still under cross examination, the witness testified that the suit plot was indeed transferred and registered in his name. However, the witness averred that the registration of the suit plot was reversed to the name of the Deceased. The witness further testified that he was never notified of any intention to reverse the suit plot to the name of the Deceased.

15. Additionally, it was the testimony of the witness that when he learned of the reversal of the Registration of the suit plot to the name of the Deceased, he [witness] lodged a complaint with the County Government of Isiolo. Nevertheless, the witness admitted that the complaint was not reduced into writing. On the contrary, the witness averred that the complaint was informal.

16. It was the further testimony of the witness that the subject suit was filed after the High Court made an Order to facilitate the determination of the ownership rights affecting the suit property. However, the witness denied that the transfer and registration of the suit property into his name was not fraudulent. Moreover, the witness testified that the transfer of the suit property to his name was premised on the lawful Minutes of the County Council of Isiolo dated the **21<sup>st</sup> December 2005**. Additionally, the witness posited that same has tendered and produced before the Court the minutes of the County Council of Isiolo.

17. The witness further testified that the Minutes produced are the Minutes of the Town Planning, Works and Markets Committee and not the Minutes of the full Council. In particular, the witness confirmed that same does not have the Minutes of the full Council. Furthermore, it was the

testimony of the witness that he does not know whether the Minutes of the Town Planning committee were ever escalated to the full Council for adoption and ratification.

18. It was the further testimony of the witness that the Minutes of the Town Planning and Markets Committee which same has produced touched on other properties. The witness also testified that the Applicants in respect of the suit property is shown to be NAAMAN MWARANIA. On the other hand, the witness averred that the Transferee of the suit property at the foot of the Minutes is shown to be JOSPHAT MUTHEE NAAMAN and not JAPHET MUTHEE NAAMAN. For good measures, the witness conceded that he is not JOSEPHAT MUTHEE NAAMAN.

19. The witness further testified that even though he is not JOSEPHAT MUTHEE NAAMAN, he has relied on the said Minutes as the basis of the transfer of the suit property to himself. In addition, the witness testified that same does not have any Minutes before the Court showing the amendments [if any] to the name of the Transferee.

20. While still under cross examination, the witness testified that upon the transfer of the suit Plot to his name, he commenced payments of the Rates to the County Council of Isiolo and now to the County Government of Isiolo. The witness averred that same has tendered and produced copies of payment requests which have been addressed to his name [JAPHEHET MUTHEE NAAMAN]. Nevertheless, the witness testified that the name was corrected when he was called upon to submit a copy of his Identity Card.

21. Regarding the Minutes being relied on to anchor the transfer of the suit property to his name, the witness stated that the Minutes were obtained

from the County Council of Isiolo. To this end, the witness posited that the Minutes before the Court are valid and lawful.

22. Upon being shown a Letter dated the **21<sup>st</sup> July 2019**, the witness averred that the letter in question emanates from the County Government of Isiolo. Moreover, the witness testified that the letter in question references the authenticity of the Minutes dated the **21<sup>st</sup> December 2005**. In particular, the witness admitted that the Letter under reference suggests that the Minutes being relied upon are invalid and were not obtained from the County Council. Nevertheless, the witness testified that same does not agree with the contents of the Letter.

23. It was the further testimony of the witness that the property in question previously belonged to his Father, but same was lawfully transferred to him [witness]. In this regard, the witness posited that the suit plot belongs to him.

24. On cross examination by Learned Counsel for the 3<sup>rd</sup> Defendant, the witness testified that the Minutes which same has tendered before the Court form the basis of the transfer of the suit plot to his name. Moreover, the witness admitted that same was aware of the mandatory requirement for a formal application for transfer before the transfer could be effected. However, the witness added that same has tendered and produced before the court a copy of the Application Form. In addition, the witness testified that the Application Letter is dated the **24<sup>th</sup> day of October 1978**.

25. It was the further testimony of the witness that the Application for transfer/transfer Letter was only acted upon in the year **2005**. Regarding the reason why there was delay to act upon the transfer; the witness testified that the delay was occasioned [occurred] because he did not have

money. Furthermore, the witness averred that the delay was also contributed to by the fact that he was taking care of sick Father.

26. The witness further testified that the Application Letter, which was ultimately presented to the County Council of Isiolo, was under his custody. In addition, the witness testified that his late Father appeared before the County Council of Isiolo during the Application for transfer. However, the witness indicated that same could not recall the exact dated of appearance.

27. Upon being shown the copy of the Minutes presented before the court, the witness testified that the Minutes have been signed by the Clerk of the County Council of Isiolo. However, the witness admitted that though the minutes contain a segment for confirmation, same have not been confirmed by the chair of the Committee.

28. As pertains to whether same has ever been summoned before the Police on matters concerning fraud, the witness indicated that he has appeared before the Police in respect of the suit property. However, the witness clarified that he has never been arrested or charged with any Criminal offense or otherwise.

29. The second witness who testified on behalf of the Plaintiff was BEVOR ORIOKI. Same testified as PW2.

30. It was the testimony of the witness that same is a Physical Planer in the Department of Physical Planning and Urban Development. In addition, the witness testified that he has been a Physical Planner since the year 2019.

