

**REPUBLIC OF KENYA**

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

**ELC CASE NO. 113 OF 2024**

**(FORMERLY NAKURU ELC E016 OF 2023)**

**FRANCIS GITIRIA MBUGUA & 151 OTHERS.....**  
**.....PLAINTIFF**

**VERSUS**

**GRACE WANJIRU NGANGA.....1<sup>ST</sup>**  
**DEFENDANT**

**JENNIFER WARINGA MIARAHO.....2<sup>ND</sup>**  
**DEFENDANT**

**JECINTER WANGARI NYOIKE.....3<sup>RD</sup>**  
**DEFENDANT**

**AGRICULTURAL AND INDUSTRIAL HOLDINGS LTD.....4<sup>TH</sup>**  
**DEFENDANT**

**THE DISTRICT LAND REGISTRAR, NAIVASHA.....5<sup>TH</sup>**  
**DEFENDANT**

**RIFT VALLEY REGIONAL SURVEYOR.....6<sup>TH</sup>**  
**DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....7<sup>TH</sup>**  
**DEFENDANT**

**JUDGEMENT**

1. Vide a Plaint dated 28<sup>th</sup> February 2023 and Amended on 23<sup>rd</sup> June, 2023, the Plaintiffs herein sought for judgement against the Defendants for the following orders:

- i. A declaration that the Plaintiffs have become entitled to the property known as Gilgil/Gilgil Block 1/7413 (Kekopey) by virtue of adverse possession.
- ii. A declaration that the Plaintiffs are the rightful owners of land parcel Gilgil/Gilgil Block 1/7413 (Kekopey) by virtue of

agreements for sale and subsequent transfer from GEMA Holdings Limited, now known as Agricultural & Industrial Holdings Limited, the 4<sup>th</sup> Defendant herein.

- iii. That the Honourable Court do declare that the Plaintiffs are entitled to own their portions in their own names absolutely.
- iv. A declaration that the Gazettement of Title No. Gilgil/Gilgil Block 1/7413 via Gazette No. 341, subsequent cancellation of the fraudulent title and issuance of new titles to the Plaintiffs on 7<sup>th</sup> April 2009 was procedural.
- v. A declaration that the entries contained on the proprietorship section in favour of the Plaintiffs are legal and absolute.
- vi. A declaration that the Plaintiffs' subsequent titles being, Gilgil/Gilgil Block 1/54381 (Kekopey), Gilgil/Gilgil Block 1/54366 (Kekopey), Gilgil/Gilgil Block 1/54416 (Kekopey), Gilgil/Gilgil Block 1/54368 (Kekopey), Gilgil/Gilgil Block 1/54398 (Kekopey), Gilgil/Gilgil Block 1/54367 (Kekopey), Gilgil/Gilgil Block 1/54392 (Kekopey), Gilgil/Gilgil Block 1/54402 (Kekopey), Gilgil/Gilgil Block 1/54435 (Kekopey), Gilgil/Gilgil Block 1/54414 (Kekopey), Gilgil/Gilgil Block 1/54383 (Kekopey), Gilgil/Gilgil Block 1/54442 (Kekopey), Gilgil/Gilgil Block 1/54407 (Kekopey), Gilgil/Gilgil Block 1/54374 (Kekopey), Gilgil/Gilgil Block 1/54420 (Kekopey), Gilgil/Gilgil Block 1/54369 (Kekopey), Gilgil/Gilgil Block 1/54391 (Kekopey), Gilgil/Gilgil Block 1/54382 (Kekopey) are valid and such, the registers for the said titles be reinstated.
- vii. A declaration that titles for parcel numbers Gilgil/Gilgil Block 1/9863 (**sic**) to 9570 (Kekopey) were obtained fraudulently and/or through corrupt means therefore null and void.
- viii. An order for cancellation of the records reflecting title

numbers Gilgil/Gilgil Block 1/9563 to 9570 (Kekohey).

- ix. A declaration do issue that the court orders obtained by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in;
    - a. Grace Wanjiru Ng'anga & 2 others v Elias Ngugi Ng'ang'a & another [2020] eKLR, &
    - b. Republic v Naivasha Land Registrar & 2 others Ex Parte Grace Wanjiru Nganga & 2 others [2020] eKLR were fraudulently obtained and the same be nullified.
  - x. That the 6<sup>th</sup> Defendant be ordered to reinstate mutation entry reference number MUT/NV/1877/5/19 in the registry index map number 14 and 15 Gilgil/Gilgil Block 1 (Kekohey).
  - xi. Costs of the suit; and
  - xii. Interest at court rates on (iii) and (iv) above.
2. Upon service, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their Statement of Defense dated 14<sup>th</sup> April 2023 which was later amended on 15<sup>th</sup> July 2023 and further Amended on 29<sup>th</sup> June 2024 whereby they denied the contents contained in the amended Plaintiff putting the Plaintiffs to strict proof. They clarified that they were office bearers and court appointed trustees of Naivasha Uiguano Group. That Naivasha Uiguano Group had been formed in the year 1975 or thereabout by residents of Mununga area in Naivasha for the purpose of advancing their economic and social interest and was registered in Naivasha on 27<sup>th</sup> January 2005 with the area ward councillor the late Nganga Kihonge as the patron and trustee. That the parcel of land formerly known as Gilgi/Gilgil Block 1/7413 (Kekohey) had been purchased from the 4<sup>th</sup> Defendant for and on behalf of the members of Naivasha Uiguano Group and not for any other individuals or groups, using Mr. Nganga Kihonge as an agent.
3. That it had been agreed that individuals who bought shares would be the members of Naivasha Uiguano Group. That the process of purchase of the foresaid parcels had however been completed by Kihonge's son the late Elias Ngugi Nganga and one Grace Nduta Theuri wherein the share of the land bought by the late Nganga Kihonge as well as the shares of the other

members of the group were to be determined after the completion of the purchase transaction.

4. That the question regarding the purchaser of the subject land had been an issue in Nakuru ELC Judicial Review No. E002 of 2021 wherein evidence had been tendered that the aforesaid land had been bought by Naivasha Uiguano Group and a title deed issued to the trustees on behalf of the group.
5. That the trustees of the group had subdivided Gilgil/Gilgil Block 1/7413 (Kekopey) into eight (8) parcels to wit; Gilgil/Gilgil Block 1/9563-9570 (Kekopey) wherein the Plaintiffs had been given the title deed to parcel No. Gilgil/Gilgil Block 1/9565 (Kekopey) to hold (in their capacity as officials) as the share of the members of the group wherein they periodically visited the land.
6. That in the month of July 2019, the Plaintiffs and members had visited land parcel No. Gilgil/Gilgil Block 1/9565 (Kekopey) with a surveyor and marked its boundary with beacons with an intent to share it to members.
7. That since the Plaintiffs had been allowed by the late Nganga Kihonge to put up temporary houses in some parts of land parcel No. 7413 during the purchase process while awaiting subdivision to members, the claim of adverse possession in any part of the aforesaid parcels, wherein they had lodged a restriction in the year 2009 blocking the 1<sup>st</sup> to 3<sup>rd</sup> Defendants' group members from accessing the same or removing any occupants, could not arise in the circumstances.
8. That further, before the year 2008, Gilgil/Gilgil Block 1/7413 (Kekopey) had been government land thus acquisition of title through adverse possession was not possible.
9. That by September 2010 when the Plaintiffs purportedly formed Naivasha Uigwano Group, the 1<sup>st</sup> to 3<sup>rd</sup> Defendant's group was already in existence wherein its members had already lawfully acquired land parcel Nos. Gilgil/Gilgil Block 1/9563-9570 (Kekopey) wherein the title deed had been issued in the names of the family members of the late Nganga Kihonge pending distribution to beneficiaries.
10. That whereas the Plaintiffs had expressly admitted that they had

discovered an alleged fraud by the former trustees in the year 2008, they instituted the instant suit in the year 2023 which was over 15 years later and outside the 3 years period of limitation prescribed by the Limitation of Actions Act. That accordingly, the instant suit was fatally incompetent wherein the court lacked jurisdiction. That the same ought to be struck out.

11. That following the refusal of Elius Ngugi Nganga and Grace Nduta Theuri to relinquish their office as trustees and to surrender the title deeds of land parcel No. Gilgil/Gilgil Block 1/7413 (Kekopey), the Plaintiffs were obliged to comply with the provisions of Sections 38, 42, 44 and 45 of the Trustees Act to revoke the appointment of the trustees and appoint new ones. That the purpose of the Gazette Notice No. 341 of 2019 by the Nakuru Land Registrar was to give notice to the registered proprietors of the subject parcel of land for objection to a proposed change of registered proprietors and had not been an instrument of change of trustees wherein the registered proprietors had objected to the change of proprietors wherein the land registrar had not issued a title deed in the names of the purported newly appointed trustees.
12. That subsequently, Gilgil/Gilgil Block 1/7413 (Kekopey) had been lawfully subdivided into 8 parcels resulting into Gilgil/Gilgil Block 1/9563 to 9570 (Kekopey) which subdivision had been captured in the relevant Registry Index Map and the title deeds issued in the trustees' names.
13. That since vide the Gazette Notice No. 341 of 2009, the Land Registrar did not issue a new title deed in the names of the Plaintiffs' trustees, the title deeds issued on 7<sup>th</sup> April 2009 that the Plaintiffs sought to rely on was fraudulent, their group having had been formed on 24<sup>th</sup> September 2010 and their having been in existence another title issued on 7<sup>th</sup> April 2008 to the former trustees for the same parcel of land and which title was still in existence and valid.
14. That following the original trustees' refusal to relinquish their position and transfer the aforesaid parcel to the group officials, the Defendant had filed Nakuru ELC Case No. 407 of 2017 for revocation of the appointment of the trustees and substitution with them. That it had been after the determination of the said case the handing over of the Titles by the original trustees to hold in their capacity as the new trustees, that they came to

know about the existence of Gilgil/Gilgil Block 1/9563 (Kikopey).

15. That accordingly, the issues being raised herein regarding the status of the group and its leadership by parties who were represented in Nakuru ELC case No. 407 of 2017 are matters that had been raised or ought to have been raised in the aforesaid proceedings, therefore, the Plaintiffs' claim was res judicata the said case that had been determined on 11<sup>th</sup> March 2020 wherein the court had vested them with the land parcel No. Gilgil/Gilgil Block 1/9565 (Kekopey).
16. That Nakuru JR No. E003 of 2020 had been instituted seeking orders to access the records of the land so as to comply with the court's order which had been denied.
17. That the 5<sup>th</sup> Defendant, acting on the strength of the Land Registrar's Gazette No. 341 of 2009, vide a letter dated March 2019, cancelled land parcel numbers Gilgil/Gilgil Block 1/9563-9570 (Kekopey) which then provoked them (1<sup>st</sup> to 3<sup>rd</sup> Defendants) to institute Nakuru JR E002 of 2021 for restoration of the parcels of land. It was then that Plaintiff filed an application for their joinder as interested parties and review, which Application was disallowed by the court on 30<sup>th</sup> November 2022.
18. That accordingly, the court had made a final and binding determination regarding the status of land parcel Nos. Gilgil/Gilgil Block 1/9563-9570 (Kekopey) thus the said issue was not open for re-litigation before a court of similar jurisdiction.
19. That the issue of reinstatement of land parcel No. Gilgil/Gilgil Block 1/7413 (Kekopey) raised in the instant suit was res judicata, the same having been an issue in Nakuru JR E002 of 2021 where the court had determined that the 5<sup>th</sup> Defendant had no jurisdiction to cancel the title of parcels Nos. Gilgil/Gilgil Block 1/9563-9570 (Kekopey) or to reinstate their mother title.
20. That the 5<sup>th</sup> Defendant had registered the subdivisions of the land parcel No. Gilgil/Gilgil Block 1/7413 (Kekopey) and issued the Plaintiffs with title deeds during the active litigation over the land parcel and existence of court orders prohibiting the actions hence the said title were void. They thus stated that the entire suit herein was misconceived, vexatious and an abuse

of the court process meant to vex, harass and intimidate the 1<sup>st</sup> to 3<sup>rd</sup> Defendants who had lawful judgements in their favour. That the Plaintiffs suit against them should thus be struck off and/or dismissed with costs.

21. The 4<sup>th</sup> Defendant's Statement of Defence dated 24<sup>th</sup> April 2023 was a denial of the Plaintiff's allegations. It maintained that it had initially owned the suit land which had been excised from one of the ranches it owned in Gilgil. That one of its founders was Nganga Kihonge (Deceased) who had also been a shareholder.
22. That in the year 1980, the Plaintiffs approached Nganga Kihonge with the intention of purchasing the suit land wherein he acted as a liaison person between the 4<sup>th</sup> Defendant and the Plaintiff. That it had been agreed that he would receive the funds for the purchase from the Plaintiffs and remit the monies to the 4<sup>th</sup> Defendant. The 4<sup>th</sup> Defendant thus allowed the Plaintiffs to take immediate possession of the suit land pending payment in full. That Nganga Kihonge diligently paid the money that he had received to the 4<sup>th</sup> Defendant (made out in his name) and it had been upon his demise, when his son contacted the 4<sup>th</sup> Defendant inquiring about the status of the land, that the 4<sup>th</sup> Defendant learnt that Nganga Kihonge had been a trustee of a group consisting of the Plaintiff which was known as Naivasha Uigwano Group.
23. On 17<sup>th</sup> July 2002, the 4<sup>th</sup> Defendant wrote to the group, through Kihonge's son, one Mr. Francis Nganga informing them of the outstanding balance of Kshs. 214,000/= on the purchase price of the suit land. The Plaintiffs had thus offset the balance and had been issued with the receipts for payment. The Plaintiffs had also appointed one Mr. Elius Ngugi Nganga-Advocate (a son to Nganga Kihonge) to represent them in the transaction.
24. That upon receipt of the balance of the purchase price, the 4<sup>th</sup> Defendant had caused the suit land to be excised from the original land (by one Mr. Kimathi Mugenyu -Surveyor) and had been given a parcel number and a title deed. Subsequently the Plaintiff sought to have the land subdivided so that each member would get a title for their own piece of land.
25. That the 4<sup>th</sup> Defendant had transferred the land to Naivasha Uigwano group and wrote to the District Land Registrar Nakuru on 21<sup>st</sup> June 2006

confirming that they had authorized the Plaintiffs to process titles for the subsequent subdivisions on their own. That since it had allowed the Plaintiff quiet possession and use of the land in the year 1980, they did not involve themselves with the said land and were neither a party or aware of Nakuru ELC Case No. 407 of 2017. That the instant suit as filed did not disclose any cause of action as against it and should be dismissed with costs.

26. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants vide their Statement of Defence dated 28<sup>th</sup> March 2023, also denied the allegations contained in the Plaintiff's Plaint citing the statutory duties of the 5<sup>th</sup> Defendant and stating that had there been a title deed issued, than it had been strictly within its statutory duties and/or due to misrepresentation of the facts by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. That the 5<sup>th</sup> Defendant was not an expert in detecting fraudulent transactions wherein its duties were limited only to its statutory duties. They thus prayed that the Plaintiff's suit against them be dismissed with costs.
27. In a rejoinder, the Plaintiffs clarified the timeline of how they acquired the land to the effect that whereas the land was bought around 1980 by individuals and smaller groups, not by the "Naivasha Uigwano Group" as a single entity, the "Naivasha Uigwano Group" was only formed after the purchase, to act as a vehicle for following up on title issuance. That at the time of purchase (1980), the land had no parcel numbers or titles because it had not yet been surveyed wherein these details only emerged around the year 2008.
28. In response to Fraud and Statute of Limitations, the Plaintiffs argued that there was no need to sue the former trustees in the year 2008 because the Land Registrar had already corrected the fraud by cancelling the "fraudulent" titles and issuing new ones to them in 2009. That since the current dispute arose from the Defendants' recent actions and claims, their suit was filed within the legal time limits.
29. They disagreed that their case was Res Judicata arguing that the core issue of ownership had never been conclusively determined by a court in the previous cases cited by the Defendants. They further went ahead to state that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were now claiming land that they previously admitted they did not even know existed. They thus sought that

the court strikes out the Statements of Defence filed by the 1<sup>st</sup> to 4<sup>th</sup> Defendants and enter Judgement in their favour as requested in their original Amended Plaintiff.

30. After the parties had complied with the pre-trial directions, the matter proceeded for hearing on the 12<sup>th</sup> November, 2024 where Francis Mwaura Thiongó testified as PW1 stating that he had filed the suit on behalf of about 151 members of “Naivasha Group”. He then produced the authority to act as Pf exh 1, the minutes dated 3<sup>rd</sup> December 2022 authorizing him to act, and the list of members as Pf exh 2 (a) and (b).
31. He then proceeded to testify that he was among the people who had brought the land. He adopted his witness statement dated 28<sup>th</sup> February 2023 as his evidence in chief and sought to rely on the documents therein filed.
32. He explained that they had sued the Defendants because he and others had bought the land No. Gilgil Block 1/7413 measuring 127.77 hectares from Gema Holdings (AIH Limited) in the year 1981 through its agent, the Late Joseph Nganga Kihonge who was the then Chairman of Nakuru County Council. That at the time, Nganga only had a letter of allotment in his name wherein the land had no title deed and parcel number as it was un-surveyed. That whereas Nganga could not transfer the land to them, he had apportioned the land, measuring around 5 acres each to several persons wherein they had taken occupation of those portions in the year 1980. He confirmed that whereas some people had bought their portions of land through groups like Kasambara Group, Naivasha Matigari Group, Longonot Women Group, others like himself had bought their portions individually.
33. That it had been while they were in occupation, that they had decided to follow up on the question of the title deed with Nganga who then asked them to pay surveyor fees to Kasyi Surveyors. That nonetheless, even after paying the fees and while waiting for their titles, Nganga passed away. They then decided to follow up the matter with his family and approached one George Kimemia, Nganga’s son who then had promised to talk the matter over with his family and give them feedback.
34. Kimemia then reported to them that he would raise the issue with

Agricultural Industrial Holding Limited (Gema Holdings), the 4<sup>th</sup> Defendant herein to find the way forward. That after visiting the 4<sup>th</sup> Defendant's offices, Kimemia and his brother approached them with a letter written by the 4<sup>th</sup> Defendant requesting that they pay an outstanding balance/debt of Kshs. 214,000/= despite the fact that they had cleared the purchase price with the late Nganga. What followed was that Jimmy, who was George Kimemia's brother appointed their brother Elias Nganga, who was a lawyer, to assist the Plaintiffs to follow up their title deed as he was in a better position to help them.

35. That subsequently, they had convened a meeting of all the groups and elected a chairman one Mr. Joseph Loshorua, a secretary (himself) and the late John Chege Kerukii wherein it had been agreed that each member pays a sum of Kshs. 625/= per acre, to offset the debt which they paid in the 4<sup>th</sup> Defendant's office and were issued with receipts. That after clearing the debt, they had decided to hire a surveyor and to follow up the title deed.

36. That their lawyer and advisor, Elias then gave them some forms to complete promising that he would take the same to the lands office so as to obtain the title deeds. He advised them to keep paying during every meeting, for the surveyor. They promptly made the payments. At the time, Elias had taken the names of Joseph and two others persons so as to complete the forms for the application for the title deeds, as the trustees, but it had been after they had informed Elias that they had collected enough money to hire a surveyor, that he had stopped attending their monthly meetings.

37. That subsequently, they had decided to go directly to the owner of the land, the 4<sup>th</sup> Defendant herein to assist them in obtaining the title wherein the said 4<sup>th</sup> Defendant had informed them that they could get title after payment of Kshs. 3,400/= as their fee. They paid the fee and were asked to wait for the possessing of the title. It had been during the wait that the 4<sup>th</sup> Defendant informed them that Elias had already received the title from the land's office which was in his name (Elias Ngugi Ngige) and one Grace Nduta Theuri whom they came to understand was Elias's sister in-law.

38. That upon receiving such information, they went to the district land

Registrar Nakuru who wrote them a letter dated 27<sup>th</sup> May 2008 advising them to hold a meeting to select their trustees so as to enable him cancel that title that had been issued to Elias Ngugi & Theuri. That accordingly, they had held the meeting as advised, on 24<sup>th</sup> May 2008 and elected their trustees being Joseph Loshorua, John Chege (deceased) and himself. They took the minutes to the Registrar's office. That upon receipt of the minutes, the said Registrar wrote a letter dated 25<sup>th</sup> July, 2008 to Elias Ngugi asking him to return the title for cancellation and replacement with the one bearing the names of the trustees. Elias never responded to this letter despite reminders.