- 31.Regarding Exhibit P1, the witness averred that the Document is the Minutes of the County Council of Isiolo emanating from the meeting held on the **21<sup>st</sup> December 2005**. In addition, the witness averred that the Minutes related to Town Planning, Works and Market Committee.
- 32.Regarding the second document, the witness said that the Document is a Letter. However, the witness declined to produce document number two insofar as he [witness] needed time to verify the authenticity of the said document. Moreover, upon being asked by the Court why he was reluctant to produce the letter, the witness intimated that according to the Records of the County Government of Isiolo, the name in their records is NAAMAN MWARANIA and not JAPHET MUTHEE MWARANIA.
- 33.The witness herein was then stood down to enable him to verify the contents of document number 2 [PMFI 2]. However, there is no indication that the witness returned to Court. In this regard, the witness [PW2], was never subjected to cross examination.
- 34.The third witness who testified on behalf of the Plaintiff was ELIZABETH NAAMAN. Same testified as PW3.
- 35.It was the testimony of the witness that same is the surviving Widow of NAAMAN MWARANIA, [Deceased]. In addition, the witness testified that same is familiar with the Plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively. In particular, the witness testified that the Plaintiff and the 2<sup>nd</sup> Defendant are her Sons while the 1<sup>st</sup> Defendant is her Daughter in law. Furthermore, the witness referenced a witness statement dated the **25<sup>th</sup> February 2019** and thereafter sought to adopt and rely on the contents of the said witness statement. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.

36. On cross examination by Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness testified that the suit plot previously belonged to NAAMAN MWARANIA, now deceased. However, the witness averred that the suit Plot was given to the Plaintiff. Additionally, the witness testified that it is JAPHETH [Plaintiff] who has been staying in the suit property.
37. While still under cross examination, the witness testified that the suit plot belongs to the Plaintiff. Moreover, the witness averred that she has tried to arbitrate the dispute between the Plaintiff and the 2<sup>nd</sup> Defendant to no avail.
38. On further cross examination, the witness testified that she does not talk to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Moreover, the witness added that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant also don't talk to her. In addition, the witness averred that she does not like the 2<sup>nd</sup> Defendant and his wife.
39. While still under cross examination by Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness testified that she does not agree with the claim by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. On the contrary, the witness reiterated that the suit plot belongs to the Plaintiff.
40. On cross examination by Learned Counsel for the 3<sup>rd</sup> Defendant, the witness testified that the suit Plot was transferred to the Plaintiff. Moreover, the witness averred that the Application for transfer was reduced into writing. Nevertheless, the witness clarified that she does not recall the date/year, when the Application was taken to the County Council of Isiolo. For good measures, the witness clarified that she was not present when the Application for transfer was presented to the County Council of Isiolo.

41.The 4<sup>th</sup> Witness who testified before the court was SHADRACK MWITHALII ITURU. Same testified as PW4.

42.It was the testimony of the witness that same is currently the Deputy Human Resource Officer at the County Government of Laikipia. Nevertheless, the witness averred that in the year **2008**, same was working with the County Council of Isiolo as the Senior Administrative Officer; and acting Deputy Clerk of the Council. In this regard, the witness testified that his duties included general correspondence and communication on behalf of the County Council.

43.It was the further testimony of the witness that by virtue of his portfolio with the County Council of Isiolo, same is therefore familiar with the facts of this matter. In particular, the witness testified that same is aware of the Letter dated the **1<sup>st</sup> September 2008** and which had been marked as PMFI 2. To this end, the witness sought to tender and produce the Letter as an exhibit before the Court. There being no objection to the production of the Letter, same was duly produced and marked as exhibit P2.

44.On cross examination by Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness averred that he is the one who signed the Letter in question. The witness clarified that he signed the Letter for/on behalf of the Town clerk. Furthermore, the witness clarified that he signed for the Town Clerk because all communications to the outside world were to be made by or on behalf of the clerk.

45.Regarding the Letter dated the **1<sup>st</sup> September 2008**, the witness testified that same have referenced the Minutes of the Council. Moreover, the

witness testified that the Minutes which he referenced at the foot of his Letter are the ones which have been produced before the court.

46. Upon being shown the Minutes produced before the Court [Exhibit P1] the witness confirmed that the Minutes in question have only been signed by the Town clerk. The witness clarified that the Minutes were supposed to have been confirmed by the Chairman of the Committee. Nevertheless, the witness conceded that the Minutes have not been confirmed/signed by the Chairman of the committee.

47. While still under cross examination, the witness testified that the minutes before the Court have also not been certified. Nevertheless, the witness averred that the Minutes in question contain a schedule including an entry pertaining to the transfer of the suit plot to one JOSEPHAT MUTHEE NAAMAN. For good measures, the witness admitted that these are the Minutes which same referenced at the foot of his Letter dated the **1<sup>st</sup> September 2008**.

48. It was the further testimony of the witness that the Minutes refer to JOSEPHAT MUTHEE NAAMAN and not JAPHET MUTHEE NAAMAN. Nevertheless, the witness averred that his Letter dated the **1<sup>st</sup> September 2008** refer JAPHET MUTHEE NAAMA.

49. On further cross examination, the witness testified that same is not aware whether there was an Application for Transfer of the Plot. In any event, the witness clarified that he was not present when the Transfer in respect of the suit property was being undertaken. Additionally, the witness testified that he did not cross check the records of the Council to confirm whether the Transfer of the suit property was ever affected.