39. That subsequently, the land Registrar issued notice in the Kenya Gazette vide Gazette Notice dated 16<sup>th</sup> January 2009 No. 341 giving them 30 days to return the title failure to which he would issue another title in the names of the trustees. That upon the expiry of the 30 days' Notice, he went to see the Registrar who told him to give them an extra 30 days which they did. That after the lapse of the extra 30 days (60 days in total), he went to the office of the Registrar and was issued with another title deed in the name of "Uiguano Group". That being laymen, they did not know the implication of the same and accepted the title the way it was wherein he had signed the title, which was issued on 7<sup>th</sup> March 2009.
40. That thereafter, they received information that Elias had returned the title to that office and that the same had been subdivided into 8 portions being block 1/9563 - 9570. That they went to the land Registrar who advised them to put a restriction on their title which restriction they did put.
41. That thinking that the said restriction was enough, they then decided to sub-divide the land among their members and arranged to hire a surveyor who then informed them that he could not proceed with their instructions because the land had already been sub-divided into the 8 blocks.
42. That later around the year 2020, they were summoned by the Land Registrar Naivasha for a meeting and when they arrived as the trustees and a lady member named Isabella Muthoni Njoroge, they found two ladies and a man who introduced themselves as trustees of block 1/9596. They had in their possession, a title and a court order. The Land Registrar then told them

that she was aware of the existence of block 1/7413 but the other title had no records in her registry. That after some discussion, it had been decided that they should fix a date in two to three days for the people to visit the land to be shown their portions of land. On the scheduled day however, the ladies did not show up and information reaching him had been that Elias had been asked by the ladies to desist from being a trustee of block 1/9565 since the ladies had a court order.

43. That subsequently, the District Land Surveyor wrote to the provincial survey to remove the barriers that had been placed by Elias and return the title to the initial mother title being Gilgil Block 1/7413. That therein after, the boundaries were removed, they signed the mutation forms and proceeded with the sub-division wherein they had processed titles for each member.
44. That later on, they were called by the Land Registrar and informed that the group that had been claiming ownership of one of the 8 portions had gone to court and obtained an order nullifying the removal of the boundaries. They sought to be joined as ex-parte parties in JR 2/2021 but were informed that the order of the court could not be reversed and that they should go back to court to demand our land which led to the filing of the instant suit.
45. He testified that they started purchasing the land in the year 1980 and that he had the original receipts to that effect. He produced the receipts filed in their documents dated 27<sup>th</sup> August 1980 for Kshs. 5,000/= as Pf exh 3 (a) and (b) and receipts dated 4<sup>th</sup> December 1991 and 8<sup>th</sup> November 1991 from surveyors as Pf exh 4 (a) and (b).
46. His evidence was that they had held meetings with the family of George Kihonge and confirmed that he had written the minutes. He then proceeded to produce the following documents:
  - i. Minutes held on 4<sup>th</sup> June 2002 as Pf exh 5.
  - ii. A letter dated 23<sup>rd</sup> June 2002 from John Kimemia as Pf exh 6
  - iii. Minutes of the meeting held on 27<sup>th</sup> June 2002 at Tumaini House Gilgil, when Kihonge was still alive, as Pf exh 7.
  - iv. Minutes held in a meeting on 4<sup>th</sup> July 2002 as Pf exh 8.

- v. A letter dated 17<sup>th</sup> July 2002 from the 4<sup>th</sup> Defendant's General Manager informing them of the debt of Kshs. 214,000/=, as Pf exh 9.
- vi. Minutes of a meeting held at Goodwill church near their land on 16<sup>th</sup> October 2004 confirming clearance of the payments as Pf exh 10.
- vii. A copy of the Registration Certificate "Kasambara Kanjuiri Group" that had been registered on 27<sup>th</sup> October 2004 as Pf exh 11.
- viii. A Certificate of Registration of "Naivasha Uiguano Group" that had been registered on 27<sup>th</sup> January 2005 as Pf exh 12. (This was not his group and they did not know about its existence.)
- ix. A letter dated 8<sup>th</sup> June 2005 addressed to Kimathi Mugenya Surveyors by the G M AIH Ltd authorizing him to determine the acreage of their land and get a parcel number as Pf exh 13.
- x. Minutes of a meeting of 11<sup>th</sup> June 2005 held at Goodwill Church compound where Elias had proposed "Uinoo group" as the name of the group, as Pf exh 14.
- xi. Pf exh 15 were minutes of a meeting held on 13<sup>th</sup> August 2005 where Elias had informed them of the surveyor's fee of Kshs. 150,000/= for the work. He clarified that they did not take the surveyor Mr. Mugengo as the GM had advised them to hire their own surveyor. His testimony had been that they had held so many meetings wherein they had always used Elias as advised by his elder brother Jimmy and that they used to pay him for the services rendered.
- xii. Minutes of a meeting of 10<sup>th</sup> September 2005 which was a follow up of the payment of the survey fee as Pf exh 16.
- xiii. A list dated 11<sup>th</sup> June 2005, 9<sup>th</sup> July 2005, 3<sup>rd</sup> August 2005 and 5<sup>th</sup> August 2005 showing payments that had been made for survey fee and land deposit, as Pf exh 17.
- xiv. Minutes of a meeting of 9<sup>th</sup> July 2005 at Goodwill compound where Elias had explained that he had not been successful in

convincing the surveyor and how he would strive to register the group, as Pf exh 18.

- xv. Minutes of 15<sup>th</sup> September 2005 wherein they sought further information on the surveyor and the parcel of land after sending people to Nairobi, as Pf exh 19.
- xvi. A letter dated 2<sup>nd</sup> November 2005 forwarded to them by Director of survey which gave specifications of the land as Gilgil Block 1/7413 measuring 135.77 hectares, as Pf exh 20.
- xvii. A letter addressed to the G M of AIH Ltd by George Kimanathi and copied to Elias Nganga Advocate informing him that the work for the group had been finished as Pf exh 21.
- xviii. Minutes of a meeting held on 14<sup>th</sup> January 2006 as a follow up for the progress of the processing of a title deed as Pf exh 22.
- xix. Minutes of 25<sup>th</sup> February 2006 in which Elias had (started telling lies) informed them that he had obtained transfer forms to be signed wherein the title would be registered in the name of the Group but that the members' pin numbers had given him problems as Pf exh 23.
- xx. Follow up Minutes (Pg 9 - 92 and 94 - 108 of their bundle) as Pf exh 24 (a - j)
- xxi. A letter dated 21<sup>st</sup> June 2006 addressed to District Land Registrar Nakuru by GM - AIH Ltd authorizing them to process their own title deed on the land they had sold to them as Pf exh 25.
- xxii. A receipt dated 31<sup>st</sup> October 2002 received from "Uigwano Group" for a sum of Kshs. 3,400/= as Pf exh 26. (He had paid the said money personally.)
- xxiii. A title to the land on 2<sup>nd</sup> April 2008 and registered the names of Elias and Grace Nduta Theuri as Pf exh 27.
- xxiv. A letter dated 22<sup>nd</sup> May 2008 addressed to them by the land Registrar advising them to hold a GM so that he could replace Pf exh 27 and issue another one in the name of trustees as Pf exh 28.

- xxv. Minutes of a meeting held on 24<sup>th</sup> May 2008 as had been advised by the Land Registrar so that they could elect the trustees as Pf exh 29.
- xxvi. A letter dated 27<sup>th</sup> May 2008 addressed to the land Registrar in compliance and forwarding the minutes as Pf exh 30.
- xxvii. A resolution of members where the trustees had been elected as Pf exh 31.
- xxviii. A letter dated 25<sup>th</sup> July 2008 by the Land Registrar addressed to Elias and Grace asking them to surrender the title that had been issued to them as Pf exh 32.
- xxix. A registration of instruments dated 4<sup>th</sup> December 2008 by the land Registrar to the Government printer where they had paid a sum of Kshs. 5000/= for the Gazette Notice as Pf exh 33.
- xxx. A copy of the Green Card dated 15<sup>th</sup> May 2009 for the title that had been issued to Elias and Grace as Pf exh 34.
- xxxi. A green card dated 7<sup>th</sup> April 2009 for the title issued to “Naivasha Uiguano Group” after the Gazette Notice for No. Gilgil/Gilgil/Block 1/7413 measuring 135.77 hectares as Pf exh 35.
- xxxii. He marked as Pf MFI 36, a faint Green Card of the sub-division of land parcel numbers Gilgil/Gilgil Block 1/9563 – 9570 that had been removed, pursuant to a court order.
- xxxiii. A copy of the Kenya Gazette dated 16<sup>th</sup> January 2009 No. 341 as Pf exh 37.
- xxxiv. A title deed dated 7<sup>th</sup> April 2009 for Gilgil/Gilgil Block 1/7413 that had been issued to “Naivasha Uiguano Group” after 60 days of the gazette notice as Pf exh 38.
- xxxv. Official searches that they had conducted on 15<sup>th</sup> May 2009 indicating that the land was registered in the names of Grace and Elias, despite them having obtained title, as Pf exh 39.
- xxxvi. Unsigned mutation forms dated 24<sup>th</sup> June 2009 wherein Elias and Grace sought to subdivide parcel No. 1/7413 into 8 parcels of land as Pf exh 40.

- xxxvii. A letter dated 2<sup>nd</sup> October 2009 addressed to the District Surveyor seeking to amend the RIM on Block 1/7413 after cancellation of the title deed as Pf exh 41.
- xxxviii. A Certificate of Registration for “Naivasha Uiguano Group” on 24<sup>th</sup> September 2010 and whose date of issue was 1<sup>st</sup> March 2017 as Pf exh 42.
- xxxix. He explained that they had registered the group after issuance of title because they had bought the land as individuals or different groups wherein when they wanted to pay the debt, they had been advised by Elias to register a group. That in any case, the title itself bore the name of the Group so they had to register the name for ease of communications.
- xl. Minutes from their record dated 8<sup>th</sup> September 2012 as Pf exh 43.
- xli. A Search conducted on 27<sup>th</sup> May 2015 to ensure that their land was safe as Pf exh 44.
- xl.ii. A complaint letter dated 14<sup>th</sup> December 2015 addressed to the Land Registrar that they had been given a title and using the old title which Elias had sub-divided and was trying to sell as Pf exh 45.
- xl.iii. A mutation form dated 22<sup>nd</sup> April 2019 signed by him and Joseph showing the removed boundaries wherein the land had reverted as Pf exh 46.
- xl.iiii. An agreement of commitment by Mary and Grace dated 2<sup>nd</sup> December 2020 as Plaintiff MFI 47.
- xl.v. A receipt dated 17<sup>th</sup> March 2021 from the department of land for Ksh. 75,700/= for the sub division of their title/land as Pf exh 48.
- xl.vi. An area list of members to whom they had sub-divided the land and given them titles as Pf exh 49.
- xl.vii. Minutes of Kasambara Group dated 23<sup>rd</sup> March 2002 and a list of its members as Plaintiff MFI 50 and 51.
- xl.viii. A list of members of Matigari Group as Plaintiff MFI 52.

- xlix. A letter of consent dated 15<sup>th</sup> April 2021 for sub-division of land to 94 members wherein some members got titles in block for their groups, as Pf exh 53.
  - I. A receipt dated 8<sup>th</sup> April 2021 for a sum of Kshs. 50,000/= paid through Gil Plan Agencies, their Surveyors as Pf exh 54.
  - li. A receipt dated 17<sup>th</sup> March 2021 for a sum of Kshs. 60,000/= for registration of the Green Card as Pf exh 55.
  - lii. Individual titles that had been issued to the Plaintiffs as Pf exh 56 (I - XCIV).
  - liii. Receipts issued to them as Plaintiff MFI 57 (I - V)
  - liv. Minutes of the meeting held on 3<sup>rd</sup> February 2022 to inform members of the court case that had suspended their title as Pf exh 58.
  - lv. Photographs showing occupation of the suit land as Pf exh 59 (a - t).
  - lvi. A ruling delivered on the 3<sup>rd</sup> March 2020 in Nakuru ELC No. 407/2017 between Grace Nganga & 2 Others vs. Elias Ngugi Nganga and Grace Nduta as Pf exh 60.
  - lvii. A judgment dated 28<sup>th</sup> February 2022 in Nakuru ELC JR 2/2021 as Pf exh 61.
  - lviii. A ruling dated 6<sup>th</sup> November 2022 in Nakuru ELC JR 2/2021 as Pf exh 62.
  - lix. The Minutes dated 12<sup>th</sup> February 2015 were marked as Plaintiff MFI 63.
  - lx. A receipt dated 9<sup>th</sup> October 1979 was also marked as Plaintiff MFI 64.
  - lxi. An affidavit sworn on 15<sup>th</sup> September 2015 by Grace Wanjiru as the chairperson of "Mweri Mabati Women Group" and a beneficiary of the land Block 1/9565 as Pf exh 65.
  - lxii. A resolution passed on 14<sup>th</sup> July 2015 by the Uiguano group (which had the same name) as Pf exh 66.
  - lxiii. A member's resolution, by a group that was not theirs, to Change trustees as Pf exh 67.

- lxiv. A supporting affidavit dated 8<sup>th</sup> March 2016 on the dispute between the three women vs Elias & Grace as Pf exh 68.
  - lxv. A list of owners of Gilgil/Gilgil Block 1/1965 (Kikopey) who had attended a meeting of 14<sup>th</sup> July 2015 and resolved to change the trustees as Pf exh 69. He explained that Zipporah Wamaitha Nganga is the mother of Elias Nganga and belonged to the other Uiguano Group which was not part of their group.
  - lxvi. An Amended Originating Summons in relation to Block 1/9565 registered in the name of the Defendants and trustees as Pf exh 70.
  - lxvii. JR 2/2021 and an Affidavit wherein he was not a party to the proceedings as Pf exh 71 (a - b).
  - lxviii. A certificate of production of electronic evidence that he had signed on 1<sup>st</sup> July 2024 as Pf exh 72.
47. He urged the court to remove the order which had cancelled the boundaries to their title deeds.
48. In cross examination by Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, PW1 was referred to paragraph 7 to 9 of the Plaint wherein he confirmed that they were the ones who bought the parcel of land from GEMA holdings now known as Agricultural Holdings Limited, the 4<sup>th</sup> Defendant herein. That they had dealt with Ngánga Kihonge (deceased) because he had a letter of allotment. He conceded to not having a sale agreement with either Nganga Kihonge or GEMA, but that it had been an ordinary agreement with no terms.
49. That he had paid to Nganga a sum of Kshs. 6,000/= for 5 acres and had been receipted by GEMA holdings, although he did not have a letter of appointment of Mr. Kihonge. He also admitted that his witness statement did not indicate the person who had the documents of the transaction.
50. He confirmed that Mr. Kihonge was the link between them and GEMA holdings and that the document which the 4<sup>th</sup> Defendant had was a letter of allotment. That Mr. Kihonge was supposed to facilitate the process of their title deeds. He admitted that he did not have the documents that Kihonge had. He confirmed that a letter at page 64 of the bundle had been written

by the GM of the 4<sup>th</sup> Defendant to one Francis Nganga who was the son of Kihonge and that the same was in relation to the land and the balance of the purchase price.

51. He explained that the said balance was on account of Nganga Kihonge who had been an agent/ and a link within them and the 4<sup>th</sup> Defendant. On being referred to Pf exh 10, the minutes dated 16<sup>th</sup> October 2004, he confirmed that he had written and signed the minutes on 2<sup>nd</sup> April 2005 and admitted that indeed the date differed and that it was an error that had occurred when they were signing the handwritten minutes to the typed minutes. That minutes were not signed on the date they were written. He confirmed that they used to have handwritten minutes.
52. That whereas Elias Ngugi Nganga was the Secretary and used to attend their meetings, he did not sign the minutes. That the indicator was that Elias' family were to clear the debt because they had paid to his father who had not cleared debt. He confirmed that "Kasambara group" had also purchased the land.
53. He confirmed that they had bought the land from Ngángá Kihonge wherein they had been issued with receipts which did not indicate the size of the land bought. Upon being referred to a letter dated 12<sup>th</sup> May 2008, herein marked as DMFI 1, PW1 confirmed that he had authored and signed the same. He confirmed that Nganga who was an agent of GEMA had bought the land and sold it to them since he had an allotment letter.
54. His response on being referred to Paragraph 37 (a) of their Plaint was that he was not accusing the 4<sup>th</sup> Defendant but that there was a mix up on their side because after they had asked them to clear the debt which they did, other persons were brought on the land despite them being in occupation. That there was no contradiction.
55. He was categorical that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were not the registered proprietors of plot No. 7413, and that the sale was supported by the receipt that Ngángá, an Agent of GEMA holdings who was the owner of the whole land, had given him.
56. He reiterated that they had paid for the whole land through Nganga wherein whereas some people had bought the land individually, others had

bought it as a group. That Nganga, had not remitted Kshs. 214,000/= which balance they came learn about after his death. That he did not know the value of the whole land which was initially 400 acres but later it had been established to be 330 acres when people who had bought the same came with Surveyors.

57. He refuted that Pf exh 10 was not an indicator of the value of land and that the debt that they were to clear was established to be Kshs. 625/= per acre. Elias had however told them that if they were unable to clear the debt, an extra acre would be sold at Ksh. 3000/= per acre. He refuted that the entire price of the land should be aggregated to what they had paid clarifying that they had paid for the land through Ngángá and that the second phase was clearance of the debt Nganga had left.
58. When he was referred to PMFI 57 (ii) and Pf exh 56, he confirmed that the same was for Ksh. 3,125/=: that the receipt dated 12<sup>th</sup> April 2005 for Kshs. 3,250/= was in reference to James Njoroge Mbugua while receipt dated 15<sup>th</sup> March 2005 for Kshs. 3,125/= was to clear the balance.
59. He explained that receipt dated 19<sup>th</sup> April 2005 in the name of Mbugua Ngure was for survey fee of Kshs. 6,050/= in total, but the amount for clearing the balance was Kshs.3,250/=. That the receipt dated 8<sup>th</sup> June 2005 for Kshs. 6,150/= was for Kanjwari group, the receipt dated 6<sup>th</sup> June 2005 was in reference to Stephen Kimani Njuguna who paid Kshs. 3,250/=: receipt dated 23<sup>rd</sup> February 2005 was for Daniel Muchine for payment of Kshs. 3,150/= while that dated 8<sup>th</sup> June 2005 was for Kshs. 3,125/=for Joseph.
60. He stated that there had been no need to add up the total since they had more receipts and that it was not true that the total amount that they had paid to clear the debt was Kshs. 49,000/=: That a sum of Kshs. 164,000/= had been paid by the other Plaintiffs whose receipts they had not filed and insisted that the family of Ngángá and other groups did not pay the balance of the debts. That they had gone individually to the 4<sup>th</sup> Respondent who had issued them with receipts.
61. He confirmed that in the year 2005 the group did not exist but had been registered after they had bought the land individually and as groups. He maintained that it was not true that the total amount that had been paid

was Kshs. 57,300/= and admitted that they did not ask what the total value of the land was.

62. The witness then provided a breakdown of several payments made between May 1980 and June 1981, as documented in their bundle of documents as follows; on 12<sup>th</sup> May 1980, survey Fees of Ksh 500/= was paid, on 11<sup>th</sup> July 1980 an amount of Ksh 5,500/= was paid, on 7<sup>th</sup> August 1980, Joseph Gatimu, paid Ksh 5,000/=, on 25<sup>th</sup> August 1980 Joseph Maina Njoroge paid Ksh 5,000/=, on the 27<sup>th</sup> August 1980, a Group of 5 persons paid Ksh 5,000/= on the 27<sup>th</sup> August 1980, Kanjuiri paid Ksh 10,500/= while on the 31<sup>st</sup> August 1980, David Karanja paid Ksh 3,000/= and on the 27<sup>th</sup> June 1981, James paid Ksh 2,500/=.
63. He contended that Kshs. 57,300/= was not the total amount of money paid as they were paying individually and as a group. That in any case, the agent did not dispute that they had paid for the entire parcel of land. That accordingly, it was not true that the money that they had paid accounted for a 10<sup>th</sup> of the total amount paid.
64. He testified that Kihonge's family had assisted them after the death of their father although they had no share or interest in the land. That they had held several meetings which were attended by Elias. He also confirmed that Pf exh 5 was in his hand writing. That this was not the first meeting and neither was a meeting of 3<sup>rd</sup> June 2006, the last meeting.
65. He confirmed that Elias, a lawyer, was fronted by his brother Francis Alias Jimmy to assist them in processing the title after the death of their father. He admitted that there was no document appointing Elias Nganga as an Agent. That whereas they did not pay him for Agency work, they used to pay him some money which he signed for as depicted in his minutes.
66. He maintained that the debt on the balance of the purchase price was to be cleared by Nganga's family because Nganga did not remit all the money they had given him. That later, Elias sub-divided the land using the title which he had obtained in his names and his sister-in-law Grace Nduta Theuri and transferred some portions to other parties and to his family and then stopped attending their meetings. That the title had been subdivided and

transferred illegally.