50. It was the further testimony of the witness that when he wrote the letter dated **1<sup>st</sup> September 2008**, same did not look at/examine the Plot Register. Nevertheless, the witness averred that he believed that the Minutes which he relied upon were genuine.
51. On further cross examination, the witness testified that he does not know whether the Plot Register for the suit Plot was ever changed from the name of NAAMAN MWARANIA to JAPHET MUTHEE NAAMAN.
52. On cross examination by Learned Counsel for the 3<sup>rd</sup> Defendant, the witness testified that same has attended Court to testify on behalf of the Plaintiff. Nevertheless, the witness conceded that his appearance is not informed by Summons to Witness. On the contrary, the witness averred that he has appeared before the Court on his own volition.
53. The witness further testified that same has not brought any document to show whether the transfer was undertaken. Moreover, the witness averred that he did not see the Application for transfer of the suit Plot from the name of NAAMAN MWARANIA to JAPHET MUTHEE NAAMAN.
54. On re-examination, the witness testified that the name contained in the Schedule attached to the Minutes produced before the Court is JOSEPHAT MUTHEE NAAMAN and not JAPHET MUTHEE NAAMAN. Nevertheless, the witness hastened and stated that the difference may have arisen out of a typographical error.
55. With the foregoing testimony, the Plaintiff's case was closed.
56. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants case is premised on the evidence of three [3] witnesses, namely: EVERLYN NGUTA NAITORE, LYDIA MOKAMI

MURIUKI and DAVID GITONGA GATURAKO, respectively. Same testified as DW1, DW2 and DW3.

57. It was the testimony of DW1 [EVERLYN NGUTA NAITORE], that same is a Civil servant working with the National Government and currently attached to Huduma Centre – Isiolo. Moreover, the witness averred that same is the 1<sup>st</sup> Defendant in respect of the instant matter. To this end, the witness testified that same is therefore familiar with the facts of the case.

58. Additionally, the witness averred that same has since recorded and filed a witness statement dated the **25<sup>th</sup> March 2019** and which witness statement, the witness sought to adopt and rely on. In this regard, the witness statement was adopted and constituted and the evidence in chief of the witness.

59. Furthermore, the witness referenced the list and bundle of documents dated the **25<sup>th</sup> March 2019**, containing six documents; and which documents the witness sought to tender and produce before the Court. However, an objection was taken to the production of the second and fifth documents; and which documents were thereafter marked for identification.

60. On the other hand, the rest of the documents were tendered and produced as exhibits on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. In addition, the witness also referenced the list and bundle of documents dated the **12<sup>th</sup> July 2019** containing two [2] documents. To this end, the second document [Ruling of the court] was admitted as exhibit P8. The other document, namely, the Letter from the directorate of Criminal Investigation was marked as DMFI 7.

61. It was the further testimony of the witness that same has also filed a statement of Defence dated the **25<sup>th</sup> March 2019**; and which Defence the witness sought to adopt.
62. On cross examination by the Learned Counsel for the 3<sup>rd</sup> Defendant, the witness testified that the suit Plot belonged to and is registered in the name of NAAMAN MWARANIA – now Deceased. In addition, the witness stated that the suit plot does not belong to the Plaintiff.
63. While still under cross examination, the witness testified that same is not aware of the reason why the 3<sup>rd</sup> Defendant has been sued.
64. On cross examination by Learned Counsel for the Plaintiff, the witness testified that same entered into and occupied the suit property in the year **2000**. However, the witness added that she was chased away from the suit property in the year **2012**.
65. It was the further testimony of the witness that the Plaintiff herein changed the records of the suit Plot at the County Council of Isiolo. Nevertheless, it was clarified that the change/transfer of the suit plot to the name of the Plaintiff was fraudulent.
66. Regarding the Letter that was written by the Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness testified that the Letter was addressed to the County Secretary- County Government of Isiolo.
67. The second witness who testified on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was LYDIA MUKAMI MURIOKI. It was the testimony of the witness that same is a sister of the Plaintiff and the 2<sup>nd</sup> Defendant. Moreover, the

witness averred that the Plaintiff is her elder Brother while the 2<sup>nd</sup> Defendant is her younger brother. In addition, the witness averred that the 1<sup>st</sup> Defendant is the wife of the 2<sup>nd</sup> Defendant and thus her sister in-law.

68. Furthermore, the witness testified that same has since recorded and filed a witness statement dated the **23<sup>rd</sup> March 2019** and which witness statement the witness sought to adopt and rely on as her evidence in chief. In this regard, the witness statement was adopted and constituted as the evidence in chief of the witness.

69. On cross examination by Learned Counsel for the Plaintiff, the witness averred that same works with the County Government of Isiolo. In addition, the witness averred that same was deployed as the Secretary to the Governor.

70. It was the further testimony of the witness that by virtue of her relationship with the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, she is conversant with the facts of this matter. Regarding exhibits P4, P6 and P7, the witness testified that same are receipts from the County Government of Isiolo bearing the name of the Plaintiff. Furthermore, the witness testified that the receipts in question refer to Plot No. 14.

71. While still under cross examination, the witness testified that the receipts before the Court bear a stamp of the County Government of Isiolo. However, the witness clarified that the receipts have not been signed. In addition, the witness testified that they are 12 siblings. Nevertheless, the witness testified that of the 12 siblings, it is only the 2<sup>nd</sup> Defendant and her who are contesting/disputing ownership of the suit property.

72.The third witness who testified on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was DAVID GITONGA GATURAKO. Same testified as DW3.