67. He confirmed that the groups were represented in the year 2002 wherein in the meeting of 4<sup>th</sup> June 2002, they were inquiring how to obtain the title deed and parcel number of the land. That the five (5) people who had attended the meeting were from Gilgil hence it was not true that they wanted to include their friends in the Kihonge list.
68. That the meeting held on the 27<sup>th</sup> June 2002, had a few people wherein the issue of compromising was not discussed. That in a Memo dated the 4<sup>th</sup> July 2022, it had been resolved that 4 people should visit the Kihonge family to get a register which their father had as they were trying to pursue the title deed upon the Agents death.
69. He confirmed that after they had cleared the balance, Elias had stopped attending the meetings but had advised them to get a surveyor and chose 3 people to be trustees. That Elias did not transfer any land to them.
70. That they had been in good books with Elias, a Mr. Kimathi had surveyed the whole land wherein he had given Elias the Survey documents. That in a meeting of to Elias at the time when they were in good books with Elias. That in a meeting of 25<sup>th</sup> February 2006- Pf exh 23, Elias had given his proposal on how the title should be registered.
71. That the land was not registered as suggested but instead, they proposed that some people registered as trustees so as to remove the names of Elias and Nduta from the title deed. The land registrar instead registered the land in the name of the Women's Group wherein they (Plaintiffs) subsequently formed their group and registered it in the year 2010 pursuant to the land Register's advice.
72. He testified that the Gazette Notice had been carried through because after Elias had refused to return the title, the land Registrar had issued another title in the name of Naivasha Women instead of their names. That subsequently, a title had been issued in the name of their group wherein the title in the name of Elias had been cancelled vide the Kenya Gazette.
73. That title issued in the women's Group was fraudulent because during that time, cooperative societies were registered in Nakuru. That the Women's Certificate had been issued on 27<sup>th</sup> January 2005.

74. He clarified that they only registered once in the year 2010 but kept on renewing and that they had sub-divided the land. That the court orders were in relation to the 8 fraudulent titles that had been issued to Elias. That they were in court to seek the removal of all those titles and they remain with the one that the land registrar had issued.
75. He confirmed that the Agenda of the meeting of 3<sup>rd</sup> December 2022 (Pf exh 2a) where 43 people attended, was to inform the members of the court case, the minutes had also authorized people to sign documents on behalf of other members. He confirmed that although the authority of 28<sup>th</sup> February 2023, after the meeting of the year 2022, had not been signed, individually the people therein had signed it.
76. On being cross-examined by the Counsel for the 4<sup>th</sup> Defendant, he reiterated that they had purchased the land through Nganga Kihonge who was the then Chairman of Nakuru Council. That the receipts issued were inscribed on the letter head of GEMA holdings.
77. He also reiterated that he had purchased 5 acres of land and had been in possession without interference since the year 1981. That the other Plaintiffs who were his neighbours also had their receipts from GEMA holdings. That GEMA, the 4<sup>th</sup> Defendant had never interfered with their possession of the land.
78. That at the time they were purchasing, the land which had been estimated to be 400 acres and did not have a parcel number, the 4<sup>th</sup> Defendant had facilitated the survey of the land wherein they had instructed the Surveyor by the name of Kimathi Mogenyu to obtain the parcel number. That the land had been given No. Gilgil/Gilgil Block 1/7413. He confirmed that the process of survey was done after clearing the balance of Kshs. 214,000/= which had been paid directly to the company both individually and via the group.
79. That they had paid 4 times for the survey, with the last payment made to Elias who had been appointed by his elder brother to act as an agent between the family and the group. He explained that after the death of Nganga communication between them and GEMA, (the company) had been through the said Elias.

80. He confirmed that the letters that had been written by the 4<sup>th</sup> Defendant at pages 70 and 93 of the bundles, had referred to "Naivasha Uiguano Group" as the owners of the land, although there were three groups including individual buyers. That whereas they did not prepare any list as purchasers of the land, the 4<sup>th</sup> Defendant had just referred to them as "Naivasha Uiguano Group".
81. He confirmed that the title produced as Pf exh 27, was in the name of Elias and Grace who had been registered as trustees of "Uiguano Group". That nonetheless, they had never seen or known Grace. He confirmed that Pf exh 27 was the title that was cancelled by the Kenya Gazette and was to be registered in the name of the trustees of Uiguano Group.
82. He confirmed that the balance of Kshs. 214,000/= had not been not inclusive of the Survey fee and that the two receipts that had been brought to court were for the initial payment of the land and for offsetting the debt. That Nganga's family did not have a share in the land since they had only come in after their father had passed away.
83. He testified that not all members of the Plaintiff lived on the land and that during their meetings, only a few representatives attended since they were very many. That they were not aware of any other purchasers of parcel No. 7413 besides themselves.
84. That in a letter dated 8<sup>th</sup> June 2005, produced as Pf exh 13, the 4<sup>th</sup> Defendant had acknowledged all payment owed to them. That Elias had obtained transfer forms to be signed by members who then proposed Joseph L.O their chair and two other ladies. That they never at any time asked him to register himself as a trustee neither did they discuss the subdivision of 7413 into 8 blocks.
85. He confirmed that Pf exh 34 was a green card wherein the Registered owners were Elias and Grace as trustees of "Uiguano Group" and that the said registration had been done after the meeting authorizing some members to be registered.
86. He confirmed that Pf exh 35 was a confirmation that the registered owners in the Green Card therein were "Naivasha Uiguano Group" of P. O. Box 397 Gilgil which registration had been done after the cancellation of the

title held by Elias and Grace, through the Kenya Gazette.

87. He confirmed that upon the payment of the Debt, GEMA had acknowledged their purchase and issued them with a receipt herein produced as Pf exh 26.
88. He acknowledged that there had been a typographical error in the date on Pf exh 10 (Minutes of 16<sup>th</sup> October 2004) and that the name "Naivasha Uiguano Group" had been proposed by Elias when they were in good terms, when he was their lawyer who had even advised them on forming and registering the group.
89. Upon being referred to PMFI 50, he confirmed that in the said minutes, they had acknowledged that the shamba was from GEMA. He also confirmed that "Kasambara Group" had 84 members and that the surveyor work for GEMA had been done by Kimathi.
90. In reference Pf exh 21, he confirmed that the parcel number showed in the letter therein was Gilgil Block 1/7413 measuring 135.77 hectares wherein their group had been mentioned.
91. He confirmed that he had paid Kshs. 6,000/= for his 5 acres portion of land. That after they had been informed of the balance, he had paid Kshs, 3,125/=. He explained that they had compiled all the receipts for all the Plaintiffs and that the ones they had produced in court were samples. That they had bought the land in the year 1981 and that he had been in possession to date. That they had no problem with GEMA, who had not complained. That they did not take part in the proceedings herein produced as Pf exh 27.
92. His evidence had been that Nganga kihonge's family had not showed any interest in the land during all the meetings, but the same only arose after the death of their father wherein they started dealing with the Land Registry and not the 4<sup>th</sup> Defendant.
93. When cross-examined by the State Counsel for the 5<sup>th</sup> to 7<sup>th</sup> Defendants, he confirmed that they had sued the land Registrar because she had cancelled their title deed to parcel No. Block 1/7413 and that he was not aware of any court order. He however confirmed that the Land Registrar had no interest in the suit property and that she issued titles after documents

had been presented. That he had no evidence of the commission of fraud by the Land Registrar.

94. He confirmed that they had subdivided the land into 94 plots and titles issued to the Plaintiff members as per the list of the titles produced as Pf exh 56(I-XCIV)

95. In re-examination, he confirmed that as the Plaintiffs they had bought land No. 7413 from the 4<sup>th</sup> Defendants either individually or through groups wherein they had been issued with receipts herein produced that read GEMA Holdings (which later became Agricultural Holdings Limited.) He confirmed that Nganga Kihonge was an Agent but he did not show them any contract between him and the owners. That nonetheless, at one of the meetings, he had shown them an allotment letter after they had bought the land. That they did not know who was paying him. He admitted that he did not visit the GEMA offices.

96. That vide a search herein produced as Pf exh 44, by 27<sup>th</sup> May 2015 they were still the registered owners. That they had put a restriction on the land after Elias started dodging our meetings. That they had given the names Francis, Joseph and John to the Registrar to be registered as proprietors. That the first time they had registered their group was in September 2010, where the certificate bore the name "Naivasha Uiguano Self Help Group" which was reviewed and "Self Help" was removed. He reiterated that Elias secretly sub-divided the land into 8 blocks in the year 2008 using the title he was to return and which title had been the cancelled. By which time, the Plaintiffs were already the owners.

97. Upon being referred to Pf exh 40, he confirmed that the date of the mutation form which had sub divided the 8 blocks, was 24<sup>th</sup> June 2009 when they had already been issued with their title. That when they visited the land Registry, they did not see the green cards.

98. That the sub-division into Plot numbers 9563 - 9570 was then registered to Elias, his wife's name Isabella, his sister in-law Grace and Zipporah his mother. That the names of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants did not appear.

99. That they had come to learn of the court case where the 1<sup>st</sup> to 3<sup>rd</sup> Defendants had filed suit against Elias and Grace very late when they were

preparing to sub-divide the land for individual members (between the year 2019 and 2020.)

100. That around that time, they had been summoned by the land Registrar wherein they had found two ladies and an old man who lay ownership to one of the parcels being No. Gilgil Block 1/9565.

101. That the ruling in Pf exh 60 in Case No. 407/2017 was delivered on 3<sup>rd</sup> March 2020 when they were preparing to do the sub-divisions and were not parties to the suit. That there had been a consent between the Defendants therein and Elias that the trusteeship should move from Grace and Elias to the 3 Defendants.

102. That in relation to Pf exh 61, the case number was ELC JR 2/2021 wherein they were not parties initially when the judgment was delivered. That land parcel No. 9563 - 9570 were cancelled and the register was opened for subdivision wherein they subdivided the land into 94 titles.

103. That is as far as Pf exh 63 was concerned, they had sought to be joined to the suit, which application was denied as the court had held that it had no jurisdiction to deal with land ownership. That it was on the strength of the said ruling, that they had filed the instant case.

104. He explained that they did not sue Elias and his family because they already had a title deed which had replaced the one that he had. That their issue had been resolved. That Pf exh 49 showed the area list for the title deed that they had obtained after sub-dividing the land to which they were seeking that the court to reinstate.

105. That he had the authority to represent the Plaintiffs in the matter herein as per Pf exh 2 (a) (b).

106. PW2, one Francis Gitiria Mbugua, adopted his witness statement dated 28<sup>th</sup> February 2023 as his evidence in chief and then proceeded to testify that he had bought his land measuring 5 acres in the 1981 from the deceased Ng'ang'a Kihonge. That at the time the land belonged to GEMA.

107. That took possession and built his house in the year 1981 where he has lived to date. That the land did not have a title. That the surveyor had just measured the land after which they were told to wait for the title deed. That when he went to construct his house, he found two neighbours who had also

built, that they were many other people.

108. He reiterated that that had held several meetings with Nganga, and paid money for the survey until his demise when they started following up with his family. That subsequently, one of his sons named George had asked that they hold a meeting with everybody else wherein the eldest son in the family called Jimmy Kihonge led the meeting. That because Jimmy had business outside the town, he told them that his younger brother Elias Ngugi Nganga would assist them get their titles.

109. He explained that they had used the Nganga family because they were not known to GEMA and Nganga was their agent. That Elias who was an advocate was to represent the family at Agriculture Holdings, the 4<sup>th</sup> Defendant herein, so that he would collect the money. His evidence was that Nganga's family had no land.

110. That Elias helped them and they paid individually to the 4<sup>th</sup> Defendant. That when he bought the land in the year 1981 and paid a sum of Kshs. 5,000/= for 5 acres and Kshs. 500/= for the surveyor. That only after completion of pay, could one be shown the land. That they had however made a second payment of Kshs. 214,000/ directly to the 4<sup>th</sup> Defendant because Nganga had not remitted all the money. They were however not given the title. That the 4<sup>th</sup> Defendant had given them receipts to show that they had paid and told them that they could sub-divide our land.

111. That subsequently, they had contributed Survey's money and gave it to Elias Kihonge wherein they then held a meeting and elected their trustees one of whom was Joseph Loshorua. That they received a title, which was registered in the name of Elias Ngugi and a lady called Nduta Theuri who was one of those who had bought the land. That subsequently, their representatives Joseph and Francis Mwaura went to see the registrar to inquire why the title had been issued in those names. That their representatives had reported back to them that whereas the Registrar had written to Elias Ngugi to return the title deed, he had not complied despite being reminded twice.

112. That accordingly, the registrar had asked for their representatives to go to the Kenya Gazette wherein the title was cancelled and they were issued

with another title, around the year 2008 although he could not recall the date. That the subsequent title was in the name of “Uiguano Group” which group had not been registered at the time but which name they had previously been using. That they had thus registered their group and since Elias had refused to receive their calls, and because they now had a title in their name, they paid the surveyor who sub-divided the land after which they were given their titles.

113. That later they had been informed that some people lay claim to their land and since they did not know the said people, they filed the instant suit.

114. That apart from the Plaintiffs, there were other neighbours and another group who had bought the land. That whereas some people had bought the land directly, there were about 3 groups who had bought the land and built many houses. That whereas initially whole land measured approximately 400 acres, when they measured the land, it was about 350 acres. That his title is dated 13<sup>th</sup> July 2021, Pf exh 56. That he had lived on the land, brought up his children thereon, had planted trees and harvested trees wherein he had now planted new trees. He sought to be declared the proprietor of his land.

115. In cross-examination by the counsel to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, he confirmed that his evidence was in relation to land No. Gilgil/Gilgil block 1/7413 (Kikopey). He confirmed that there were people who had bought the land individually and others in groups. That he bought his land individually through Nganga Kihonge although he had no written agreement with him.

116. That later Kihonge’s son and other people had gone to the 4<sup>th</sup> Defendant’s office where it was discovered that they had a debt. That he had paid his share of the cost of Ksh 3,300/= which had been decided in a meeting held on 16<sup>th</sup> October 2024.

117. When he was referred to Pf exh 10, he confirmed that they had agreed on how the debt would be paid and that they were to pay a sum of Kshs. 625/= per acre hence a buyer of 5 acres would pay Kshs. 3,150/=. That the payment had been made between the year 2004 and 2005. That they were giving their duplicate receipts hence he had the original receipt in his pocket. That since they were many, they could not bring all their receipts.

118. He confirmed that he was given his receipt of Ksh. 5,000/= by the 4<sup>th</sup> Defendant's office and that he represented many people. That everybody was had been paying Ksh. 5,000/=. That Nganga showed him his portion of land and he took possession. He confirmed that Elias had sub-divided the parcels of land into 8 portions although he neither knew or had seen the people to whom the 8 portions was sub-divided for.
119. When he was referred to Pf exh 46, he confirmed that whereas he did not know how to read a map, the same had not been sub-divided. He explained that his parcel of land was No. 5 from Nakuru direction and within the 8 portions of land.
120. His response on being referred to photographs, Pf exh 59 was that the photographs had about 11 houses and grave yards. That however, he did not know if his house was among the pictures. That all he wanted was to have his land back. That he was aware that Elias had registered himself in the year 2008 and subdivided the land in the year 2009. That he was not aware of limitation period, and that they were following the issue with the land Registrar and were not just sitting idle. He insisted that he was not out of time.
121. He insisted that the Kihonge family had registered themselves to the 8 portions of land although they did not purchase the land. That the in reference to Pf exh 5, the first meeting was held in Naivasha. That when they bought the land from Nganga, he was a councillor.
122. That the Agenda of the meeting that had been attended to by 143 people had been for them to be informed of the pending case and to hire an advocate. That later on, they were informed that the "Kirima Group" had won the case. He refuted that anybody was authorized to sign documents on behalf of others in that meeting. That he did not know the women sitting/present in court or if any of them had attended their meetings.
123. In reference to Pf exh 22, he confirmed that Elizabeth Wanjugu Mugo was No. 6 but he did not know her. That she had also appeared on the subsequent meeting. He however maintained that he had never seen those women on the land.
124. When he was cross-examined by the counsel for the 4<sup>th</sup> Defendant, he

confirmed that he was one of the people who had bought the land individually from Nganga Kihonge but that the land belonged to the 4<sup>th</sup> Defendant. He explained that they had paid the money to Kihonge but they did not know whether he remitted the same to the 4<sup>th</sup> Defendant since they did not go to the 4<sup>th</sup> Defendant's office. He confirmed that they completed the payment of Kshs. 214,000/= hence they had no debt with the 4<sup>th</sup> Defendant. That further the 4<sup>th</sup> Defendant had not asked them for any money and that they had no complaint against it. That he had no evidence that the 4<sup>th</sup> Defendant had collaborated with the other Defendants.

125. When cross-examined by the State Counsel for the 5<sup>th</sup> to 7<sup>th</sup> Defendants, he confirmed that his land was Gilgil/Gilgil Block 1/54392 (Kikopey) and that he had bought it individually. He explained that after they had lived on the land and because they had met many times with Ng'ang'a, they saw it fit to join hands to pursue their titles.

126. When he was referred to Pf exh 34, he confirmed that the first entry was the Government of Kenya while the second entry read Elias Ngugi and Grace Nduta. He confirmed that he knew Elias. That it had been indicated in brackets that the two were trustee of "Naivasha Uiguano Group". That the third entry indicated that the title deed was issued to the Trustees which title deed had been cancelled. He confirmed that their group was "Naivasha Uiguano Group".

127. In re-examination, he maintained that he had bought his land individually as most of the Plaintiffs had done. That after Nganga had died, they saw it fit to come together to follow up the title and that the Group had included Elias Ngugi. That they later came to be known as "Naivasha Uiguano Group."

128. He confirmed that he did not see his house in the photographs adduced in evidence and neither had he taken the photos. That he knew Michael who was a neighbour but was now deceased. That he knew the second house in the picture and that he could tell that some of the houses belonged to his neighbours. That he could also identify the first house. That the second house was for John Chege, who was buried in one of the graves therein. He confirmed that the fourth and sixth house were for prosecutor Mbugua.

129. He also confirmed that they had agreed on how much to pay on the balance being Kshs. 3,200/= money which he had paid and given out his duplicate but did not know why the same was not in court. He confirmed that he had attended the meetings of the years 2002 – 2005 among them, the meetings of 27<sup>th</sup> June 2002 and 4<sup>th</sup> July 2002, as a purchaser.
130. That whereas he had been asked about the 8 portions, he did not see the sub-division on the Ground neither did Elias come on the ground to sub-divide the land. He confirmed that his land was comprised in the larger land and that he had come into the land in the year 1981.
131. That after Elias got title in his name, they had gone to the land Registrar who solved their problem. That the title showed that they were proprietors. He confirmed that in the meetings, they had called themselves “Naivasha Uiguano Group” which group had been registered after the issuance of the title. That about three quarter of the Plaintiffs had built on the land after purchasing it.
132. That he did not know the women they had sued. That they had paid the debt and were discharged by the 4<sup>th</sup> Defendant.
133. When he was Referred to Pf exh 1, being Minutes dated 3<sup>rd</sup> December 2022, he confirmed that he knew the people in attendance and who had asked them to represent them in court. In reference to Pf exh 58, he confirmed that the minutes had the same date but he did not know why. He confirmed that he was one of those who had been elected to represent the other members in court.
134. Stephen Gakuru Thige also adopted his witness statement as his evidence in chief and while testifying as PW3 proceeded to state that the suit land herein belonged to “Matigari Women Group.”. That their mothers had bought the same from Ng’ang’a Kihonge, an Agent of GEMA, in the year 1981. That whereas the women had been shown the land, there was no title hence they (the women’s children) had gone to follow up the land wherein they had been given receipts and asked to follow up the titles.
135. That it had been in a meeting with other buyers, that it had been discovered that there was a debt on the land amounting to Kshs. 214,000/= hence they had gone to the GEMA office and paid the money wherein they

had been asked to await the titles. It was while waiting that their representative had informed them that Elias, an Advocate who was helping them to manage the Group, had caused the title to the land to be registered in his (Elias's) name and his sister in law's name.

136. That they then choose their trustee being Loseru as the Chairman and used their representative to follow up on the title. A caution was placed on the same. That despite Elias being asked to return the title he failed to do so and on further follow up, it had been discovered he had sub-divided the land into 8 portions that further, the Elias' group had wanted to consolidate the 8 portions into one parcel of land.