73.It was the testimony of the witness that same is currently the Principal Administrator – Isiolo County Government. Furthermore, the witness said that same joined the County Government of Isiolo in December 2011. Additionally, the witness averred that previously, same used to be in charge of Minutes and correspondences at the County Council of Isiolo and now the County Government of Isiolo.

74.Upon being referred to Exhibit D4, the witness testified that the document is a Letter from the County Government of Isiolo in response to an inquiry touching on and concerning ownership of Plot No. 14 Isiolo. The witness averred that the Letter in question confirmed that the Minutes which were being referenced were not in the custody of the County Council of Isiolo. Moreover, the witness also testified that he also did not see/come across the Transfer Form [if any].

75.Additionally, it was the evidence of the witness that before a Transfer of the suit Plot could be effected, it was incumbent upon the parties to sign/execute the Form. Moreover, the witness averred that the parties would also be called upon to pay the requisite Court Fees.

76.While still under cross examination, the witness testified that same did not find and/or come across any copy of the minutes underpinning the transfer of the suit property.

77.On cross examination by Learned Counsel for the 3<sup>rd</sup> Defendant, the witness testified that same did not find any transfer form at the Offices of the County Council of Isiolo. Moreover, the witness averred that the

minutes before the Court and which are being relied upon by the Plaintiff are not genuine. In addition, the witness testified that the minutes were never approved by the Full Council.

78.Regarding ownership of the suit Plot, the witness testified that the suit plot belongs to and is registered in the name of NAAMAN MWARANIA – the Deceased.

79.On cross examination by Learned Counsel for the Plaintiff, the witness testified that in the year **2005** same was working at Runyenjes. Moreover, the witness clarified that he joined the County Council of Isiolo and now the County Government of Isiolo in the year **2011**. In this regard, the witness clarified that he was therefore not present when the Minutes were made and the transfer process. Nevertheless, the witness added that the Transfer Forms are ordinarily kept by the Revenue Officer.

80.It was the further testimony of the witness that he is the one who authored/wrote the Letter before the court, namely, exhibit D5. The witness further testified that in the year **2013**, there was an electronic Plot Register that was being maintained by the County Government of Isiolo. Furthermore, the witness averred that the register confirms that the suit plot belongs to NAAMAN MWARANIA.

81.Regarding the Letter which was generated by the Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness testified that same was addressed to the County Secretary – County Government of Isiolo. In addition, it was the testimony of the witness that the letter in question does not contain notation[s] to show that the matter was marked for his attention. Nevertheless, it was the testimony of the witness that the letter which has

been produced before the Court is the Advocates copy and not the one which was received by the County Government.

82. While still under cross examination, the witness testified that the matter in question was actioned to him and thereafter same proceeded to and responded to the enquiry. Moreover, the witness reiterated that the Plot register in respect of the suit property has never been altered/changed. To this end, the witness confirmed that the register of the suit property shows/reflects the name of NAAMAN MWARANIA, as the owner.

83. It was the further testimony of the witness that same did not come across a copy of the Transfer Form. In any event, the witness clarified that the Transfer Form was not one of the documents in their records. The witness further testified that the Minutes which have been placed before the Court by the Plaintiff are not authentic. Additionally, the witness testified that the minutes have not been signed by the Chairman of the Committee.

84. While still under cross examination, the witness testified that the minutes in question also would have been forwarded to the full Council for purposes of adoption and approval. However, it was the testimony of the witness that the minutes were never escalated to the full Council. In this regard, the witness reaffirmed his position that the minutes were not authentic.

85. With the foregoing testimony, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' case was closed.

86. The 3<sup>rd</sup> Defendant neither called any witness nor tendered any evidence at all. For good measures, the 3<sup>rd</sup> Defendant's case was closed without any evidence.

87. Upon the close [conclusion] of the hearing, the Advocates for the parties sought time to file and exchange written submissions. To this end, the Court proceeded to and issued directions pertaining to the filing and exchange of the written submissions. In addition, the Court also circumscribed the timelines for the filing of the said submissions.

88. The Plaintiff filed written submissions dated the **4<sup>th</sup> November 2025** and wherein same has highlighted three [3] key issues, namely: the Plaintiff is the lawful owner of the suit property; the suit property was gifted to and in favour of the Plaintiff by NAAMAN MWARANIA and hence the Plaintiff is a beneficiary of the gift *inter vivos*; and the Plaintiff has proved his claim to the requisite standard and thus same is entitled to the reliefs sought at the foot of the Plaint.

89. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a comprehensive and elaborate written submissions dated the **6<sup>th</sup> November 2025** and wherein same have highlighted and canvassed three [3] issues. The issues canvassed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are: whether the suit plot was ever lawfully transferred to the Plaintiff; whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fraudulently deprived the Plaintiff of Plot No. 14 KULAMAWE; and whether the Plaintiff lawfully acquired the suit property by way of a valid gift *inter vivos* or otherwise.

90. The 3<sup>rd</sup> Defendant filed written submissions dated the **8<sup>th</sup> November 2025** and wherein same has highlighted two [2] key issues, namely: that the suit property belongs to and is registered in the name of NAAMAN MWARANIA [DECEASED] according to the records held by the 3<sup>rd</sup> Defendant; and the Plaintiff did not discharge the burden of proof as pertains to his claims before the Court.