137. That there was a gazette Notice that had cancelled Elias' title after which they got their title in the name of "Uiguano Group" although they had wanted the same to be registered into the names of their trustees. That thereafter, their representatives sub-divided the land wherein they had received the title to "Maligano" in his name and that of the Secretary. That they were in court because their representatives had informed them that our titles had an injunction.

138. When he was referred to PMFI 52, he produced the said register of the list of members as Pf exh 52 as well as the receipts in the name of "Rugethe bus services" as Plaintiff Exhibit 57 (i- v) and explained that the same contained "Matigaro Women's Group". He explained that they had the bus service because the one who had written the receipt was Ngángá's wife, Mumbi who used the receipt of their business, the bus service.

139. He maintained that they (the children) paid the 4<sup>th</sup> Defendants as could be seen from the 4<sup>th</sup> Defendant's receipts. When he was referred to a receipt dated 21<sup>st</sup> December 2004, he confirmed that the same had been paid by "Matigari Group" while that the second receipt dated 18<sup>th</sup> January 2004 had been issued by the 4<sup>th</sup> Defendant and was from "Ngángá Kihonge Group".

140. He prayed that the court help the Women's children to get their mothers' land. He explained that before the court cancelled their title, they had been issued the title in his name and Daniel Gitau Waithaka. He confirmed that their land was block 1/54432 (Kikopey) and that "Matigari Group's" land measures 7 acres.

141. In cross-examination by the counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, he confirmed that he was representing "Matigari Group". That whereas the women had the certificate, he did not have the same although they had given him their receipts. That he had no written authority since he had been informed orally.
142. That their parents bought the land when he was young but he was now 71 years old. That whereas all the women were dead, he did not have their death certificates but he insisted that he was being truthful. He confirmed that their parents had dealt with Nganga Kihonge and that their plan had been for sub-dividing of the land. He confirmed that before Nganga died, he had showed them the land. That nonetheless, he did know the amount of money that had been paid for the land and was not sure if the same was Ksh. 17,800/=
143. He confirmed that after the land had been shown to them, they took possession and placed a fence and although they did not live there, they used the land for cultivation and to ploughed it. He confirmed that Advocate Elias was Nganga's son.
144. That the leaders that had selected used to brief them on the progress of the land during meetings. That he had taken their receipts to the secretary of the Group. That Elias had taken them to GEMA's office where he found somebody called Maina.
145. When he was cross-examined by the Counsel for the 4<sup>th</sup> Defendant, he confirmed that Elias had represented his father Ngángá after his death. That however, they did not enter into any written agreement with Elias so that he could help them since he was to help them on behalf of his father. He confirmed that Elias had not been sent by the 4<sup>th</sup> Defendant but by his family and that he was not working on behalf of the GEMA. That GEMA had not asked them to vacate from the land.
146. On cross-examination by the State Counsel for the 5<sup>th</sup> to 7<sup>th</sup> Defendants, He confirmed that they were given title deed to land parcel No. block 1/54432 (Kikopey) which belonged to their mothers who had bought the same as a group. That whereas they had given him the receipts, he did not know how much the land had costed. He clarified that he had only brought

the receipts that he had been requested for and which totalled to around Kshs. 30,000/=

147. He confirmed that the Group was called "Matigari Women Group", although he did not know when the same had begun. That the said group had bought the land through Ngángá which land belonged to GEMA. He confirmed that Nganga did not have a title deed.

148. In re-examination, and in reference to Pf exh 1, he confirmed that the list that had been signed had included his group and that he could see their name. That all their parents were now deceased. That he had been given the receipts by the Chairman Muthoni Munyaka who was still alive.

149. He confirmed that they did not live on the land but were just ploughing the same. That they had gone to GEMA office and were given receipts in the Women's Group name and that he used to attend the meetings called by "Naivasha Uiguano." That they did not sue Nganga's family because they had bought the land individually.

150. By consent, PW 1 Francis Mwaura Thiongo, Secretary of Naivasha Uiguano Group was recalled to produce the documents which had been marked for identification wherein he produced the original minutes of the 23<sup>rd</sup> March 2021 as Pf exh 50, a list of members of "Kasambara Group" as Pf exh 51 and the receipt dated 9<sup>th</sup> October 1979 as Pf exh 64.

151. In cross-examination by the Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, he confirmed that he had a list of members of some members their group and as well as members had representatives of "Kasambara" and "Matigari Groups" although they were separate.

The Plaintiff thus closed their case Court:

152. The Defence case opened with the testimony of DW1, Jennifer Waringa Miaraho, a chairlady of both A. I. C. Church, "Mothers Women Group" and a Secretary in the "Naivasha Uiguano Group" who was stood down due to health issues.

153. The defence evidence was then submitted by DW2, Grace Wanjiru Nganga, who also informed the court that she had high blood pressure and arthritis and therefore could have forgotten some things because of her

health. She confirmed that she was a Defendant in the instant case and that they had previously been sued in the year 2005. She then adopted her witness statement dated 29<sup>th</sup> June 2024 as her evidence in chief.

154. She proceeded to testify that the instant case was in relation to Land parcel No. Gilgil/Gilgil/Block 1/7413. That she knew “Naivasha Uiguano Group” that was formed in the year 2005 and that she was its Chair lady. That a Counsellor called Kihonge (she pronounced it as Thionge) had contacted the leaders of the Groups wherein she had gone as a member of “Mwireri Mabati Women Group” alongside other groups like “Kirima Poultly Group” and “Naivasha Group”.

155. That Kihonge Nganga had informed them that there were parcels of land being sold in Mirima by GEMA for which they could buy as a group. Subsequently, they had convened a meeting and formed a group known as “Naivasha Uiguano Group” wherein they chose their leaders being; Elizabeth Mugo, Chair, Angeline Wanjeri, Secretary and Grace Wanjiru as the Treasurer. Minutes of the meeting were recorded and signed by the Group and other leaders on 10<sup>th</sup> November 1975.

156. That the “Naivasha Uiguano Group” then agreed that people should be contributing money in their respective groups before being forwarded to her with accompanied with the receipts, which money would then be taken by her secretary to Ngángá’s office in Naivasha, obtain a receipt from therein and present it to the group during their meeting.

157. She confirmed that the receipts from pages 14 to 23 of Defendant’s documents were the ones that had been issued to members, while the ones from pages 24 to 33 had been issued by Ngángá’s office and that one of the receipts had been written by Angeline Njeri. She however could not remember when they had compiled the list but confirmed that they had completed paying the money.

158. She was referred to pages 8 to 10 of their documents wherein she confirmed that the same was the list that showed the payments made by the members totalling to a sum of Kshs. 249,000/= for the purchase of the land. That they had also paid Kshs. 80,000/= for survey which money was also receipted as per the signed list dated 11<sup>th</sup> March 1996 at pages 11 to

13 of their documents.

159. She testified that in the year 1992, Nganga who was their councillor had taken them to the land and informed them that it was theirs. At the time he was unwell and passed away in the year 1994, wherein his son Elias Ngugi Kihonge took over. That Nganga had also bought shares using his group called "Naivasha Group" wherein his family took their share.

160. That in the year 2005, they had registered the Group in Social Development Naivasha while she was the Group's Treasurer, wherein in the year 2015, they had renewed the Group's Certificate at the Social Development Naivasha. They also selected officials and she was elected as the chairlady.

161. Her testimony was that when Elias took over in the year that she could not remember, he told them that they had a debt for which they contributed a total of Ksh. 50,000/= and gave him to hand it over to GEMA, he gave them 5 receipts as per item 8 at Pages 34 to 36 of their documents.

162. That Elias had then told them that upon issuance of the title, the Chairperson was to present it to him so that they could sub-divide the land. That subsequently, the title (Pf exh 27) had been issued in the names of Grace Nduta and Elias Ngugi as the trustees of the land and was annexed with the map was for land parcel No. Gilgil/Gilgil Block 1/7413, that a second title was No. 9563. That when they instructed Elias to change the names and have them registered to the officials as trustees of the land, he had refused and had stayed ought of sight for a long time.

163. That upon realizing that Elias did not want to remove himself as the trustee, they had gone to the lands office and sought to have the names on the title removed wherein they had been advised to go to court. That subsequently, they had a filed a suit in Naivasha Court to remove Elias as a trustee so that they could be registered. She confirmed that Elias Ngugi had neither bought the land nor was he a member and proceeded to state that as the case was transferred to Nakuru wherein the court had issued an order for them to publish the matter in the Gazette in which they complied.

164. That unfortunately, while the matter was proceeding in court, Elias died and his wife Wanjiru, an advocate took over. That when they meet Wanjiru

and Nduta at the Nakuru Law Courts, they had agreed to be removed as trustees wherein by consent, an order was issued directing the names to be removed and the officials be registered as trustees.

165. She confirmed that an order dated 11<sup>th</sup> March 2020, item 9, was the one they had presented to the land Registrar who told them that they had no land wherein they had gone back to court.

166. That she had asked the Land Registrar to give them a copy of the Register of land parcel No. 7413 since they wanted to know what had happened to their land because they same did not reflect in the lands records wherein the Registrar had refused to give them the Register. That they then proceeded to the Nairobi registry to seek for assistance, wherein they had been advised to go back to court so that they could be given their documents which they did.

167. She confirmed that an order dated 10<sup>th</sup> December 2020, item 9, was the order that they had taken to the Registrar as per an Affidavit of service-item No. 20. She then proceeded to testify that while the case was ongoing, they came to learn that their land had been removed by the Registrar from the map of 7413 wherein it had been subdivided.

168. That the Land Registrar had no power to remove/change a title deed and close the Register. That accordingly, they had gone back to court and filed suit in No. 002/2021 JR wherein the court had ordered (item No. 22) that all that had been entered to the Register be cancelled.

169. Upon being examined by the court, she stated that she did not know how to read in English.

170. She then proceeded to testify that they had taken the order to the Registrar who amended all entries that he had made.

171. That she could not remember whether the Plaintiffs herein had been joined in the case in Nakuru. That whereas they had been sued for not being members of "Naivasha Uiguano Group", she was a member of the Group and that they had been the ones who had established the "Naivasha Uiguano Group". She confirmed that her name was in the Register of the Group as No. 46 in item 5 of the list of members who had bought the land. That she was also in the list of members who had paid for the survey. That

further, they had made an application to replace the original certificate, No. 1 of the Defendant's list and that her name was on the said application.

172. On being referred to item No. 2, she confirmed that the Certificate was registered in the year 2015 and not in the year 2005 as they had renewed the same hence issues on the Certificate of the year 2005 was not true. That she knew the land and that the same was vacant, had no buildings and neither had it been cultivated. That the land that was neighbouring theirs was the one that had buildings and where cultivation was ongoing.

173. She clarified that they only had one parcel of land and that the rest belonged to other people and that it not right to be sued over a parcel of land that was not theirs. That she knew about the Gazette Notice that had removed Elias and Nduta from trusteeship. That a subsequent Green card showed that they were still trustees as per item No. 29. She asked the court to dismiss the suit herein because it was false, so that they could take occupation of their land and proceed to cultivate it.

174. On being cross-examined by the Counsel for the Plaintiffs, the Defence witness confirmed that she was the Chairlady of the "Mwireri Mabati Group" which had 85 members and that they had bought the parcel of land in the year 1975 as "Naivasha Uiguano". That nonetheless, they had not subdivided and shared the land or taken occupation of the land.

175. She confirmed that Nganga Kihonge had sold them the land which belonged to GEMA. That they did not know its acreage since it had not been measured. That she could not recall when they had realized that they were not registered proprietors. That Nganga had just shown them where the land was but did not show them the title. She confirmed that Elias was the one who got the title after he had taken over his father's position.

176. She clarified that they had contributed the money as two groups while the third group had paid money directly to Nganga. That the said groups were; "Mireri Mabati Women Group", "Kirima Poultry Group" and "Naivasha Uiguano Group" which belonged to Nganga's Family and who did not attend their meetings.

177. In reference to the minutes of meeting dated 10<sup>th</sup> November 1975 Df (Item No. 3) translated in item No. 4, the witness confirmed that she knew

Zipporah Wamaitha Nganga as Nganga's wife and that she had attended the meeting. She clarified that the said Wamaitha was in both the "Mireri Group" and the "family group". She confirmed that member No. 47 in the list of members of the Group in Df Item No. 5 was the said Wamaitha who also appeared in the list of those who had made payment for the survey.

178. She admitted that as a chairlady of "Uiguano Group", she also represented Nganga's family because they had come together as a group to buy the land wherein, she was also a trustee together with the other elected members. She confirmed that after Elias took over in the year 1995, after buying the land, he had presented them with a title registered in his name that of Grace Nduta as trustees, although she could not remember the land number as reflected in the title.

179. That whereas the land measured about 400 acres in the first title, she could not remember the year that the title had been bought. That however, they had gone to the court to follow up on the title in the year 2008. When she was referred to Defence Item 9, she admitted that the court order showed that they had gone to court in the year 2017. That they had waited for all those years because Nganga had been sick and that they had been following up with Elias to be removed as a trustee.

180. Upon being referred to Pf exh 68, she confirmed that they had started the case in Naivasha in the year 2016 seeking for the title to land parcel land No. 9565 and that they had not been after land title No. 7413 because it belonged to other people. Her response on being referred to Pf exh 71 (b), was a confirmation that she had sworn the Affidavit inclusive of the contents contained at paragraph 15 which was read out to her.

181. She confirmed that their land was a sub-division of land parcel No. 7413 whereby Nganga's family had been registered as proprietors of the rest of the sub-divisions. She confirmed that the person that had been registered to land parcel No. 9565 was Elias and Grace. That whereas they did not know Grace, she was a sister to Elias's Wife.

182. That when they took the court order to the land registry, they had been told that their land had not been registered and that they did not know who had been registered to their land. That they had never filed a suit against

the Plaintiffs and that she could not remember when she first knew about the Gazette Notice at the lands.

183. She confirmed that the suit land had a restriction although she did not know who had asked the Registrar to place it. She further confirmed that Plaintiffs live on the suit land hence if they had told the court that the land was theirs and that they lived there, they were not telling lies.

184. She confirmed that they had written Defence Item No. 10, seeking records of their land but the Commission had noted that the records would be touching on 3rd parties who were the Plaintiffs and who had refuted that the land did not belong to the Defendants' group.

185. She confirmed that Elias was elected by his family, not their group, so that he could fill his father's position as his son and not as an advocate. She confirmed that she had been shown the Gazette Notice, by their advocate and that it had been the lands office that had been asked to return the title of land parcel No. 7413.

186. In reference to Pf exh 60, she confirmed that they had filed the case to remove Elias wherein the court had informed them that they would take parcel No. 9565 as proprietors. That in reference to Pf exh 61, they had wanted their land so that they could sub-divide it and start working on it and that the court had informed them that they were proprietors of land parcel No. 7413. That they had just wanted Elias to be removed from the land so that they could be given one parcel of land between the two parcels of land. That the court had decided on its own motion to register them as proprietors of land parcel No. 7413 so that Elias could be removed. That they had not asked to be registered to the whole parcel of land. That they did not want to grab land from the Plaintiffs, but just wanted their one share of land.

187. When she was cross-examined by the Counsel for the 4<sup>th</sup> Defendant, she confirmed that she had met Nganga Kihonge in the year 1975 and that he only had the family group but she did not know whether he held any position in the group.

188. When she was referred to Defence item No. 3, she confirmed that Nganga had just called them and informed them to come up with a group to buy land because he was a Patron in GEMA.

189. That whereas she had been chosen as a treasurer, in a year she could not remember and neither could she remember if the minutes of the meeting were filed, currently she was representing "Naivasha Uiguano" as it's chairlady.
190. She confirmed that she had never farmed nor built any structure on Plot No. 9565 although they had gone there on several occasions to look at the farm and seek to be allowed to take possession of the same so that they could start cultivating. It was her evidence that Elias started working with them after taking over from his father Nganga Kihonge who died in the 1994.
191. That the clerks at the GEMA office told them that they had paid for the land in the 2006. She confirmed that Elias had told them that the land had a debt of around Ksh. 54,000/= and not Ksh. 220,000/=:, wherein the two groups had contributed the money
192. When the contents of Defence item No. 40, were read to her, she refuted that the balance was Kshs. 214,000/=. She maintained that Elias had given them 5 receipts when she was representing the two groups, that is "Mwireri" and "Naivasha Uiguano".
193. She confirmed that the receipts at pages 34 to 36 of their documents were in relation to "Kirima Women's Group" and that there had been no receipts of "Naivasha" or "Mwireri Group". She confirmed that they had paid sum of more than Kshs. 214,000/= to GEMA for which they had produced receipts to that effect.
194. That she would not know if the amount in the said receipts had totalled Kshs. 50,000/= because they had given Elias the money wherein, he had brought them the receipts. She confirmed that she had been a treasurer of "Uiguano" since 1975 wherein she used to collect the money and take it to Ngangas office.
195. Upon being referred to item No. 6 at pages 26 to 31 of their list, she explained that she just used to sign for the money received and given to Nganga. That she had paid for land, hence a receipt in her name ought to have been in the documents filed. That she did not know why no receipt had her name yet in the receipt book, her name had appeared. That she knew

that she was a member of “Uiguano Group” because when they formed the Group, she was elected as treasurer.

196. In re-examination, she stated that the receipt books were at home and that after issuing the receipts, they had shown the members how their money had been paid to GEMA. That she was aware of the names in the list in the Defence item No. 5, being members who had contributed the money buy the land. That list had been signed by them as officials wherein her name appeared as No. 46 for the sum of Kshs. 6,000/= hence it was evident that she had paid for a share of the land.

197. That the members in Nganga Kihonge’s Group were Zipporah, Alice, Nganga’s family among others whom she could not recall and that their land was No. 9565 which was a sub-division of No. 7413.

198. She explained that the balance shown in the letter was in reference to Kihonge’s land No. 7413. That the debt of Kshs. 214,000/= had been paid for their land No. 9565. That paid frequent visits to land No. 9565 to ensure that nothing has been built there.

199. DW3, one John Wanjama Ruara confirmed that he was the Assistant Secretary of “Naivasha Uiguano Group” having been elected in the year 2020 after the death of the then Assistant Secretary. That he was became a member of the Group by virtue of the death of his mother in the year 2006.

200. That his duties included assisting the secretary known as Jennifer Wavunge (DW1 herein) who was unwell and on treatment whereby the group had requested him to hold the position as a secretary until she recovers.

201. He adopted his witness statements dated 15<sup>th</sup> July 2023 and 20<sup>th</sup> May 2025 as his evidence in chief before proceeding to testify that the Group called “Naivasha Uiguano Group” was started by his mother one Veronicah Wachuka and others in the year 1970 at a time when he was about 11 years. That they used to help each other to buy household goods like plates.

202. That he heard that they had been informed by the then Councillor Kihongo that GEMA was selling land. That was when they had formed the group called “Naivasha Uiguano Group” which comprised of three groups namely; “Mwireri Group”, “Naivasha Poultry Group” and “Nganga’s family”.

203. That vide minutes dated 10<sup>th</sup> November 1975, being their item No.3, the two groups had met Nganga with the purpose of forming “Naivasha Uiguano Group” wherein Elizabeth was the chair. It had been decided anyone who would be buying the land would become a member of the Group. That a list of people who had bought the land was compiled. The minutes were signed by the officials.
204. He confirmed that Item No. 5, was a list of payment of the land parcel No. Gilgil/Gilgil Block 1/9565 which land he had visited severally, the last time being in the year 2023, and which land was still a bush, with no houses and/or cultivation ongoing. He confirmed that Defence Item No. 32 to 36 were photographs he had taken in the year 2023. He marked the Photographs as DMFI 1 (a - j)
205. He also confirmed that Defence item No. 5, were payments made by members for the purchase of a Gilgil Shamba wherein the names in the said list were of the people who had bought and paid for the land wherein the total amounted to Ksh. 249,000/=. That the same had been signed by the officials of the Group.
206. That the second list was for payment of the survey wherein the total amount that had been paid was Kshs. 93,500/=. The same had also been signed by the officials. He produced the lists as Df exh 2 (a -b). He also produced Item No. 3, which were the Minutes in Kikuyu and their translation as Df exh 3 (a-b).
207. He confirmed that Grace and her colleagues, Jenniffer and Jacinta were in both the lists as members of the Group which had been issued with a certificate as “Naivasha Uiguano Group” on 15<sup>th</sup> September 2015. His evidence had been that although the Group had been registered on 27<sup>th</sup> January 2005, the certificate was not issued that same year (2005). He confirmed that the registration No. of the Certificate is GSD/Naivasha/WG/1040.
208. He explained that the Group was of Mununga Sub location, Naivasha East location, Naivasha Central division - Nakuru County. That there had been an election where the leaders had sought for the replacement of the name “self-help” group wherein they had made an application to that effect dated

15<sup>th</sup> September 2015. That the officials were; Grace as the Chair, Jennifer as the Secretary and Jacinta as the Treasurer who had been given the certificate. He produced the Application and Certificate as Df exh 4 (a - b) stating that the Certificate showed that the group was registered in Naivasha. That in the year 2005, there were registration of groups because even the Plaintiff had registered a group called "Kasabara Kanjwiri Group" in the 2004, in Gilgil.

209. In reference to Defence Item 13, he confirmed that the same was the certificate of the group that had been registered on 27<sup>th</sup> October 2004 in Gilgil, registration No. Gilgil/DSS/SHG/481.

210. That in the year 2010 in Gilgil, there had been registration of another Group, bearing the same name as their group, being "Naivasha Uiguano Group" as per Defence Item No. 15. That the same was registered on 27<sup>th</sup> September 2010 in Gilgil registration No. Gilgil/DSS/SHG/62260. He produced the two certificates as Df exh. 5 (a-b).

211. He proceeded to testify that their members paid the money to the group for purposes of buying land and which money was taken to Nganga Kihonge who issued them with the receipts as seen at page 14 to 23, herein marked as DMFI - 6 (a-j), of their documents. His evidence was that the receipt books were in the Group's office. He identified Defence Item No. 7 as the receipt that had been issued by Nganga as follows:

- i. That Angeline the secretary had taken a sum of Kshs. 15,000/= to Nganga's office on 18<sup>th</sup> April 1977 and was issued with a signed receipt.
- ii. That the second signed receipt was dated 7<sup>th</sup> February 1997 for Kshs. 10,000/= had been paid by Elizabeth Wanjohi.
- iii. That on the other hand, the third signed receipt was dated 27<sup>th</sup> June 1977 for Kshs. 25,000/=.
- iv. That the receipts for Kshs. 13,500/= dated 16<sup>th</sup> January 1978 had been paid in by Elizabeth.
- v. That other receipts were the ones dated 24<sup>th</sup> September 1979 for Kshs.19,500/=, 15<sup>th</sup> June 1980 for Kshs. 9,480/=, 13<sup>th</sup> September 1980 for Kshs. 500/=, 24<sup>th</sup> June 1980 for

Kshs. 1000/=, undated receipt for Ksh. 840/=, 7<sup>th</sup> February 1980 for Kshs. 14, 615/=, 6<sup>th</sup> July 1980 for Kshs. 560/=, 22<sup>nd</sup> June 1981 for Kshs. 35,000/=, 23<sup>rd</sup> March 1981 for Kshs. 6,500/=, 22<sup>nd</sup> November 1979 for Kshs. 10,000/=, 22<sup>nd</sup> January 1981 for Kshs. 5,000/=, 4<sup>th</sup> January 1982 for Kshs. 32,000/=, 15<sup>th</sup> March 1982 for Kshs. 6,000/=, 17<sup>th</sup> May 1982 for Kshs. 23,000/=, 26<sup>th</sup> July 1982 for Kshs.10,900/=, 14<sup>th</sup> August 1984 for Kshs. 2,660/=, 18<sup>th</sup> August 1983 for Kshs. 850/=, 27<sup>th</sup> May 1984 for 2,300/=, 11<sup>th</sup> August 1983 for Kshs. 2,500/=, 1<sup>st</sup> August 1983 for Kshs. 5,225/= and 21<sup>st</sup> September 1983 for Kshs. 1,240/=

212. He marked the copies as DMFI 7 (a-z).

213. He then testified that there had been other also receipts that had been issued during Elias' time as referred to in defence item 8, as follows;

- i. receipts dated 8<sup>th</sup> June 2005 for Kshs. 10, 720/=, 6<sup>th</sup> May 2005 for Kshs. 16,075/=, 9<sup>th</sup> June 2005 for Kshs. 3,680/=, 25<sup>th</sup> February 2006 for Kshs. 10,000/= and 11<sup>th</sup> July 2005 for Kshs. 13,000/=

214. He marked them as DMFI 8 (a-e).

215. He testified that that after buying the land, they had been issued with a title deed.

216. That although he was not aware of another case in relation to the land herein, there had been a case filed in Nakuru where the Plaintiffs had sought for ownership of the land.

217. That the Plaintiffs were in possession of a letter stating that the land herein had been bought by Ng'ang'a Kihonge for a Group of 23 known as "Naivasha Highview Group" as per item 37 at Page 94 to 95 of the documents, which letter had been signed by Joseph and Francis who were the Chair and Secretary of "Naivasha Uiguano Group". That the letter, dated 12<sup>th</sup> May 2008 had been written to District Land Registrar in reference to land parcel No. Gilgil/Gilgil Block 1/7413/Kikopey, which land was owned by "Naivasha Uiguano Group." That although the letter had confirmed that Ng'ang'a Kihonge had bought the land, in the instant case, the Plaintiffs lay

claim that they had bought the land themselves. He confirmed that the plaintiffs had a certificate referring to themselves as "Naivasha Uiguano Group" as reference to item 14 at page 46, a certificate of "Naivasha Uiguano Group" registration No. Nakuru/DSS/SHG/13534 that had been registered on 24<sup>th</sup> September 2010. That the same was a group of Sub-Location-Naivasha, Division-Naivasha and Location-Naivasha.

218. That item 16 at page 58 was a letter therein dated 18<sup>th</sup> November 2020 from the department of Social Development Nakuru East which was in reference to Registration No. Nakuru/SHG/13534 of the same certificate, confirming that the group's membership which totalled 22 members had been registered on 24<sup>th</sup> September 2010 to raise funds. He confirmed that Grace and the others were elected trustees of the group.

219. That item No. 9 at Page 37 was a Court Order in regard to case No. 407/2017 where the Defendant were Elias Nganga and Another and where the court had appointed them as trustees. That whereas the order had asked the registrar to register the three as trustees, when they took the order to the land registrar, he refused to comply with the order hence they had sought help from other offices.

220. In reference to item No. 10, he confirmed that the same was a letter dated 28<sup>th</sup> August 2020 from the Commission of Administration of Justice-Office of ombudsman in reference to the Green Card to land No. 9565. That the said letter had asked them to go to court which they did.

221. That item 19 at page 63 was an application in ELC JR E003/2020 where the Applicants were Grace and 2 Others. That vide a court order signed on 10<sup>th</sup> December 2020, they had obtained an injunction wherein they had sworn an affidavit of service of the order to the Land Registrar.

222. That item No. 20 at page 64 was that in the pendency of the case, when the Registrar cancelled the sub-divisions Nos. 9562 to 9570 that had been made by Elias from land parcel No. 7413 and re-subdivided it into several other parcels of land, they had gone back to court seeking that the land be reverted into 8 portions and they be given their portion being parcel No. 9565.

223. When he was referred to item No. 25 at page 65 to 68, he confirmed that

the case number was JR No. 2 of 2021. That Grace Wanjiru, Jenifer and Jacinta were the officials of the group. That item 21 at page 69 was the decree issued by the court reverting the 8 portions that Elias had subdivided in the year 2009.

224. He identified item 23 at page 72 as a title to land parcel No. Gilgil/Gilgil/Block/9566/ Kikopey in the name Ziporah Wamaitha Ng'ang'a that had been issued on 10<sup>th</sup> July 2009. He confirmed that title No. 7413 ceased to exist upon its sub-division and therefore in the year 2020, title No,7413 was not there.

225. Her confirmed that items 26 and 27 at pages 78 to79 was a Gazette Notice, by the District Land Registrar in respect to cancelation of the names of Elias and Grace Nduta as trustees in the title and replacing them. That despite the notice, the said names were not removed as evidenced in item 28 at page 80 of which was a Green Card that showed both Elias and Grace as registered trustees. That the certificate of search in item 29 as showed that Elias and Grace as trustees of "Naivasha Uiguano Group" as at 15<sup>th</sup> May 2009 and not the Plaintiffs.

226. When he was referred to Pf exh 27, he confirmed that the same was a title deed to land parcel No. 7413 which had been was issued on 7<sup>th</sup> April 2009 in the name of "Naivasha Uiguano Group". He however stated that the same was not a lawful title because in April, 2009, Elias and Grace's names reflected in the register. He argued that the title to land parcel No. 7413 had been issued on 2<sup>nd</sup> August 2008 in the names of Elias and Grace noting a difference in the title of April which had no trustees but the name of the group.

227. He stated that whereas Plaintiffs' Group had been registered on 24<sup>th</sup> September 2010, the title had been issued on 7<sup>th</sup> April 2009 in their names. He admitted that he did not have anything else to show that the Plaintiffs' title was fraudulent.

228. He confirmed that although there were no houses in land parcel No. 9565, Plaintiffs' houses and a lot of developments were on land parcel No. 9563 which is situated towards Nakuru. That their parcel of land No. 9565 was the third land from land parcel No. 9563.

229. When he was referred to item 30 at page 82, he pointed out the positions of land parcel Nos. 9563 and 9565 stating that land parcel Nos. 9563 to 9564 were registered to Grace and Elias while land parcel No. 9565 was registered in the name of his Group. That the rest of the parcels were in the names of Elias and Nduta and who are the people who were supposed to have been sued as Defendants.

230. He confirmed that Plaintiffs' cause of action had started in the year 2009 wherein they had been attending court. That whereas the Plaintiffs had made a contribution of a sum of about Kshs.100,000/=, they on the other hand had paid about Kshs. 400,000/=. That subsequently, in case the Plaintiffs were to be given land, theirs would be a smaller portion of land. He sought for the court to give them their land and for Plaintiffs to pay for costs.

231. He produced the 1<sup>st</sup> -3<sup>rd</sup> Defendant's documents exhibits as follows:

- i. A Letter dated 12<sup>th</sup> May 2008 as Df exh 9
- ii. Certificate registered on 24<sup>th</sup> September 2010 as Df exh 10.
- iii. Letter dated 18<sup>th</sup> November 2020 as Df exh 11.
- iv. Order in case No. 407/2017 Df exh 12.
- v. Letter dated 28<sup>th</sup> August 2020 as Df exh 13.
- vi. Affidavit and Order in JR E003/2020 as Df exh 14 (a-b)
- vii. Gazette Notice as Df exh 15 (a-b).
- viii. Green Card Item 28 Df exh 16
- ix. Certificate of Search dated 15<sup>th</sup> May 2009 as Df exh17.
- x. Title Deed issued on 7<sup>th</sup> April 2009 as Df exh 18.
- xi. Title dated 2<sup>nd</sup> August 2008 as Df exh 19.
- xii. RIM item No. 30 as DMF1 20.
- xiii. Decree in JR No. 2 of 2021 Df exh 21.

232. The Defendants' witness was stood down to enable him avail the documents that had been marked for identification and for cross-examination wherein on 30<sup>th</sup> September 2025 he testified that after paying the balance, the land had been registered to Elias Ngugi Nganga and Grace Nduta Theuri as trustees of Uaiguano Group. That as per Df exh 9, the name of the title deed was Gilgil/Gilgil/Block 1/7413 (Kekopey) wherein the two

had been selected as trustees by the family of Nganga Kihonge. That whereas he now knew that trustees could be removed either by themselves, by those who chose them or a court order, he had not heard evidence to the effect that they had been removed as trustees. That indeed, a letter dated 22<sup>nd</sup> May 2008 by the District Land Registrar - Nakuru to Joseph Loshorua in regard to land parcel No.7413 had confirmed the two had been registered as trustees, he produced it as Df exh 22.

233. When he was referred to Gazette Notice dated 4<sup>th</sup> December 2008 in relation to land parcel No.7413 (Df exh15), he confirmed that the title was registered to Elias and Grace and that all their documents had stated the title to the land as No. 7413. In reference to Pf exh 35, he confirmed that the title to the land was Gilgil/Gilgil/Block 1 No.7413 and that the word Kekopey was missing from the said title. That the register had been opened on 9<sup>th</sup> February 1994. Upon being referred to a Green Card that had been opened on 9<sup>th</sup> February 1996, he confirmed that the same was a Certificate of Registration which had been signed by the Land Registrar, Nakuru on 15<sup>th</sup> May 2009 with regards to land parcel No. Gilgil/Gilgil/Block 1/7413, in the names of Elias Njugi Nganga and Grace Nduta Theuri and that it bore their identity card numbers. He produced the same as Df exh 23.

234. His response on being referred to Pf exh 34 was that the same had been opened on 9<sup>th</sup> February 1994 and was in reference to land parcel No. Gilgil/Gilgil/Block 1/7413. That however, it had no certificate of the Registrar and was different from theirs and that the signatures therein had been hand written thus the same could be of a different land since it omitted the word "Kikopey".

235. In reference to Pf exh 44, he confirmed that the same was an Application for a search on land parcel No.7413 after the same had been subdivided, wherein there was the mother title together with other titles. His response on being referred to Pf exh 56 was that the title therein was for land parcel No. Gilgil/Gilgil/Block 1/54416 (Kikopey) showing the word "Kikopey" but which was different from the mother title. That it could have been a fraudulent title because it had not been indicated where it had emerged from.

236. When he was referred to DMFI 20, he confirmed that the same was an original map to the area known as Gilgil/Gilgil/Block 1/Kikopey. That it showed the 8 subdivisions for land parcel Nos. 9563 to 9570 which had been registered on 25<sup>th</sup> June 2009. That the parent land was No.7413 and that the resultant parcels could be seen on the map. He produced the map as Df exh 20 and confirmed that their land parcel No. 9565 was present in the Map.

237. He testified that after the case in Nakuru, they had returned the beacons and were given titles. That there was nobody on Plot No. 9565 and that to get to the said plot, they had to pass through Plots Nos. 9563 to 9570. That whereas plot No. 9563 was occupied, the rest of the plots were vacant with nobody living there.

238. That in the year 2021, the court in Nakuru had made a determination for the land to be restored to parcels of land Nos. No.9563 to 9570 as per Df exh21. That the judgment was to the effect that the cancellation had been done un-procedurally by the Registrar as there had been no notice. That to date, there was no evidence that the Registrar had the power to cancel the title and that there was nothing to compel the court to interfere with the decision in Nakuru.

239. He confirmed that the duplicate receipts that had been brought to court were torn from page 14-23 of a receipt book which he now had in court. He then proceeded to produce some of the original receipts, he had received from members, as Df exh 6(a-j). He also produced the list of the 74 members, dated 11<sup>th</sup> March 1996 of the payments made by all members and signed by Elizabeth, Angeline and Grace who were the Chair, Secretary and Treasurer respectively as Df exh 2(a).

240. He produced original receipts that had been marked as DMFI-7(a-z), and DMFI-8(a-e), as Df exh 7(a-z) and Df exh.8(a-e) respectively.

241. In cross-examination by the Counsel for the Plaintiffs, he confirmed that he had come as a witness for "Naivasha Waiguno Group" whose leaders were the Defendants. That he had been a member of that group from the year 2006 but was not a member when the suit property was being purchased. He confirmed that currently the Group was known as "Naivasha Uiuguno Group". That he was an Assistant Secretary having been elected in

the year 2020 after the previous Secretary had passed away although he had no documents to prove the same.

242. That the authority to plead had been produced in evidence. That the Group had 74 members who started buying the land in the year 1975 although the receipts he had produced begun from the year 1980. He confirmed that when their members bought the land, they did not take occupation thus they were not on the land although the Plaintiffs had developed the suit land and were also ploughing therein.
243. When he was referred to Df exh 2(a), he confirmed that the list had been prepared on 11<sup>th</sup> March 1996, that in Df exh 2(b), member No.47 was Sipora Wamaitha Nganga who was now the deceased and had been Nganga Kihonge's wife, a member of the Group as well as a member of Nganga's family although Nganga was not a member of their group.
244. That since there had been two groups namely "Mabati Group" and "Mwireri Group", Nganga had asked them to form one group wherein he had bought land parcel No.9565 on behalf of the group from GEMA.
245. That Df exh 6, was a receipt of members who had bought the "Gilgil Shamba". He confirmed that the original receipts read "Kirima Women Group". That they had bought the land as one after Nganga's family had bought the same and later gave the group their share. That after Nganga had died, Elias had taken over his father's property and the position of the head of the family. That he however, did not know if Elias had his own land apart from the family land.
246. That upon purchase of the land, they had not been informed of its measurement. That they had filed a suit against Elias because they wanted the title to be registered in the name of their group's trustees. He confirmed that the receipts did not read "Naivasha Wuiguano Group".
247. Upon being referred to Df exh 8(a-e), he confirmed that the same read "Kirima Women Group" and that Df exh 7(a-z), had emanated from Nganga's office although he did not know who had issued them specifically. He confirmed that Grace Wanjiru Nganga, Jenifer and Jacinta had filed a suit against Elias and Nduta (Df exh 12) wherein the Plaintiffs were not parties (in Nakuru No.407/2017).

248. That they had gone to the Ombudsman to look for help wherein they were told to go back to court that vide Pf exh 13 which was a letter from the Ombudsman, they had been informed of third parties who had also laid claim to the land.

249. He argued that Df exh 23, was a different since the word “Kikopey” was not included confirming that the Green Card had been issued by the Registrar’s Office. That Df exh 15, was in reference to Gilgil/Gilgil Block 1/7413 (Kikopey) wherein the acreage was 138.77 hectares. That the names of people who were to be replaced were Joseph and Francis as trustees of “Naivasha Wuiguano Group”

250. He confirmed that they had procured Df exh 20 from the Survey of Kenya although it did not contain either an official stamp or seal.

251. He confirmed that the Plaintiffs had subdivided land parcel No.7413 into 8 portions, but that at the moment, nobody was using their land as evidenced in his photographs. That he had taken the place of his mother, Veronica Wachuka Ruara in the year 2006 who was on the list although he had nothing to show that she was his mother.

252. That he had been present when Nakuru No.407/2017 and the cases of 2020 and 2021 had been filed in court and all they had been asking for was the title deed after the court directed that there be three (3) trustees of “Naivasha Wuiguano Group”. He confirmed that the Plaintiffs in the instant case were different from those in the previous cases.

253. When he was cross-examined by the Counsel for the 4<sup>th</sup> Defendant, he confirmed that he got into Naivasha Wuiguano Group in the year 2006 after his mother’s death but did not buy any shares. That the group held a meeting and asked for children whose parents had died wherein his brothers had agreed that he be the representative of the family. That however, there was no document to that effect. He confirmed that he was now an Assistant Secretary in the group and that his work was to help the Secretary when she is not available or where there was too much work.

254. That whereas he also kept documents for the group, the documents that he had brought to court were kept by the group’s secretary called Jenifer Waringa Miaraho. That the committee had held a meeting after which he

was given the documents since the said Jenifer could not proceed with the case. That he did not bring the original documents because he had not been asked to do so. He explained that when he first come to court, he did not know that the original documents were required. That however, he knew his work as a Secretary of the Group.

255. That “Naivasha Uiguano Group” had first consisted of two groups, the first group being “Mabati Women Group” while the second group was “Kirima Poultry Group.” That “Mabati and Mwireri” were one group.

256. He confirmed that there was a difference between their group and the group that had bought the land wherein their group was defending plot No. 9565. While the other group had bought the larger portion being No. 7413.

257. That whereas “Naivasha Wuiguano Group” was buying land parcel No.7413, Nganga’s family also lay claim to the same land. That his group had no relationship with GEMA neither had he visited the offices of GEMA as an Assistant Secretary.

258. In re-examination and in reference to Df exh 7, he confirmed that the same was dated 18<sup>th</sup> April 1977 in the name of Angelina Wanjiru - “Uiguano Group”. Wherein the receipts bore the name of “Uiguano Group” which consisted of three (3) groups. That Df exh 1 were minutes of the 3 groups.

The 1<sup>st</sup> to 3<sup>rd</sup> Defendants thus closed their case.

259. The 4<sup>th</sup> Defendant’s case proceeded with the testimony of DW4, one Mathew Ngondi Ngunya who was an employee of Agricultural and Industrial Holdings Ltd former GEMA holdings, the 4<sup>th</sup> Defendant herein and who had worked at GEMA for about 32 years.

260. He adopted his witness statement dated 26<sup>th</sup> April 2023 as his evidence in chief and proceeded to testify that the suit land herein had initially measured approximately 41,000 acres and was registered to one Lord Korr. That subsequently, the 4<sup>th</sup> Defendant bought the whole land between the years 1974 to1975 and started selling the same between 1965 to 1971. That Ng’ang’a Kihonge was a shareholder of 4<sup>th</sup> Defendant holdings as well as a member. That after the 4<sup>th</sup> Defendant bought the land, it was registered as its proprietor wherein Gilgil/Gilgil Block 1/7413 had initially been block A2

wherein No. 7413 came out about in the year 2005.