91. Having reviewed the pleadings filed by/on behalf of the parties; the evidence tendered [*both oral and documentary*] and upon consideration of the written submissions, I come to the conclusion that the determination of the subject dispute turns on three [3] key issues, namely: whether the Plaintiff has proved his claim as pertains to ownership of the suit property or otherwise; whether the Plaintiff has proven the plea of Fraud either as pleaded or at all; and what reliefs [if any] ought to be granted.

92. Regarding the first issue, it is important to highlight that it is the Plaintiff who approached the Court contending that the suit property was lawfully and validly transferred to and registered in his name. For good measures, the crux is captured at the foot of paragraph 5 of the Plaint dated the **26<sup>th</sup> February 2019** and wherein the Plaintiff contended that the suit property lawfully belongs to him same having been transferred unto him by his father [NAAMAN MWARANIA] during his lifetime.

93. The other limb of the Plaintiff's case relates to the fact that even though the suit property was lawfully transferred unto him by NAAMAN MWARANIA [now Deceased] the Defendants have fraudulently colluded and caused the registration to be reversed and reverted to the name of the Deceased. To this end, the Plaintiff posits that the reversal of the registration and the re-instatement of the name of NAAMAN MWARANIA as [sic] the owner of the suit property is underpinned by Fraud.

94. It is also important to underscore that even though the Plaintiff sought Leave to amend the Plaint, the Application seeking for amendment was dismissed *vide* the Ruling rendered on the **4<sup>th</sup> March 2024**. In this regard, the issued pertaining to gift inter vivos, which was sought to be

introduced *vide* the amendment, does not arise. For good measures, the Plaintiff cannot seek to canvass a cause of action, namely; the plea of gift inter vivos outside the parameters of the pleadings filed. In this regard, I beg to highlight that the question of whether or not the suit property was gifted to the Plaintiff on the basis of gift inter vivos does fall for my determination. **[See Orders 2, Rule 6 of the Civil Procedure Rules, 2010, which illuminates the Doctrine of Departure]. [See also the holding in the case of Independent Electoral and Boundaries Commission –vs Stephen Mutinda Mule and Others [2014] eKLR, Dakianga distributors Limited –vs Kenya Seed Limited [2015]eKLR and General & another v Hussein & 3 others (Civil Appeal 100 (ELD NO. 32) of 2018) [2025] KECA 1022 (KLR) (5 June 2025) (Judgment).**

95. Back to the issue for consideration. It is the Plaintiff who had posited that the suit property was lawfully transferred to him by NAAMAN MWARANIA. In this regard, it was incumbent upon the Plaintiff to tender and place before the Court evidence of an agreement or an arrangement in writing signed by NAAMAN MWARANIA. Instructively, any disposition of an interest in land [immoveable property], was by law required to be reduced into writing and thereafter be signed by the person chargeable with the transaction. **[See Section 3 of the Law of Contract Act which was subsequently amended culminating into Section 3 (3) of the Law of Contract Act, Chapter 23 Laws of Kenya].**

96. I beg to state that even though the Plaintiff had referenced an agreement/arrangement between NAAMAN MWARANIA [now Deceased] and himself, pertaining to the suit property, the Plaintiff did not tender or produce any such agreement. Moreover, the Plaintiff

conceded that the agreement between the Deceased and himself was never reduced into writing. In this regard, the agreement [if any], that was entered into between the Deceased and the Plaintiff would be illegal and invalid for all intents and purposes.

97. First forward, the Plaintiff contended that the deceased executed a Transfer Form which was subsequently placed before the County Council of Isiolo [now defunct] and which Transfer Form is indicated to have facilitated the transfer and registration of the suit property in favour of the Plaintiff. Such a Transfer Form [if any], would have been a critical document to confirm that indeed the Deceased executed and authorized the transfer. However, it is not lost on me that the Transfer Form was also not tendered before the Court. On the contrary, DW3 [DAVID GITONGA GATURAKO] testified that same did not find or come across the said Transfer Form from the records of the County Council of Isiolo, now the County Government of Isiolo.

98. Additionally, the Plaintiff herein referenced and relied on the Minutes of the County Council of Isiolo dated the **21<sup>st</sup> December 2005**. It is the said Minutes which are contended to have anchored the Transfer of the suit property from NAAMAN MWARANIA [now Deceased] to the Plaintiff herein. To this end, it is therefore imperative to interrogate the veracity and validity of the impugned minutes, in an endeavour to authenticate whether same can vindicate the Plaintiff's claim of ownership to the suit plot.

99. To start with, it is important to point out that the minutes in question are the minutes of the Town Planning, Works and Market Committee. The minutes are therefore Departmental minutes which by law would be escalated to the full Council for purposes of adoption and ratification.

Notably, the said minutes can only become authentic upon adoption by the full Council. However, the Plaintiff admitted and acknowledged that same was not aware whether the impugned minutes were ever escalated to the full Council or at all.

100. On the other hand, it also crystal clear that the Plaintiff did not tender or produce before the Court the full Council minutes [if any] approving the minutes of the Town Planning, Works and Market Committee. I beg to state that it was the obligation of the Plaintiff to place before the Court such minutes. The fact that no minutes of the full Council were placed before the Court created a fertile basis to warrant the invocation and deployment of the Doctrine of adverse inference.

101. Secondly, it is also worthy to recall that the minutes dated the **21<sup>st</sup> December 2005** were only signed by the Clerk of the County Council. For good measures, the minutes were neither confirmed nor authenticated by the Chairman of the Town Planning, Works and Market Committee. Instructively, the segment pertaining to confirmation by the Chairman is blank. The question that does arise is whether such minutes which have not been confirmed by the Chair [in the manner required under the law] can be deemed to be authentic.