261. That Nga'nga Kihonge introduced "Naivasha Uiguano" to the 4<sup>th</sup> Defendant. Wherein he would collect money from the group and remit it to the 4<sup>th</sup> Defendant and which money he collected until his death. That after his death however, Uiguano group was left with a debt wherein Elias had gone to their office in the company of some old men who wanted to process a title deed but had been informed of the debt that amounted to Kshs. 214,000/=.

262. That according to their records, the land had been recorded as block A2 - X - Ng'ang'a Kihonge Group (Gilgil - Kikopey). That accordingly, they had written a letter on 17<sup>th</sup> July 2002 to one Kihonge Nganga informing him that his group had a debt of Kshs. 214,013/= (Pf exh.9) which debt was cleared by the Naivasha Uiguano group who paid it in person (individually) and cleared it in the year, 2005.

263. That therein after the 4<sup>th</sup> Defendant had written a letter to one surveyor Mr. Muginyo to go on the ground where the people of "Naivasha Uiguano" group had been allocated and surveyed the land because it had no parcel number. That subsequently, the said surveyor had given the land, parcel No. Gilgil/Gilgil Block 1/7413 measuring 135.77 hectares. That afterwards, on 17<sup>th</sup> November 2005, the group, through a representative, one Mr. E.N. Ng'ang'a and Company Advocates sought from them their title and that the same to be registered under "Naivasha Uiguano Group" wherein their trustees were Joseph Leshorua, Elias Ngugi and Ng'ang'a Kezia Wairimu as per their letter.

264. That he had advised them to avail the PIN Numbers, ID copies and registration certificate of the group for which they complied and the 4<sup>th</sup> Defendant filed the transfer form under "Naivasha Uiguano Group".

265. That the certificate of Registration of the group was however not availed hence they had been unable to process the title deed under the name of the group. Subsequently, through a copy of letter from the Group dated 12<sup>th</sup> May 2008, that had been given to the General Manager, and which had been addressed to the District Land Registrar complaining that some people had processed the title to land parcel No.7413, the 4<sup>th</sup> Defendant was made

aware that the title of the Group to No.7413 had already been processed at the Nakuru Land office without the consent of the 4<sup>th</sup> Defendant.

266. That it had been from that time, that there was no interaction between “Naivasha Uiguano Group” and the 4<sup>th</sup> Defendant. That they did not have a copy or record of the title to land parcel No.7413. That they had not colluded with either party to procure the title to land parcel No.7413 and neither was the 4<sup>th</sup> Defendant involved with the sub-division of No.7413.

267. When cross-examined by Counsel for the Plaintiff, he confirmed that they had admitted to the Plaintiffs’ claim that they sold to them land parcel No.7413 in the year 1977 when they started buying it. That at the time the land was vacant and that some of the Plaintiffs had taken occupation. He confirmed that Nganga played the role of an Agent wherein he took money from the Plaintiffs and remitted it to the 4<sup>th</sup> Defendant wherein Elias took over, as a trustee of Naivasha Uiguano Group, after his death although he could not remember the year at time the witness was an employee of the 4<sup>th</sup> Defendant. He maintained that the members cleared the balance individually and had been issued with receipts.

268. He gave examples of the members who had paid and whose receipts and/or copies were in his file, as Margaret Njeri receipt No.36750, Mwangi Karunga’s receipt No.36749 and Ndurumo Njoroge’s receipt No.36747 and confirmed that Pf exh 56 were receipts from their office. He also confirmed that after payment of the balance, the group had gone together with Elias and the people that they wanted to be their trustees. That Joseph Loshorua was Plaintiff No.13 in the instant case.

269. He admitted to not having taken any steps after being aware that the title had been processed without their consent because it was the role of the Company to process the title and they had not been involved. That whereas the proprietors in the title were Elias Nganga and Grace Nduta, these were not persons who had brought the letter to the 4<sup>th</sup> Defendant’s office to process the title. He confirmed that Pf exh.9, had originated from their offices and was addressed to Francis Kihonge Nganga. Upon being referred to Pf exh 39 he testified that the Plaintiff had purchased the land measuring 135.77 hectares which they had paid for.

270. That Pf exh 25 was also a letter dated 21<sup>st</sup> June 2006 which had originated from their office and was addressed to the District Land Registrar authorizing him/her to process the title for the group after they had cleared with the company hence, they had no issue.

271. That Pf exh.26, was a receipt dated 31<sup>st</sup> October 2007 that had emanated from their office in reference to “Naivasha Uiguano Group” P.O. Box 397 Gilgil for a payment of Kshs.3,400/= for the title deed to parcel No.7413 (Kikopey). He confirmed that at some point, the 4<sup>th</sup> Defendant had been notified of the fraudulent title.

272. He stated that Pf exh 28 was a letter dated 22<sup>nd</sup> May 2008 by Joseph Loshorua, a chairman of “Naivasha Uiguano Group” the Plaintiff herein which had been copied to them notifying them that there was a problem. Elias had been summoned to the office by the General Manager but he did not respond. That the 4<sup>th</sup> Defendant did not seek to reclaim the land from the Plaintiff since it was aware that they had occupied it. That he had never seen the 1<sup>st</sup> to 3<sup>rd</sup> Defendants and did not know whether they were in occupation of land No.7413. He maintained that the land had been sold to the Plaintiffs and that after their surveyor had demarcated the land, they had not been involved in any way further.

273. The witness was cross-examined by Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, wherein he confirmed that the 4<sup>th</sup> Defendant is a Limited Company with a board of directors and company secretary and acting through a resolution of the board. That it also had a seal and stamp. That whereas he had been authorized by the company to testify, he had no authorizing letter. He stated that it was the General Manager who signed the leases and agreements and not him because he was only a property manager whose responsibility was to respond to payments of rent having been employed in the year 1993.

274. That he was still in school when the land was bought, but personally knew Nganga as a shareholder, and not a director of the company, when he started working for the company. That he also personally knows a few of the plaintiffs. He was categorical that the land had not been bought by Nganga but by “Uiguano Group”, from the 4<sup>th</sup> Defendant.

275. That he had learnt about the group after the death of Nganga. That they

had the file and communication to the effect that the land was not Nganga's. That Elias was in contact with the General Manager hence he would not have known if he had been asked for the list of members. That they also did not have a certificate of the group or list of members and therefore could not determine whether or not the Plaintiffs were members of the group or whether they bought the land individually or as members of other groups. That he only knew the "Naivasha Uiguano Group". That unfortunately, Nganga who was better placed to explain how he had been dealing with the group was now deceased.

276. He was categorical that Nganga had paid for the group as its trustee and that they had a record of the receipts the company issued Nganga after payment which receipts were unfortunately not filed since they had no notice that the Plaintiffs had not filed the copies. That however the letters that had been tabled in court were to the effect that the receipts had been issued under the name of "Naivasha Uiguano Group". That after the demise of Nganga, some people had gone to their office in the company of Elias and that was why they had accepted them as members of the group.

277. He confirmed that they had records of how Nganga had paid monies to their office, from which they had determined the balance owed and was not aware of Kshs.49,000/= that had been paid, since he knew the balance of head.

278. Upon being referred to paragraph 13 of his statement and Pf exh 3, he confirmed that whereas the company had identified the land as "Nganga Kihonge", he was not the buyer. That after the surveyor had completed the survey of the land, he had requested for a parcel number from the Director of Survey.

279. In reference to Pf exh 20, he confirmed that the director of survey was requested to amend the RIM and create a parcel of the area that had been surveyed which was identified as Gilgil/Gilgil Block 1 (Kikopey) and that the parcel given its number as Gilgil/Gilgil Block 1/7413. That the letter had been addressed to commissioner of lands from the Director of Lands. That the entire land had been allocated by the commissioner of land. That it was not their company which followed up the demarcations of land but the

surveyor and that he had not seen the 4<sup>th</sup> Defendant's allotment letter.

280. He confirmed Pf exh 35 as a Green Card to parcel No. Gilgil/Gilgil Block 1/7413 measuring 135.77 hectares and that it did not have the name "Kikopey". That Pf exh 23 was a title to Gilgil/Gilgil Block 1/7413 (Kikopey) measuring 135.77 hectares but that he did not know why they were different. He testified that after the land had been excised, they did not process the title to No.7413 and therefore did not have a copy of the title deed.

281. That Pf exh 25 was a letter wherein they had authorized the Plaintiffs to process titles and sub-divisions on their own. That after the sale, the 4<sup>th</sup> Defendant was not concerned with processing title deeds. That whereas Nganga was a trustee, after his death, the administrators of his estate did not approach the 4<sup>th</sup> Defendant hence when Elias had become a trustee, they did not raise an objection although they did not release any documents to him.

282. He confirmed that a letter dated 27<sup>th</sup> May 2008 written by Joseph Loshorua and Francis Mwaura to the District Land Registrar - Nakuru District Land Registrar pursuant to the letter produced as Df exh 22, resulted in the release of the title and was categorical that they had sold the land to the group of Uiguano not to the women.

283. Upon being referred to Df exh 23, he confirmed that Elias and Grace got registered to the land on 2<sup>nd</sup> April 2008 but that he was not aware that the Plaintiff ought to have filed suit within 12 years or that they had no claim. He confirmed that Pf exh 9 was a letter addressed to Kihonge by the General Manager. He also confirmed that file was in his custody.

284. On being cross-examined by Counsel for the 5<sup>th</sup> to 7<sup>th</sup> Defendants, he confirmed that he had written a letter in reference to the contents at paragraph 11 of the Plaint. That the Plaintiffs had wanted 400 acres but had only paid for land measuring 135.77 hectares. He denied having received a letter stating that they had colluded with the Land Registrar nor having so colluded. He also confirmed that the 4<sup>th</sup> Defendant had not been charged with any criminal offence stating that they had written a letter to the Land Registrar to issue a title in the name of "Naivasha Uiguano" but did not

know what had happened during the processing of the title.

285. In re-examination, he confirmed that the 4<sup>th</sup> Defendant had a structure of how the receipts and payments was done. That after receiving the first amount from Nganga Kihonge, they had opened a file for the group which had a letter and receipts of all transactions. That after the land had been reserved and a parcel number issued, they transferred the land. That whereas they had been given the name of the trustees, they had not been given the Certificate of Registration of the Group. That after a long time, the 4<sup>th</sup> Defendant had written to the Registrar to prepare a title although they did not know what had happened leading to the complaint by the group. That he was aware of parcels of land on Kikopey Ranch and had handled matters on Kikopey Ranch from the year 1994. That as a property manager, he was not concerned with bringing suits for the 4<sup>th</sup> Defendant which was the preserve of the Company Advocate. He reiterated that he knew “Naivasha Uiguano Group” before the death of Nganga Kihonge but had not known if the said Nganga Kihonge was a trustee of the group. He confirmed that the authorization letter had been given to their counsel.

The 4<sup>th</sup> Defendant had thus closed its case.

286. Josephine Mburu the Land Registrar – Naivasha testified as DW5 to the effect that she was in court in relation to parcel of land No. Gilgil/Gilgil Block 1/7413 and that she had brought with her the member’s register from GEMA and the Green Card to the Land No.7413.

287. She explained that GEMA’s register had been opened on 9<sup>th</sup> February 1994 and that as per the members Register, they had opened an entry and registered “Naivasha Uiguano Group” which had been issued with a title deed. That the Green Card had a couple of entries as follows;

- i. On 25<sup>th</sup> March 2022 a court order had been registered removing entries Nos. 4 to 6 reverting back the title to Naivasha Uiguano Group.
- ii. That the parcel had been closed on subdivision on 25<sup>th</sup> March 2022 and new members were issued 9563 – 9570 (Kikopey).

288. She explained that the procedure of processing a title where the land had been bought by a company was that the company would forward the transfer documents to their office and upon payment of the fee prescribed, it would be verified if the details were the same as the ones the company had provided in the members register. That once there was confirmation, they proceed and register. That the said procedure had been followed in the instant case.

289. That the cancellation that had been done was pursuant to a court order in JR No.2 of 2021 at Nakuru dated 28<sup>th</sup> February 2022. That on the face of it, they had the documents that they had relied upon and followed a proper procedure to register. She produced the Green card as Df exh 24 and the Members Register as Df ex 25

290. In cross-examination by the Counsel for the Plaintiff, she was referred to Df exh 25 wherein she confirmed that the land No.7413 was registered to "Naivasha Uiguano Group". In reference to Df exh 24, she confirmed that the parcel number was Gilgil/Gilgil Block 1/7413 and was opened on 9<sup>th</sup> February 1994. That the initial owner was the Government of Kenya, 2<sup>nd</sup> entry was on 28<sup>th</sup> March 2008 being "Naivasha Uiguano Group" P.O. Box 397, Gilgil.

291. That between the years 1994 and 2008, the whole parcel of land was held by GEMA. That the 3<sup>rd</sup> entry showed that a title deed had been issued on 7<sup>th</sup> April 2009 to "Naivasha Uiguano Group" while entry No.4 was a transaction that had been cancelled the 17<sup>th</sup> June 2009 transaction which had been a restriction on the dealing with the land without consent of directors, Joseph and Francis who had placed the said restriction. That entry No.5, showed that the restriction was removed for sub-division of members of "Naivasha Uiguano Group".

292. In reference to Pf exh 56, she confirmed that the same were titles that had been cancelled by an order of the court where the last entry on the Green Card was the closure of the title to pave way for subdivision. Her response on being referred to Pf exh 20 was that whereas she could not confirm the signature, the letter-head showed that the letter had come from the Ministry of Lands and Settlement. In regard to Pf exh 25, she confirmed

that the same had been addressed to the District Land Registrar – Nakuru by the 4<sup>th</sup> Defendant

293. On being referred to Pf exh 28, she confirmed that the originator of the letter was the Ministry of Lands and that the same had been addressed to Joseph Loshorua – Chairman of Naivasha Uiguano Group. That it was signed by the District Land Registrar Nakuru. That she was not aware that the District Land Registrar had advised the Plaintiffs to replace the trustees because from the records and Members Register, Naivasha Uiguano Group which is a self-help group was the Registered owner.

294. When she was referred to Pf exh 32, she confirmed that the Land Registrar, one Ms. Mwaura was addressing Elias and Grace of “Naivasha Uiguano Group” with regard to land parcel No. 7413 wherein she had asked for surrender of the title deed. In reference Pf exh 33, she confirmed that the same had originated from the District Land Registrar who was directing Elias and Grace to surrender the title deed for No.7413. That it had also stated the names of the trustees that the group had sought. She explained that it was on the basis of cancellation of the entries that they now had the present entries.

295. Upon being referred to Pf exh 34 to 36, she confirmed that the Green Cards had emanated from the land’s office. MFI 36 was now produced and admitted as Pf exh 36. In reference to Pf exh 37 she stated that the name for the then Land Registrar Nakuru was Mr. Nyatika. She confirmed that Pf exh 41, was a letter from the Ministry of lands that had been issued by Jane Mwaura, Land Registrar Nakuru notifying her of the cancellation in relation to parcel No. 7413, through a gazette Notice.

296. When she was referred to Df exh 24, she confirmed that Gilgil/Gilgil Block 1/7413 and Gilgil/Gilgil Block1/7413 (Kikopey) was one and the same parcel of land and that it was not grave for the word “Kikopey” to miss. That with regards to ELC JR.2/2021, she was not in a position to confirm whether the land Registrar had participated in those proceedings. She explained that once properties were cancelled, they were null and void and that what she had produced was what was in the Land Register.

297. On cross-examination by the Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, she

confirmed that the land was owned by Naivasha Uiguano Group which was not a company but a group. She explained the process of registration of land for groups to the effect that that when a group went to them to register land, they would have a Members' Register which most of the time, was in their (Registrar's) custody. That the group would submit the transfer documents and pay the prescribed fee and once the Registrar confirms that the transfer documents and members register tally, they would proceed and register.

298. In reference to Df exh 22, she confirmed that the said letter was written by the Department of Lands - Nakuru, signed by the District Land Registrar Nakuru and addressed to the Chairman Naivasha Uiguano Group - Joseph Loshorua. That she did not have reason to doubt the contents therein. That as per the said letter, trustees could hold land for the group and that a title had been issued in the name of the trustees for the group. Her response in reference to Df exh 15 was that the same had been written by Mr. Nyatika District Land Registrar and that the 1<sup>st</sup> Registration had been done in Nakuru wherein the gazette notice had been published. She confirmed that she did not know the said land registrar personally.

299. Upon being referred to Df exh 3, she confirmed that the same had been certified by the land registrar on 15<sup>th</sup> May 2009 and was with regard to land No. 7413 registered to Elias Ngugi and Grace Nduta as trustees of "Naivasha Uiguano Group" and that the records in their office were the registers that she had produced. In reference to Df exh 21 she confirmed that it was an order that was registered and had the word "Kikopey" at the end. She maintained that she had brought the register that was in their office. That whereas she did not get their parcel file, she had the register for Kikopey wherein the suit land reflected.

300. She confirmed that Df exh 22, was not in the parcel file. That the letter by the Plaintiffs dated 12<sup>th</sup> August 2008 addressed to the Land Registrar was also not in their records. She explained that sometimes their filing was different. That although parcel files contained letters, yet there were documents relating to the suit land, like the two letters, which she had not found.

301. She confirmed that Pf exh 20, was a letter written by Johnson Kibiru, the director of survey giving the suit land No. Gilgil/Gilgil Block 1/7413 (Kikohey). She confirmed that errors do happen but if the land was Gilgil/Gilgil Block 1, then it was in Kikohey even without the inclusion of the word "Kikohey" word.
302. That according to the provisions of Section 9 of the Land Registration Act, she knew the documents that were needed to register land, and therefore if one had no ID Card and KRA Pin Certificate, she could not Register the land. That although the "Naivasha Uiguano Group" did not indicate the ID Card and the KRA Pin Certificate number, their registration was not irregular.
303. She confirmed that they had registered the court order that had cancelled the titles. That before the year 2009 "Uiguano Group" were the registered owners although they had not received the title. That the Green Card had been issued in the year 2009.
304. She confirmed that Df exh 24 was a title deed that had been issued on 7<sup>th</sup> April, 2009. That Df exh 23, also a title, had been issued on 2<sup>nd</sup> April 2008. Her evidence was that a title deed issued without the names of the trustees was still proper.
305. She confirmed that Df exh 15, was a Notice for the title deed to be issued in the names therein specified. That as per the letter, the instrument was the resolution of change of trustee. That there was no resolution or change of trustees on Df exh 24. That the change of trustees according to the Gazette Notice was not implemented.
306. When she was cross-examined by Counsel for the 4<sup>th</sup> Defendant, she confirmed that the parcel of land No. Gilgil/Gilgil Block 1/7413 was owned by GEMA. That although she did not have a register for GEMA Holding, she had processed other parcels of land belonging to GEMA. She confirmed having received a Members Register in relation to the parcel of land No.7413 and that she was not aware that there was a Group Certification of "Naivasha Uiguano Group". She refuted having colluded with GEMA to process titles for the Plaintiff as well as for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.
307. In re-examination, she confirmed that the documents that she had produced had summarized what was contained in the parcel file stating that

the fact that the parcel file was missing did not invalidate what was on the Green Card. That the Green Card registered transfer of interest in land wherein Minutes and resolutions were not reflected in the Green Card.

308. She confirmed that Pf exh 20 amended an error and the land was not a different parcel of land before the word “Kikopey” was added. That she would not know if the trustees were some of the members in the Register. She opined that Pf exh 28 was not a proper advice noting that the current status of the Green Card was “Naivasha Uiguano Group” as it read in the register.

309. The 5<sup>th</sup> to 7<sup>th</sup> Defendants closed their case and direction was taken that parties file their written submissions. I shall thus proceed to summarize the same as herein under.

### **Plaintiff's Submissions.**

310. The Plaintiffs filed their final written submissions on 27<sup>th</sup> October 2025, asserting their absolute right to the suit property through both historical purchase and the doctrine of adverse possession. They framed their issues for determination as follows:

- i. Whether the Plaintiffs have become entitled to the property known as Gilgil/Gilgil Block 1/7413 (Kekopey) by virtue of adverse possession.
- ii. Whether the Plaintiffs are the rightful owners of land parcel, Gilgil/Gilgil Block 1/7413 (Kekopey) by virtue of purchase from GEMA Holdings Limited & subsequent occupation thereon.
- iii. Whether the Honourable court should declare the plaintiffs as persons entitled to own their portions in their own names absolutely.
- iv. Whether the Gazettement of Title No. Gilgil/Gilgil Block 1/7413 via Gazette No. 341, subsequent cancellation of the

fraudulent title and issuance of new title to the Plaintiffs on 7<sup>th</sup> April, 2009 was procedural - making the entries contained on the proprietorship section in favor of the plaintiffs legal and absolute.