102. I am afraid that the failure by the chairman of the Departmental committee to sign and confirm the minutes goes into the root and substance of the minutes. Simply put, the minutes devoid of confirmation are bereft of validity and legality. Same cannot attract any probative value before a Court of law.

103. Thirdly, it is not lost on me that the minutes on the Town Planning, Works and Market Committee [like the ones being relied upon by the

Plaintiff herein] are Public documents and hence the law requires that only the original or duly certified copies thereof are admissible before a Court of law. The requirement for production of the originals or duly certified copies thereof, is a good measure to ensure that the document being produced is authentic and has not been manipulated.

104. In respect of the instant matter, the minutes [exhibit P1] were never certified. In fact, while under cross examination by Learned Counsel for the 3<sup>rd</sup> Defendant, the Plaintiff conceded that certain pages of the minutes had been excluded. For good measure, the Plaintiff is on record stating that same only photocopied portions/segments of the minutes which were [sic] relevant to his matter.

105. At this juncture, it is imperative to reproduce verbatim, the testimony of PW1 while under cross examination by Learned Counsel for the 3<sup>rd</sup> Defendant.

106. Same stated thus:

***“Referred to page 11 of the Minutes and the witness confirms that the minutes appears to start from the middle of some sentence/paragraph. I do wish to state that I did not photograph the other paragraphs. I only photocopied the pages/areas that were important and useful to me.*”**

107. The admission by the Plaintiff brings into the picture a possibility of alteration, manipulation and adulteration of the minutes. It is for this reason that the provisions of Section 80 of the Evidence Act are couched in mandatory [peremptory] terms. The import and tenor of the provisions

of Section 80 of the Evidence Act is to avert chances of manipulation of public documents in an endeavour to defile the cause of Justice.

108. In the case of **Kenya Railways Corporation & 2 others v Okoiti & 3 others (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023] KESC 38 (KLR) (16 June 2023) (Judgment)**, the Supreme Court of Kenya considered and expounded on the necessity of due compliance with the provisions of **Section 80 of the Evidence Act, chapter 80, Laws of Kenya**.

109. For coherence, the Court stated thus:

*80. The [Evidence Act](#) cap 80 Laws of Kenya applies to all proceedings, including constitutional petitions save for the exceptions set out therein. Section 2 thereof, provides that: Application.*

*1. This Act shall apply to all judicial proceedings in or before any court other than a Kadhi's court, but not to proceedings before an arbitrator.*

*2. Subject to the provisions of any other Act or of any rules of court, this Act shall apply to affidavits presented to any court.*

*81. The [Evidence Act](#) provides for admissibility of evidence with section 80 setting out the manner in which public documents may be produced in court.*

*It states: Certified copies of public documents. 1. Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.*

*2. Any officer who by the ordinary course of official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section.*

82. This procedure ensures the preservation of the authenticity and integrity of the public documents filed and produced in court. Further, section 81 of the Evidence Act allows the production of certified copies of documents in proof of the contents of the documents or parts of the documents of which they purport to be copies.[ Emphasis supplied]

110. Fourthly, assuming for the sake of arguments only that the minutes dated the **21<sup>st</sup> December 2005** were valid [which is not the case] a question does arise as to whether minutes by and of themselves can confer or birth a bundle of rights in land [immoveable property] capable of being protected under the law.? It suffices to highlight that minutes of the County Council; the County Government or such other allocating authority conferred with mandate to allocate land are *inchoate* and facilitative in nature. Simply put, the minutes are merely facilitative instruments [tools] and thus a medium towards procurement of the requisite Title documents.

111. In my humble view, the minutes by and of themselves cannot confer proprietary rights and interests over immovable property. To my mind, no one, the Plaintiff not excepted can walk to a Court of Law and seek to be declared as the owner of a landed property on the basis of minutes. By parity of reasoning, the minutes of the allocating authority fall in a lower hierarchy than a letter of allotment. So if a Letter of Allotment by and of itself cannot confer proprietary rights over land, then what is the legal status of [sic] minutes.

112. In this regard, I share and adopt the sentiments of the court in the case of **County Council of Mery & 2 others –vs- PCEA through the Registered trustees [2020] KEELC 1712**, where the Court stated thus:

***“Minutes alone do not confer any proprietary interests in land. This is because minutes are an expression of an intention to allocate land. The commitment to actualize the intent to allocate is manifested in the issuance of the Letter of Allotment from the allocating authority. Demarcation of the parcel of land in question is then carried out through the process of survey. Thus the resolution of the Council as captured in the minutes must be put into effect in order to give rise to a bundle of rights in land capable of being protected.”***

113. Fifthly, it is important to reiterate that the minutes that are being referenced and relied upon by the Plaintiff to underpin the registration of the suit property in his name relate to one JOSEPHAT MUTHEE NAAMAN and not JAPHET MUTHEE NAAMAN. This bit of the evidence came to the fore during cross examination of PW1 and same conceded that the minutes do not refer to him. The question that does arise is how the minutes that referenced a separate and distinct person can now be invoked and relied upon by the Plaintiff.

114. Worse still, it is on record that the Plaintiff did not seek to procure any amendment to the minutes to correct the name. On the contrary, the Plaintiff was content to place before the Court payment request for Rates [mischaracterized as payment receipts] bearing his name. Notably, the payment request for rates do not supplant minutes of the Council. Moreover, the payment requests for Rates or better still Revenue Receipt[s] for payment of rates [if any] do not constitute Deeds of Title to bestow proprietary rights to any claimant.

115. Finally, it would be remiss of me conclude on this issue without taking into account the testimony of DW3. It is instructive to recall that

DW3 was the Principal Officer – County Government of Isiolo, who is the custodian of all the records pertaining to all the unregistered land falling within her Jurisdiction. The said witness testified that he authored and generated a Letter dated the **24<sup>th</sup> July 2019** [EXD5] which confirmed that the minutes being relied upon by the Plaintiff were neither traceable to their records nor were same authentic. Suffice it to state that the Plaintiff intimated to the Court that he did not agree with the contents of the said letter.

116. Nevertheless, there is not gainsaying that the Plaintiff did not procure or bring forth any document, whether letter or otherwise, from the County Government of Isiolo to recant the contents of the said Exhibit. To my mind, the contents of Exhibit D5 were neither controverted nor impeached.

117. In the premises, I come to the conclusion that the Plaintiff herein did not place before the Court any plausible; concrete; compelling; or credible evidence to demonstrate the root of his claim [Title] to the suit property. For good measures, it was the obligation of the Plaintiff to discharge the burden of proof starting with the root of his Title and claim.

118. In this respect, I am reminded of the succinct holding of the Court in the case of **Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment)** where the Court stated thus:

*"We will next address the pertinent issue regarding the existence of two titles in respect of the same parcel land. The best evidence*

*of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements: (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question; (b) it must contain a recognizable description of the property; (c) it must not contain anything that casts any doubt on the title.*

119. The significance of proving the root of the title in respect of immovable property was revisited by the Court of Appeal in the case of **General & another v Hussein & 3 others (Civil Appeal 100 (ELD NO. 32) of 2018) [2025] KECA 1022 (KLR) (5 June 2025) (Judgment)**; where the Court of Appeal reaffirmed the position that a Certificate of Title by and of itself does not constitute conclusive evidence of ownership. Pertinently, the Court held that the validity of a Certificate of Title and by extension ownership rights is dependent on the process underpinning the Certificate of Title.

120. The Court stated as hereunder:

*“.....To effectively resolves the parties conflicting claim to the disputed land, it is necessary to interrogate the root of the title for both parties. The root of title is the deed to which title to a property is ultimately traced to prove that the owner has a good title. Put differently, when a court is faced with a claim such as in*

*this case, it must scrutinize the root of the title and follow all processes and procedures that brought forth the two titles at hand. The parties to such litigation must always bear in mind that their title is under scrutiny, and they need to demonstrate how they got their title starting with its root.*

121. Without belabouring the point, my answer to issue number one is to the effect that the Plaintiff herein has failed to establish and prove Title or entitlement to the suit property. Notably, it is the Plaintiff who was chargeable with the burden of proving his claim of ownership. The burden cast upon the Plaintiff required to be discharged on a balance of probabilities. What constitutes balance of probability has been the subject of various Court decisions. [See **James Muniu Mucheru –vs- National Bank of Kenya [2019] eKLR;**].

122. Turning to the second issue, namely; whether the Plaintiff has established the Plea of Fraud as against the Defendants or otherwise. The Plaintiff herein had also anchored his claim to the suit property on the basis of fraud. According to the Plaintiff, the suit property was lawfully transferred and registered into his name pursuant to the minutes of the Town Planning, Works and Market Committee. The minutes under reference were tendered and produced as exhibit P1.

123. Nevertheless, it is imperative to outline and highlight that even though the Plaintiff had contended that the suit plot was transferred and registered in his name, the Plaintiff herein did not tender or produce before the Court a copy of the Plot Register to underpin the contention that the Plot was indeed registered in his name. Moreover, the evidence tendered by PW2 and DW3, confirmed that the suit property remained in the name of NAAMAN MWARANIA –Deceased.

124. Be that as it may, it is the Plaintiff who had contended that the suit property which had been registered in his name was subsequently reverted to the name of the Deceased. To this end, the Plaintiff contended that the reversal of the registration as pertains to the suit property was predicated on fraud. Furthermore, the Plaintiff ventured forward and supplied various particulars of fraud.

125. It is common ground that whosoever seeks to propagate the plea of fraud is called upon to plead, particularize fraud and thereafter tender plausible evidence demonstrating fraud. Additionally, it is trite and established that the burden of proof as pertains to fraud is slightly higher than balance of probabilities but below beyond reasonable doubt. Simply put, the standard of proof applicable in matters of fraud has been stated to be the intermediate standard.

126. In the case of **Kuria Kiarie & 2 others v Sammy Magera [2018] KECA 467 (KLR)**, the Court of Appeal elaborated on the manner of pleading fraud and the applicable standard of proof. The Court stated as hereunder:

*25. The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:*

*“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].*

*The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.*

26. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows;-

*“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”*

27. We have examined the appellants' amended defence for any pleading on particulars of fraud or illegality but there is none. The claims were therefore stillborn and no evidence could be tendered. Even if it was open to tender evidence on fraud and illegality, the mere allegation that a sale agreement and a Consent for transfer cannot be obtained on the same day is well below the standard of proof set under the authorities cited. We need not belabour this issue as we are satisfied that it was neither properly pleaded nor strictly proved. That ground of appeal fails too.