- v. Whether the titles for parcels numbers Gilgil/Gilgil Block 1/9563 to 9570 were obtained fraudulently and/or through corrupt means therefore null and void & if their records should be cancelled?
  - vi. Whether the court orders obtained by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were fraudulently obtained and the same be nullified.
  - vii. Whether the Plaintiffs' subsequent titles subsequent titles that is to say, Gilgil/Gilgil Block 1/54381, 54366, 54416, 54368, 54398, 54367, 54392, 54402, 54435, 54414, 54383, 5444 2, 54407, 54374, 54420, 54369, 54391 & 54382 (Kekopey) are valid and if the 5<sup>th</sup> & 6<sup>th</sup> Defendants should be ordered to reinstate mutation entry reference number MUT/NV/9877/5/19 in the registry index map number 14 and 15 Gilgil/Gilgil Block 1(Kekopey-) & subsequently reinstate the registers for the said titles.
  - viii. Whether the Plaintiffs should be awarded Costs of the suit & interest.
311. On the first issue for determination, the Plaintiffs argued that even if the 1<sup>st</sup> to 3<sup>rd</sup> Defendants had a claim, it has been extinguished by law. Relying on Section 7 of the Limitation of Actions Act, they submitted that the right to recover land is barred after 12 years. That since they had been in occupation of the suit land since 1980, any rival claim ended by 1992. They argued that their occupation was open, peaceful, and as of right (*nec vi, nec clam, nec precario*). They cited the cases of **Wambugu v Njuguna [1983] KLR 172, Kairu v Kang'ethe [2023] KEELC**

**17758** and **Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana [2018] KECA 402** in support thereof.

312. On the second issue for determination, they contend that they were the Bona Fide Purchasers for Value without Notice. That they had purchased the suit property from the 4<sup>th</sup> Defendant through its agent Nganga Kihonge wherein the 4<sup>th</sup> Defendant had acknowledged the same. That upon paying the full purchase price, they had been put into occupation. That the 4<sup>th</sup> Defendant (GEMA) explicitly admitted to selling the land to the Plaintiffs. Citing Section 107 of the Evidence Act, they submitted that the purchase was proved via minutes, receipts, and correspondence. They relied on the decisions in the cases of **Garnac Grain Co. Inc. v H.M. Faure & Fair Dough Ltd [1967] 2 All E.R. 353** (on the enforceability of sales), **Katende v Haridar & Company Limited [2008] 2 E.A.173** (defining a bona fide purchaser) and **Weston Gitonga v Peter Rugu Gikanga [2017] eKLR**.

313. On the third issue for determination, the Plaintiffs submitted that they were entitled to own their portions in their own names absolutely, they placed reliance on Lord in Bishopsgate holding in the case of **Motor Finance Corporation Ltd vs. Transport Brakes Ltd (1949) 1 KB 322, at pp. 336 337** on protection of commercial transactions to the effect that the person who takes in good faith and for value without notice should get a good title.

314. The Plaintiffs also argued that the Land Registrar acted lawfully in 2009 when cancelling the "fraudulent" title held by Elias and Grace. They relied on the provisions of Section 142 of the Registered Land Act (Repealed), which allowed the Registrar to rectify the register in cases of error or fraud submitting that Gazette Notice No. 341 was a regular administrative action taken after Elias and Grace failed to surrender the title following a change in group trusteeship. They baxsed their argument on the decision in **Republic v Land Registrar - Busia County [2023] KEELC 20078** and **Egesa (Exparte Applicant) (Environment and Land Judicial Review Case**

**E002 of 2022) [2023] KEELC 20078 (KLR) (28 September 2023) (Judgment).**

315. On the fifth issue for determination as to whether the titles for parcels numbers Gilgil/Gilgil Block 1/9563 to 9570 had been obtained fraudulently and/or through corrupt means therefore null and void & if their records should be cancelled, they placed reliance in the decided case of **General & another v Hussein & 3 others (Civil Appeal 100 (ELD NO. 32) of 2018) [2025] KECA 1022 (KLR)** on the power of the court to order for cancellation of the registration of a title.
316. The Plaintiffs the went ahead to challenge the 2020/2021 court orders obtained by the 1<sup>st</sup> -3<sup>rd</sup> Defendants in Nakuru being **Grace Wanjiru Ng'anga & 2 others v Elias Ngugi Ng'ang'a & another [2020] eKLR**, and **Republic v Naivasha District Land Registrar & 2 others Ex parte Grace Wanjiru Nganga & 2 others [2022] eKLR** arguing that the 1<sup>st</sup> - 3<sup>rd</sup> Defendants obtained orders to cancel the Plaintiffs' titles without involving the actual people living on the land (the Plaintiffs). That under Section 26 of the Limitation of Actions Act, time for fraud begun when it was discovered. That in this case, it was discovered in the year 2020. They acknowledged that fraud must be proved at a higher standard than a balance of probabilities but below "beyond reasonable doubt." And went on to rely on the decisions in the following cases: **Justus Tureti Obara v Peter Koipeitai [2014] eKLR**, **R.G. Patel v Lalji Makanji (1957) EA 314** and **Arthi Highway Developers Limited v West End Butchery Limited [2015] eKLR**.
317. That they had proved that they were the legitimate owners of the suit property for which their claim should be allowed in its entirety. That using its inherent powers under the provisions of Section 3A of the Civil Procedure Act and in the Environment and Land Act, the court should thus order for cancellation and reinstatement of mutation. That they be warded costs.

**1<sup>st</sup> to 3<sup>rd</sup> Defendants Further Submissions**

318. The 1<sup>st</sup> -3<sup>rd</sup> Defendants presented a comprehensive defense which was centered on technical legal failures, the doctrine of "void acts," and the evidentiary collapse of the Plaintiffs' claims.
319. They argued that the court had no jurisdiction to hear the case for reason that the under the Limitation of Actions Act, the Plaintiffs had 12 years to sue after discovering the alleged fraud in 2008/09, that filing the suit in the year 2023 which was 15 years later, made the claim "hopelessly statute-barred." Reliance was placed on the decision in **Muli Kyove v Ruth Nzioka [2019] eKLR** which held that limitation was a jurisdictional issue and if the time has lapsed, the court must dismiss the suit.
320. The Defendants further contended that the suit was a procedural nullity wherein the Plaintiffs had failed to include mandatory averments required by **Order 4 Rule 1(f)** regarding previous proceedings. That further, the "Authority to Act" for the 152 Plaintiffs was unsigned wherein they (Defendants) had produced handwritten minutes showing only 43 people attended the authorization meeting, thus contradicting the Plaintiffs' typewritten list of 152. Reliance was placed on the decision in **Luke Cheruiyot & 37 others v National Oil Corporation of Kenya [2015] KECA 572 (KLR)**, (on mandatory verifying affidavits) and **Martin Magina Okoyo & Another v Bondo County Council & 2 Others [2011] eKLR** (on the invalidity of attendance lists as "authority to sue").
321. Thirdly, it was the 1<sup>st</sup>-3<sup>rd</sup> Defendants' submission that the Plaintiffs' current titles were illegal because they were created while a court "stay" order was in place. That the Land Registrar subdivided the land in May 2021 while **Nakuru JR 2 of 2021** was active. Citing **Kawaljeet Singh Rekhi v Peter Wainaina Kamau & 2 others [2016] KECA 89 (KLR) [2016]** and **Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1** they argued that any act done without jurisdiction or in violation of court orders was void from the beginning and cannot confer a valid title.
322. The 1<sup>st</sup> -3<sup>rd</sup> Defendants then went on to challenge the Land Registrar's power to cancel Elias and Grace's 2008 title via a Gazette Notice stating that under Section 142 of the Repealed Registered Land Act, a Registrar

could only fix minor errors (names/addresses), that only the **High Court** (under Section 143) had the power to delete a proprietor's name. Reliance was placed on the decision in the case of **Republic v Land Registrar Busia County** (supra) to show that even under current laws, a Registrar cannot unilaterally cancel a title deed; they must move to court.

323. The 1<sup>st</sup> -3<sup>rd</sup> Defendants then argued that the Plaintiff had essentially "abandoned" the claim of adverse possession during their testimony. That there had been witness contradictions when PW1, PW2, and PW3 testified stating that they wanted the land because they purchased it, and not because they were adverse possessors despite the fact that they could not identify which specific portions of the 400 acres they were in occupation. Reliance was [placed in the decision in **Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another [2015] eKLR** and **Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana & 15 others [2018] KECA 402 (KLR)** that established that an adverse possession claim must fail if the claimant cannot provide a sketch plan or precisely identify their location on the map.

324. That since both the 4<sup>th</sup> Defendant and the Plaintiffs had admitted that the land was bought by Nganga Kihonge, under the Trustees Act (Cap 167) therefore, Nganga Kihonge was the legal owner/buyer with the power to register the land in his name (or his appointees, Elias and Grace) to facilitate distribution. Reliance was placed on Section 17 & 24 of the Evidence Act to submit that through the Plaintiffs' own letter of 2008 they had admitted that Kihonge was the buyer.

325. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants then summarized both the Plaintiff and the Defendants' evidence and framed ten specific issues for the court's determination. Their central thesis was that the Plaintiffs' suit was technically incompetent, statute-barred, and based on irregular land registrations. Their issues for determination as follows;

- i. Whether the claim arising from the registration of the land in the year 2008 and subsequent subdivision in the year 2009 which the plaintiffs allege was fraudulent is barred by the Limitation of Actions Act.

- ii. Do the Plaintiffs have a cause of action against the 1<sup>st</sup> to 3<sup>rd</sup> Defendants as regards the registration of the land in 2008 and subdivision in the year 2009?
- iii. Whether the title that was issued in the names of Elias Ngugi Nganga and Grace Nduta Theuri in the year 2008 was cancelled by Gazette Notice No 341 of 2009.
- iv. Who bought the subject land?
- v. Whether the 1<sup>st</sup> to 3<sup>rd</sup> Defendants' Certificate of Registration of their group is fraudulent.
- vi. Whether the 1<sup>st</sup> to 3<sup>rd</sup> Defendants used fraud and misrepresentations regarding their group in the previous court cases.
- vii. What was the effect of the decree of the court in Nakuru JR 2 of 2021 to the subdivision of the subject land and issue of title deeds in favor of the Plaintiffs.
- viii. Whether the acts done by the 5<sup>th</sup> and 6<sup>th</sup> Defendants in violation of court orders conferred any titles to the Plaintiffs.
- ix. Have the Plaintiffs acquired the parcel of land by adverse possession.
- x. Who bears the costs of the instant matter?

326. They first hinged their submissions in the decided case of **Daniel Otieno Migore vs south Nyanza sugar company [2018] KEHC 5465 (KLR)** to the effect that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection.

327. They then proceeded to submit that the Plaintiffs were barred from challenging the 2008 registration and 2009 subdivisions. That since the Plaintiffs had admitted to discovering the alleged fraud in the year 2008/2009, filing the suit in 2023 which was 15 years later, exceeded the limit set by the Limitation of Actions Act. Reliance was placed on the decision in **Muli Kyove** (supra) to submit that when a claim is statute-barred, the court lacks jurisdiction to hear it.

328. That the Plaintiff had no Cause of Action and while citing the case of **Karugi & another v Kabiya & 3 others [1983] KECA 38 (KLR)**, they

argued that the Plaintiffs had sued the wrong people, that their grievance ought to have been against Elias and Grace, not the 1<sup>st</sup> -3<sup>rd</sup> Defendants.

329. They then contended that the title issued on 7<sup>th</sup> April 2009 in the name of "Naivasha Uiguano Group" was a legal nullity for reason that whereas the group was registered in 2010, yet the title had been issued in 2009 whereas a non-existent body could not hold land. Citing the case of **Moses Okatch Owuor & another v Attorney General & another [2017] KEELC 3821 (KLR)** they argued that a self-help group lacked the legal capacity to own land in its own name, that such land ought to be held by trustees. Placing reliance on the decision in **Wambui v Mwangi & 3 others [2021] KECA 144 (KLR)** they argued that because Elias and Grace's title already existed, the second title issued to the group was a "parallel title" and thus void.

330. The 1<sup>st</sup> -3<sup>rd</sup> Defendants further challenged the Plaintiffs' claim that the 2009 Gazette Notice effectively cancelled previous titles submitting that under Section 33 of the Repealed Registered Land Act, a Gazette Notice was only a notification, not an automatic cancellation. The Land Registrar testified that this notice was never actually implemented in the records. They argued that Section 142 of the repealed Act only allowed for corrections of names/addresses, not the wholesale creation of new titles.

331. They disputed that all the 152 Plaintiffs actually bought the land from GEMA for reason that that only 10 out of 152 Plaintiffs produced receipts, totalling only Ksh 106,400/= which did not cover the balance allegedly owed to GEMA. That under Section 24 of the Evidence Act, GEMA's "admission" that the Plaintiffs bought the land was not conclusive proof and could not bind the Defendants.

332. They submitted that the Plaintiffs' current titles were obtained in violation of the law. That while the 2021 Judicial Review was active, the land Registrar subdivided the land and issued titles to the Plaintiffs. Relying on the **Kawaljeet Singh Rekhi case** (supra) they argued that the acts done without jurisdiction or in violation of court orders were void from the beginning.

333. They submitted that the Plaintiffs acted "perfidiously" by Registering a group with the exact same name in 2010 to mimic the Defendants' 2005

group and thereafter Operating "clandestinely behind closed doors" at the registry while the Defendants were pursuing legal records through the court in JR 003 of 2020. They thus requested the court to dismiss the Plaintiffs' claim entirely, reinstate the 8 original blocks 9563-9570 and award them costs.

#### **4<sup>th</sup> Defendant's Submissions**

334. The 4<sup>th</sup> Defendant on the other hand vide Written submissions dated 31<sup>st</sup> October 2025 framed one (1) issue for determination to wit; Whether the 4<sup>th</sup> Defendant played any role in the alleged fraud or misrepresentation and whether such fraud had been proved.

335. It then proceeded to submit that as AIH Limited / GEMA Holdings, it had been a legitimate seller who had been caught in the middle of a dispute between the Plaintiffs and the 1<sup>st</sup> -3<sup>rd</sup> Defendants. It gave a Historical Legitimacy of the Sale to the effect that the company had acquired a 45,000-acre ranch from settlers post-independence and began selling portions in 1977 wherein the late Ng'ang'a Kihonge who was one of its shareholder introduced the Plaintiffs' group, "Naivasha Uiguano Group", as buyers of approximately 335 acres of land. That after Kihonge's death, the group cleared an outstanding balance of Ksh 214,000/= by the year 2005 wherein the 4<sup>th</sup> Defendant then processed the parcel number Gilgil/Gilgil Block 1/7413.

336. The 4<sup>th</sup> Defendant argues that the alleged fraudulent activities occurred after their involvement ended. That the late Advocate Elias Ng'ang'a (Kihonge's son) had requested that the land be transferred to specific trustees (himself, Joseph Leshorua, and Keziah Wairimu and when the 4<sup>th</sup> Defendant asked for the group's registration certificate to finalize the transfer, it was never provided. Consequently, the 4<sup>th</sup> Defendant never processed or registered any title.

337. They contend that any subsequent illegal registrations or subdivisions were orchestrated by Advocate Elias Ng'ang'a and the 1<sup>st</sup> -3<sup>rd</sup> Defendants, not the company, and relied on established case law **Vijay Morjaria\_vs Nansingh Madhusingh Darbar & Another [2000] eKLR**, to argue that

fraud must be specifically pleaded and distinctively proved, not inferred from "conjecture or association" and **Ratilal Gordhanbhai Patel v Lalji Makanji [1957] E.A 314**, that emphasized that while the standard was not "beyond reasonable doubt," it is higher than the ordinary balance of probabilities and must be proved with "clarity, precision, and cogency" standards which the Plaintiffs had failed to meet for fraud.

338. The 4<sup>th</sup> Defendant then proceeded to point out a crucial weakness in the Plaintiffs' case against them to the effect that both PW1 and PW2 (Plaintiffs' witnesses) admitted during testimony that the fraud was committed by the 1<sup>st</sup> -3<sup>rd</sup> Defendants and Elias Ng'ang'a.

339. That the 1<sup>st</sup> -3<sup>rd</sup> Defendants also did not allege any wrongdoing against the 4<sup>th</sup> Defendant in their own defense.

340. That the totality of the evidence and testimony before the Honourable Court had demonstrated that:

- i. The 4<sup>th</sup> Defendant had lawfully sold the land to Naivasha Uigwano Group through its intermediary Nganga Kihonge.
- ii. The group had completed payment and had duly been issued with a parcel number.
- iii. The 4<sup>th</sup> Defendant had no role in subsequent dealings.
- iv. The alleged fraud had been perpetrated by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants and the late advocate Elius Nganga.
- v. That no cause of action had been disclosed or proved against the 4<sup>th</sup> Defendant.

341. They thus prayed that the Honourable Court be pleased to.

- i. Find and hold that the 4<sup>th</sup> Defendant had no role in the alleged fraud or misrepresentation.
- ii. Find that no cause of action lies or had been proved against the 4<sup>th</sup> Defendant.
- iii. Dismiss the suit against the 4<sup>th</sup> Defendant with costs.
- iv. Award such further or other relief as the court may deem just.

## **Determination.**

342. I have considered the Plaintiff's suit, the defence thereto, the submissions and the authorities cited by the parties as well as the applicable law herein. A summary of the evidence presented by both the Plaintiffs and the Defendants during the hearing was as follows; the Plaintiffs, a group of 152 individuals presented their case primarily through the evidence of PW1-Francis Mwaura Thiong'o, PW2-Francis Gitiria Mbugua, and PW3-Stephen Gakuru Thiga to the effect that they purchased parcel No Gilgil/Gilgil Block 1/7413 (Kekopey) measuring approximately 335 acres from the 4<sup>th</sup> Defendant (GEMA Holdings) in the late 1970s, land which was excised from a larger ranch. The transaction was facilitated by the late Ng'ang'a Kihonge who received the purchase price for onward transmission to the 4<sup>th</sup> Defendant. That whereas some people bought their portions of land through groups like Kasambara Group, Naivasha Matigari Group, Longonot Women Group, others bought their portions individually and took possession of their respective parcels of land. That after his death, the 4<sup>th</sup> Defendant informed them that they still owed it a balance of Ksh. 214,000/=which they paid and were put in possession of the land. They produced receipts to that effect.

343. Their evidence had been that they entrusted the registration process to Elias Ng'ang'a (a lawyer and son of Kihonge) but instead of registering the group as the proprietor of the land, Elias allegedly registered the land in his own name and that of his sister-in-law, Grace Nduta, in 2008.

344. That upon this discovery they had lodged a complaint with the land Registrar wherein upon his/her advice they had elected their trustees on 24<sup>th</sup> May 2008 so that the title deed previously issued to Elias Ngugi and Theuri could be cancelled and their trustees be registered instead. The Registrar then formally asked Elias Ngugi to surrender the title for replacement on 25<sup>th</sup> July 2008 and upon noncompliance, Gazette Notice No. 341 was published on 16<sup>th</sup> January 2009, giving a 30-day ultimatum for the return of the title. After 60 days (including a 30-day grace period), the Registrar issued a new title deed on 7<sup>th</sup> April 2009 under the name "Uiguano Group".

345. That the group later discovered that Elias Ngugi had purportedly subdivided the land into 8 portions resulting to Block 1/9563 – 9570 wherein he transferred a portion of it to his (Kihonge's) family members and another portion to the 1<sup>st</sup>-3<sup>rd</sup> Defendants. The Plaintiffs lodged a restriction and proceeded to enlist the services of a land surveyor who subdivided the land.
346. They presented photographs of permanent homes, farms, and graves as evidence that they had been in occupation of the land since 1980. They argued that they had earned the land by adverse possession through over 12 years of open, continuous occupation. They produced titles issued to them in the year 2021, claiming that they were the only valid titles.
347. The 1<sup>st</sup> -3<sup>rd</sup> Defendants' evidence led by DW1, DW2, Grace Wanjiru Nganga, and DW3 John Wanjama Ruara was to the effect that they represent the original "Naivasha Uiguano Group," which was formed in 1975 (comprising Mwireri, Kirima Poultry, and Nganga's family) specifically to buy land from GEMA and which they claimed was older and more legitimate than the Plaintiffs' entity. They produced receipts dating back to 1977 and a list of 74 members who allegedly paid a total of Kshs. 249,000/= for the land and Kshs. 93,500/= for survey fees by 1996.
348. They produced a certificate from the Social Development Officer showing the "Naivasha Uiguano Group" only had 22 members, thus casting doubt on how 152 Plaintiffs could have been the rightful owners of the suit land.
349. They confirmed that while the mother title of the land was No. 7413, they were interested in its subdivision being No. 9565 upon which they lay claim to. That their title originated from a lawful transfer from the first registered owners being Elias and Grace and produced photographs taken in the year 2023 to show that this specific portion of land remains a "bush" and unoccupied.
350. They admitted that the Plaintiffs were in actual physical possession of another portion of the land where they lived, farmed and had constructed buildings although that was not the portion, they lay claim to. They also confirmed that they have never lived on or cultivated their portion of land, save that they only visited it from time to time.
351. That they did not originally seek the whole of Block 1/7413, but the

Nakuru Court gave it to them on its own motion so as to remove Elias as a trustee.

352. Their evidence was that the Plaintiffs' obtained their titles in the year 2021 while there had been a High Court stay order in place in Nakuru JR No. 2 of 2021 and therefore these titles were "void ab initio." That vide the court's judgement in Nakuru ELC Judicial Review No. 2 of 2021, an order of Certiorari had been issued quashing the Registrar's decision that had nullified and cancelled the subdivision titles of parcels No Gilgil/Gilgil Block 1/9563-9570 (Kekopey) and reinstating the parent land No. Gilgil/Gilgil Block 1/7413 (Kekopey). That the court had ordered the 6<sup>th</sup> Defendant (Director of Survey) to restore the 8 parcels to the Registry Index Map (RIM). That it had been pending the 2021 case, that the Land Registrar proceeded to subdivide the land and issue individual titles to the 152 Plaintiffs which titles were legally void even if they appeared genuine on paper.

353. The 4<sup>th</sup> Defendant's Evidence through GEMA's Property Manager DW4 - Mathew Ngunya, confirmed that GEMA sold the land to the Plaintiffs' group through Kihonge wherein the Plaintiffs cleared an outstanding debt of Kshs. 214,013/= individually between the years 2002 and 2005 and the purchase price was fully paid by 2005. DW4 confirmed that the Plaintiffs took possession in the 1970s/80s.

354. That thereafter GEMA prepared transfer forms for "trustees" as requested by Elias Ng'ang'a but did not proceed with the process when the group failed to provide a registration certificate. He exonerated GEMA in what followed thereafter stating that it played no part in the 2008 registration or subsequent subdivisions and had no records of the current titles. That the registration of the land in the private names of Elias Ngugi and Grace Nduta in 2008 was done without GEMA's consent and was therefore fraudulent. He stated he had never seen the 1<sup>st</sup> -3<sup>rd</sup> Defendants before the court case

355. The Land Registrar-Naivasha, who testified as DW5 provided the technical history of the land's "Green Card" (the official register) confirming that the mother title-Block 1/7413 was opened in the year 1994 wherein in the year 2008, it was registered to "Naivasha Uiguano Group" with Elias and Grace as trustees. She confirmed that a Gazette Notice was issued to cancel

those trustees, but which Notice was not fully implemented in the records. She explained that the Plaintiffs' subsequent subdivision of the parcel of land into 94 plots was cancelled following a court order in JR No. 2 of 2021 (Nakuru). That as of March 2022, the 94 titles held by the Plaintiffs have been "closed" in the register, and the land has been reverted to the 8 original blocks (9563-9570) as per the Nakuru decree.

356. She also clarified that the omission of the word "Kikopey" on some titles was a minor clerical error and did not signify a different parcel of land.

357. Having summarized the evidence as adduced by both the Plaintiffs and the Defendants as herein above, I find the issues arising therein for determination as being;

- i. Whether the Plaintiffs' suit is res judicata Nakuru ELC Judicial Review No. E002 of 2021, if not
- ii. Whether the Plaintiff's suit is statute barred under Section 7 of the Limitation of Actions Act, if not
- iii. Whether there was a legal sale agreement
- iv. Whether the Plaintiffs have acquired the suit land by adverse possession.

358. On the first issue for determination, it is trite that jurisdiction is the bloodline of any action; without which the court is essentially a ship without a compass. That if this foundation is missing, any superstructure built upon it will eventually come crashing down. The principle that jurisdiction must be decided first—because any proceedings conducted without it are a nullity—is a cornerstone of common law. Indeed the "Golden Rule" regarding jurisdiction is that it is a threshold issue such that when a court's authority is challenged, it must "down its tools" and resolve that question immediately before taking any further steps as was held by the Court of Appeal in the classical case of **Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd [1989] KLR 1** where **Nyarangi, JA** had this to say;

*"Jurisdiction is everything. Without it, a court has no power to make one more step... Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law drops tools the moment it holds the opinion that it is without jurisdiction."*

359. The Supreme Court of Kenya has reaffirmed this rule, where in the case of **Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR)** the court had held as follows:

*"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings."*

360. This court's jurisdiction having been questioned to the effect that the suit herein filed was Res judicata Nakuru ELC Judicial Review No. E002 of 2021, and secondly, that the Plaintiff's suit was statute barred under Section 7 of the Limitation of Actions Act, I must determine these two issues in the first instance.

361. The substantive law on res judicata is found in Section 7 of the Civil Procedure Act Cap 21 which provides that:

*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to*

*try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”*

362. In order therefore to decide as to whether this case is res judicata Nakuru ELC Judicial Review No. E002 of 2021, the court of law as is trite of me, should always look at the decision claimed to have been settled, the issues in question and the entire pleadings of the previous case and the instant case to ascertain;

- i. What issues were really determined in the previous case;
- ii. Whether they are the same in the subsequent case and were covered by the decision of the earlier case.
- iii. Whether the parties are the same or are litigating under the same title and that the previous case was determined by a court of competent jurisdiction

363. I have considered the Judgement delivered on the 28<sup>th</sup> February 2021 in Nakuru ELC Judicial Review No. E002 of 2021 herein produced as Pf exh 61 and Df exh 21 and which was reported as **Republic v Naivasha District Land Registrar & 2 others Ex-parte Grace Wanjiru Nganga & 2 others [2022] KEELC 1084 (KLR)**. In the said suit the parties had been the Republic as the Applicant vs Naivasha District Land Registrar, Rift Valley Regional Surveyor and the Honorable the Attorney General as the 1<sup>st</sup> to 3<sup>rd</sup> Respondents respectively, AND Grace Wanjiru Nganga, Jennifer Waringa Miaraho and Jecinter Wangare Nyoike (Suing as trustees of the members Naivasha Uiguano group) EX PARTE Applicants where the ex-parte applicants had sought for the following orders;

*“1). An order of certiorari to remove to this Court and quash the decision of the 1<sup>st</sup> respondent herein contained in a letter dated March 2019 nullifying and cancelling title deeds for land parcel nos. Gilgil/Gilgil block 1/9563 to 9570 (Kekopey) and reinstating their parent title parcel number Gilgil/Gilgil block 1/7413 (Kekopey).*

2). *An order of certiorari to remove to this court and quash the decisions of the 2<sup>nd</sup> respondent herein dated 21-3-2019 and 7-5-2019 cancelling land parcel numbers Gilgil/Gilgil block 1/ 9563 to 9570 (Kekopey) from registry index map number 14 and 15 Gilgil/Gilgil block 1 (kekopey) and reinstating their mother title land parcel No. Gilgil/gilgil block 1/7413 (kekopey) in the aforesaid map.*

3). *An order of mandamus directing the 1<sup>st</sup> respondent to remove entries no. 4 and 5 in the register of land reference no. Gilgil/Gilgil block 1/7413 (Kekopey) and mark the register as closed upon subdivision to parcel numbers Gilgil/Gilgil block 1/9563 to 9570 (kekopey).*

4). *The applicants be granted leave to apply for orders of mandamus compelling the 1<sup>st</sup> respondent to open registers for land parcel nos. Gilgil/Gilgil block 1/9563 to 9570 (kekopey).*

5). *An order of mandamus compelling the 2<sup>nd</sup> respondent to remove the mutation entry reference no. MUT/NVS/9877/5/19 from registry index map number 14 and 15 Gilgil/Gilgil block 1 (kekopey) and restore land parcel numbers Gilgil/Gilgil block 1/9563 to 9570 (kekopey) in the aforesaid map.*

6). *A prohibitory order prohibiting the 1<sup>st</sup> respondent from making entries or registering any dealings in the register of land ref no Gilgil/Gilgil block 1/7413 (kekopey)."*

364. Subsequently upon considering the matter, the learned Judge in his judgement dated the 28<sup>th</sup> February 2022, had made the following orders;

*"a) An order of certiorari is hereby issued removing to this court and quashing the decision of the first respondent herein contained in a letter dated March 2019 nullifying and cancelling title deeds for land parcel numbers Gilgil/Gilgil*

*Block 1/9563 to 9570 (Kekopey) and reinstating their parent title parcel number Gilgil/Gilgil Block 1/7413 (Kekopey).*

*b) An order of certiorari is hereby issued removing to this court and quashing the decisions of the second respondent herein dated 21<sup>st</sup> March 2019 and 7<sup>th</sup> May 2019 cancelling land parcel numbers Gilgil/Gilgil Block 1/ 9563 to 9570 (Kekopey) from registry index map number 14 and 15 Gilgil/Gilgil Block 1 (Kekopey) and reinstating their mother title land parcel number Gilgil/Gilgil Block 1/7413 (Kekopey) in the aforesaid map.*

*c) An order of mandamus is hereby issued directing the first respondent to remove entries numbers 4 and 5 in the register of land reference number Gilgil/Gilgil Block 1/7413 (Kekopey) and mark the register as closed upon subdivision to parcel numbers Gilgil/Gilgil Block 1/9563 to 9570 (Kekopey).*

*d) An order of mandamus compelling the second respondent to remove the mutation entry reference number MUT/NVS/9877/5/19 from registry index map number 14 and 15 Gilgil/Gilgil Block 1 (Kekopey) and restore land parcel numbers Gilgil/Gilgil block 1/9563 to 9570 (Kekopey) in the aforesaid map.*

*e) Since the ex parte applicants did not seek any costs in the Notice of Motion, I make no order as to costs.”*

365. In the present suit, the Plaintiffs, have now sued the 7 Defendants herein seeking for the following orders;

- i. A declaration that the Plaintiffs have become entitled to the property known as Gilgil/Gilgil Block 1/7413 (Kekopey) by virtue of adverse possession.
- ii. A declaration that the Plaintiffs are the rightful owners of

land parcel Gilgil/Gilgil Block 1/7413 (Kekopey) by virtue of agreements for sale and subsequent transfer from GEMA Holdings Limited, now known as Agricultural & Industrial Holdings Limited, the 4<sup>th</sup> Defendant herein.

- iii. That the Honourable Court do declare that the Plaintiffs are entitled to own their portions in their own names absolutely.
- iv. A declaration that the Gazettement of Title No. Gilgil/Gilgil Block 1/7413 via Gazette No. 341, subsequent cancellation of the fraudulent title and issuance of new titles to the Plaintiffs on 7<sup>th</sup> April 2009 was procedural.
- v. A declaration that the entries contained on the proprietorship section in favour of the Plaintiffs are legal and absolute.
- vi. A declaration that the Plaintiffs' subsequent titles are valid and such, the registers for the said titles be reinstated.
- vii. A declaration that titles for parcel numbers Gilgil/Gilgil Block 1/9863 (**sic**) to 9570 (Kekopey) were obtained fraudulently and/or through corrupt means therefore null and void.
- viii. An order for cancellation of the records reflecting title numbers Gilgil/Gilgil Block 1/9563 to 9570 (Kekopey).
- ix. A declaration do issue that the court orders obtained by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in;
  - c. Grace Wanjiru Ng'anga & 2 others v Elias Ngugi Ng'ang'a & another [2020] eKLR, &
  - d. Republic v Naivasha Land Registrar & 2 others Ex Parte Grace Wanjiru Nganga & 2 others [2020] eKLR were fraudulently obtained and the same be nullified.
- x. That the 6<sup>th</sup> Defendant be ordered to reinstate mutation entry reference number MUT/NV/1877/5/19 in the registry index map number 14 and 15 Gilgil/Gilgil Block 1 (Kekopey).
- xi. Costs of the suit; and

xii. Interest at court rates on (iii) and (iv) above.

366. Having looked both cases, I find that there is no doubt that whereas the subject matter in the two cases involved the mother title Gilgil/Gilgil Block 1/7413 (Kekopey) and its subdivisions, Gilgil/Gilgil Block 1/9563 to 9570 (Kekopey) the parties herein were different in that both the 4<sup>th</sup> Defendant (GEMA Holdings) and the 152 individual Plaintiffs were not parties to that suit between the 1<sup>st</sup>- 3<sup>rd</sup> Defendants and the Land Registrar.

367. Secondly whereas the scope in the Nakuru JR No E002 of 2021 was concerned with the procedural propriety of the Land Registrar's actions (Certiorari/Mandamus), it did not determine the validity of the underlying root of title, or the merits of who actually owns and therefore it did not bar a party from filing a substantive suit to prove their title. In the present suit, the Plaintiffs now seek a declaration of ownership based on Adverse Possession and Sale Agreements, which issues were not directly and substantially in issue in the previous case.

368. The relationship between Nakuru ELC JR No. 2 of 2021 and the present suit however creates a complex legal scenario noting that Prayer (viii) of the present suit seeks for the cancellation of Titles 9563 to 9570 which had been reinstated vide Order (c) in Nakuru JR No. 2 of 2021. Prayer (x) in the present suit further seeks to reinstate a mutation (MUT/NV/1877/5/19) which the decree order (d) in Nakuru JR No. 2 of 2021 had specifically ordered to be removed and therefore trying to deal with the validity of the subdivision of the mother title No. Gilgil/Gilgil Block 1/7413 (Kekopey), I find, would be re-litigating the same map and registry entries already decided in the Nakuru JR No. 2 of 2021 which was a final decree on the registry entries. So in essence what this decree did was to extinguish land parcel No. Gilgil/Gilgil Block 1/7413 (Kekopey) which then ceased to exist and in place was now No. Gilgil/Gilgil Block 1/9563 to 9570 (Kekopey)

369. The Supreme Court of Kenya in **Dina Management Limited vs County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment)** pronounced itself as follows:

*“The doctrine of res judicata was founded on public policy and was aimed at achieving two objectives namely, that there must be finality to litigation and that the individual should not be harassed twice with the same account of litigation. The doctrine of res judicata may be pleaded by way of estoppel so that where a judgment had been delivered, subsequent proceedings were estopped. Where res judicata was pleaded by way of estoppel to an entire cause of action, rather than to a single matter in issue, it amounted to an allegation that all the legal rights and obligations of the parties were concluded by the earlier judgment, which may have involved the determination of questions of law as well as findings of fact, that was a form of action estoppel.”*

370. While *res judicata* is designed to ensure that there is an end to litigation, the legal system generally refuses to protect a judgment that was obtained through trickery or deception. This involves things like perjury, or forged documents presented *during* the trial. Because the court had the chance to weigh that evidence during the original case, courts are stricter about letting you reopen a case based solely on intrinsic fraud such that when a court finds that the previous judgment was “procured by fraud,” it is often treated as void or “voidable,” and cannot be used to block a new trial.

371. In **Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) [2023] KESC 105 (KLR) (15 December 2023) (Judgment)**, the Supreme Court had at paragraphs 81, 82 and 83 observed as follows:

*“In the instant case, Sirikwa pleaded that the allocation and transfer of the suit parcels was tainted by fraud and lack of due process and was therefore illegal, null and void. The particulars of fraud were tabulated as refusal to transfer the suit parcels to Sirikwa notwithstanding official commitment by the government, trying to defeat and deprive Sirikwa of its*

*right to the suit parcels, and endeavouring to illegally confer title to the suit parcels to other purported beneficiaries.*

*We are unconvinced that such vague particulars of fraud were proved to the required standard going by the absence of any serious attempt to table concrete evidence to prove the subject allegations to the required degree...”*

372. In the instant case the Plaintiffs pleaded as follows;

*“A declaration do issue that the court orders obtained by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in;*

*Grace Wanjiru Ng’anga & 2 others v Elias Ngugi Ng’ang’a & another [2020] eKLR, & Republic v Naivasha Land Registrar & 2 others Ex Parte Grace Wanjiru Nganga & 2 others [2020] eKLR were fraudulently obtained and the same be nullified”.*

373. No evidence however was led as to how the said orders were fraudulently obtained by the 1<sup>st</sup> -3<sup>rd</sup> Defendants that misled the court in the Nakuru JR No 2 of 2021, maybe by non-disclosure of fact or by use of fake documents.

374. Indeed, it is not lost that the Plaintiff’s knew about the 2021 case wherein they sought to be joined as ex-parte parties. I find that the current suit is res judicata in terms of prayers vii, viii, ix and x herein a determination of the same having been decided in the Nakuru JR No 2 of 2021.

375. Section 26 of the Limitation of Actions Act provides as follows;

*“Where, in the case of an action for which a period of limitation is prescribed, either—*

*(a)the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent;  
or*

*(b)the right of action is concealed by the fraud of any such person as aforesaid; or*

*(c)the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:"*

376. Section 26 of the Limitation of Actions Act is a provision of the law that extends the normal limitation period in three specific circumstances being fraud, concealment, or mistake wherein the period of limitation does not begin to run until the Plaintiff has discovered the said fraud or could with reasonable diligence have discovered it. The Plaintiff's claim is that the Defendant's titles were obtained fraudulently. The evidence herein adduced was to the effect that after they had discovered that the mother title No. Gilgil/Gilgil/Block 1/7413 had been fraudulently registered in the names of Elias Ngugi Ngige and Grace Nduta Theuri, the Plaintiffs had lodged a complaint with the district land Registrar Nakuru vide a letter dated 12<sup>th</sup> May 2008 where they had specifically protested the issuance of the title to Elias Ngugi. In response, the Land Registrar, vide a letter dated 22<sup>nd</sup> May 2008 herein produced as Df exh 22 advised them to hold a meeting to select their trustees so as to enable him cancel that title. This depicted their full knowledge of the facts they are now calling "fraud. To this end there is no doubt that the alleged fraud had been discovered in the year 2008 and therefore the 12-year clock started the moment the fraud became discoverable.

377. The 2008 registration of Elias and Grace was a public record at the Land Registry and therefore by law, the said registration served as constructive notice to the whole world. Once they became aware of the entry in the register that contradicted their interest, they had been required to move to court. Waiting 15 years was a failure of reasonable diligence. They had sat on their rights. Under Section 7 as read with Section 26 of the Limitation of Actions Act, the period of 12 years to recover land began to run in May 2008 and expired by operation of law in May 2020.

378. I find that the Plaintiffs' attempt to rely on the Nakuru ELC JR No. 2 of 2021 to "reset" the clock a legal fallacy, as that case was a procedural

contest over entries that existed since 2009, all of which were within the Plaintiffs' knowledge. the Nakuru JR No 2 of 2021 was therefore not a new 'fraud', but a legal proceeding to restore the 2009 subdivisions and did not "restart" the limitation period for an old grievance.

379. The Supreme Court of Kenya emphasized the centrality of jurisdiction in **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR** as follows:

*"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law."*

380. The Court of Appeal had outlined the law on enlargement of limitation period under Section 27 of the Limitation of Actions Act in the case of **Mary Osundwa v Nzoia Sugar Company Limited (2002) eKLR** wherein it had held as follows:

*"This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. That action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. This section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other cause of action other than those in tort."*

*In the case of **Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] KECA 152 (KLR)** the Court of Appeal had held as follows:*

*"It is common ground that the cause of action in this matter was based on contract and that section 4 of the Limitation of Actions Act prohibits suits filed after the end of six years from the date on which the cause of action accrued. As Potter,*

*JA observed in the case of **Gathoni vs Kenya Cooperative Creameries Limited (Civil Application No. 122 of 1981):***

*"The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest."*

*It is also trite law that the period of limitation cannot be extended. If any authority is necessary, this Court in **Divecon vs Samani (1995-1998) EA 48** stated as follows:-*

*"...to us, the meaning of the wording of section 4 (1) is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action. A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that ""the wording of section 4 (1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked."*

381. Section 7 as read with Section 26 of the Limitation of Actions Act which prescribes the period of 12 years to recover land and or upon the discovery of fraud, does not vest in the courts discretionary jurisdiction to enlarge the said limitation period. It therefore follows that; the plaintiff's claim was statute-barred and remains statute-barred. No court has jurisdiction to entertain the claim regardless of the hardship.

382. It is now settled law that where a court finds that it has no jurisdiction, it must immediately down its tools as was held in **The Owners of Motor Vessel “Lillian S”** (supra). In the end and for the above reasons, I find that the court has no jurisdiction to try the Plaintiffs’ suit which is herein dismissed with costs.

**Dated and delivered via Microsoft Teams at Naivasha this 29<sup>th</sup> day of January 2026.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT- JUDGE**