127. Has the Plaintiff proven the plea of fraud to the requisite standard or at all? The Plaintiff had contended that the suit property was lawfully transferred and registered in his name. However, the Plaintiff did not place before the Court a copy of the Transfer Form to demonstrate that the Application for transfer was duly approved.

128. Furthermore, the Plaintiff also failed to tender and place before the Court a copy of the Plot Register. It is common ground that the ownership rights pertaining to [sic] an unregistered landed properties within the County Governments are ordinarily contained in the Plot Cards

or the Plot Register. In this regard, proof that the Plaintiff became the owner of the suit property was domiciled in the Plot Register.

129. In the premises, it behoved the Plaintiff to tender the Plot Register before the Court and then demonstrate that there were alterations [if any] made on the register, impacting on the Plaintiff's ownership. Absent the Plot Register, the critical foundation anchoring the Plaintiff's claim and by extension the plea of fraud collapses.

130. *In a nutshell*, I am unable to discern the foundation of the Plaintiff's contention that there was fraud perpetrated by the Defendants in respect of the suit plot. In any event, it bears repeating that it is one thing to allege and another to prove the allegations. In respect of the subject matter, the assertions by the Plaintiff were not proven. Same remained at the level of allegations.

131. Moving on to the final issue, namely; what reliefs [if any] ought to be granted. To start with, the Plaintiff herein sought various reliefs at the foot of the Plaint dated the **26<sup>th</sup> February 2019**. In particular, the Plaintiff sought a declaration that the suit plot lawfully belongs to himself.

132. Though the Plaintiff sought an Order of declaration, I beg to state that the Plaintiff did not tender and/or produce before the Court any approved transfer Form; any Letter of Allotment or any authenticated Minutes of the full Council. Simply put, the Plaintiff did not place before the Court any deed or document of title to warrant a declaration of ownership. Suffice it to state, that a declaration of ownership cannot issue for the mere asking. Instructively, such an order can only issue on the basis of valid and credible evidence demonstrating existing rights.

133. The next relief that has been sought relates to an order of rectification of the Plot register in respect of the suit plot. In the absence of any ownership rights, the prayer for rectification of the register of the Plot has certainly, been sought in vacuum. In short, such an order cannot be issued in favour of a person who has no proven rights or interests to the Plot.

134. Next is the issue of Costs. It is trite and established position of the law that Costs follow the event. In this case, the event is the outcome of the suit. Nevertheless, it is not lost on me that even though costs follow the event, the Court is still clothed with discretion as pertains to award of costs. [See the provisions in Section 27 of the Civil Procedure Act, Chapter 21, Laws of Kenya] [See also the elaborate holding of the Supreme Court in the case of **Jasbir Singh Rai and 3 others –vs- Tarlochan and 4 others [2013]eKLR**]

135. Having reviewed the facts and the circumstances pertaining to the subject matter; and upon taking into account the brazen conduct of the Plaintiff as pertains to the endeavour to transfer the suit property from the name of the Deceased albeit without due regard to the law, I come to the conclusion that the Plaintiff ought to bear the Costs of the suit.

#### SUMMARY OF FINDINGS

136. In the course of the discourse, I have made various findings and conclusions. The findings are in the body of the Judgment. However, it is important to pick out the findings and summarise same. To this end, the findings are as hereunder:

***[i]. The agreement that was allegedly entered into between the Deceased and the Plaintiff [which was***

*never tendered] was contrary to the provisions of Section 3 of the Law of Contract Act.*

*[ii]. The Minutes of the Town Planning, Works and Market Committee dated the 21<sup>st</sup> December 2005, were incomplete, illegal, void and invalid.*

*[iii.] The Suit property was never transferred to and registered in the name of the Plaintiff.*

*[iv. The suit property remained registered in the name of NAAMAN MWARANIA- Deceased] and thus forms part of the Estate of the Deceased.*

*[v]. The Plea of fraud was not proven/established.*

*[vi]. The cause of action on the basis of gift inter vivos was prohibited by the Doctrine of departure in terms of Order 2 Rule 6 of the Civil Procedure Rules, 2010.*

*[vii] The Plaintiff did not discharge the burden of proof.*

### **FINAL DISPOSITION**

137. Flowing from the analysis contained in the body of the Judgment, it must have become apparent that the Plaintiff herein did not discharge the burden of proof as pertains to the claims before the Court. On the contrary, evidence abound that the suit property remained registered in the name of the Deceased.

138. In the premises, and for the reasons alluded to; the final Orders of the Court are as hereunder:

*[i]. The Plaintiff's suit be and is hereby dismissed.*

*[ii]. The suit property be and is hereby declared to form part of the Estate of NAAMAN MWARANIA – Deceased and thus subject to the provisions of the Law of Succession Act.*

*[iii] Costs of the suit be and are hereby awarded to the Defendants.*

*[iv]. The Costs in terms of clause [iii] above shall be agreed upon and in default to be taxed in the conventional manner.*

139. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO this 15<sup>th</sup> of January 2026.**

**OGUTTU MBOYA, FCIArb; CPM [MTI-EA].**

**JUDGE**

In the presence of:

**Mukami/Hussein – Court Assistants**

**Mr. Mwirigi Kaburu for the Plaintiff**

**Mr. Kiautha Arithi; and Gikunda Arithi for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**

**Mr. Ken Muriuki for the 3<sup>rd</sup> Defendant**

