

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC NO. 283 OF 2017
(FORMERLY NAKURU HCCC NO. 49 OF 2004)

**AGUNUS WANGUI WAWERU AND JANE
MUTHONI WAWERU (Legal Representatives
of the Estate of WAWERU
MACHARIA (Deceased).....PLAINTIFF**
VERSUS

**EDITH NJERI MURIGU (Legal Representative of
Estate of FRANCIS
MURIGU MURAGE (Deceased).....1ST DEFENDANT**
**PETER NJUGUNA
GITAU.....2ND DEFENDANT**

JUDGMENT

1. By an Amended Complaint dated 28th October, 2017, the Plaintiffs herein sued the Defendants seeking the following orders:
 - a) *A declaration that the amalgamation of plot numbers 16 and 17 Moyasset Scheme in the circumstances was illegal and unlawful.*
 - b) *An order of cancellation of title number LR 9712/3 I.R 69839 issued to the 1st Defendant on 9th July, 1996.*
 - c) *A declaration that the transfer of L.R 9712/3 to the 2nd Defendant on 15th August, 2013 was illegal.*
 - d) *Cancellation of the transfer of L.R Number 9712/3 I.R 69839 by the 1st Defendant to the 2nd Defendant effected on 15th August, 2013.*
 - e) *An order directing the Registrar of titles or his successors to issue a certificate of title to the Plaintiff in*

respect of the parcel of land originally known as plot Number 17 Moyasset Scheme measuring 48 acres approximately.

- f) *A permanent order of injunction restraining the 1st and 2nd Defendants by themselves, their agents or servants or any other person/persons acting under them from entering, remaining on, wasting, encroaching, subdividing, transferring, evicting or in any other way interfering with the Plaintiff's ownership and occupation of a portion of the suit land originally known as plot Number 17 Moyasset Scheme.*
- g) *Costs of the suit.*

PLAINTIFFS' CASE

2. PW1, Samuel Thiongo, an Assistant Director of Land Adjudication and Settlement Nakuru, testified that he was the officer in charge and custodian of the scheme's records, which did not show that Mzee Jomo Kenyatta was an allocating authority or in any other capacity.
3. He further testified that the official records showed that Plot Nos. 16 and 17 were distinct parcels, and there was no evidence of the consolidation or amalgamation of the two plots. It was his evidence that the original allottee of plot 16 was John Kamau Muigai, who executed a charge on the land in October 1973, and later transferred the plot to the 1st Defendant on 6th April, 1976 and a land Control Board consent was issued later in the same year.

4. PW1 further testified that plot 17 was also initially held by John Kamau Muigai until it was transferred to the Plaintiff and that the Plaintiff was the lawful owner according to the department's records. It was his evidence that there was a boundary dispute between 1980 and 1983, which was resolved by each party retaining their specific parcel and that the issue did not involve consolidation of parcels No. 16 and 17 land.
5. Upon cross-examination by Ms. Njoroge, he admitted that he neither had the original application for John Kamau Muigai, nor the cadastral map or the complete Moyasset scheme plan, which were kept in Nairobi. He confirmed that Plot 16 had changed hands through his office, all government dues were paid, and his office had raised no issues at the time of the transfer from the 1st Defendant to the 2nd Defendant.
6. He stated that the deed plan presented by the defence was outside what they ordinarily did on settlement Scheme land. He added that according to his records, the Plaintiff was the fully paid-up and recognized owner of Plot No. 17. PW1 further stated that according to the transfer the acreage was 36.41 Hectares and that according to his records, plot No. 16 is about 50 acres which is not equivalent to the one on the transfer. He also told the court that the 1st Defendant has a leasehold while SFT records refer to a freehold.
7. Upon cross-examination by Mr. Ndubi, PW1 stated that the 36 original allottees of Moyasset Scheme were identified through plot allocation

Committees who made applications but told the court that he did not have any application submitted by Kamau Muigai.

8. PW1 confirmed that the loans for Plot Nos. 16 and 17 were repaid in 56 instalments over a period of 28 years and had a file for each parcel. PW1 further stated that the dispute between Plot Nos 15, 16 and 17 was in respect of a road crossing the 3 parcels.
9. On re-examination, by Mr. Kagucia, PW1 explained that the standard SFT (Settlement Fund Trustee) procedure, involved creating a physical plan, accounting for public utilities, and then subdividing the remainder for beneficiaries identified by a plot allocation committee.
10. PW1 stated that the Defendant's deed plan was an isolated case created with the specific intention of having a title separate from the standard Moyasset Scheme. He added that his Nakuru office did not contain any documentation regarding the amalgamation of Plot Nos. 16 and 17.
11. He further stated that in the instant case it appeared to be a case of double titles, and had neither a record of any title released to the 1st Defendant, nor any SFT record amalgamating plots for the 1st Defendant's benefit.
12. PW2, Agnes Wangui Waweru, adopted her witness statement dated 7th October, 2022, as her evidence in chief, and stated that they occupied the suit land plot No. 17 together with her late husband over 20 years,

having first settled there in 1984. It was her evidence that they had been cultivating the land and buried her son and grandson on the suit land. She also stated that the land was 48 acres but never constructed any houses on Plot No. 16.

13. It was her testimony that she left the suit land twice due to ethnic clashes in 1992 and 2007, and later returned and was assisted by the government to rebuild their houses. She produced original photographs of the plantations and activities on the suit parcel as Pexh.13r (i) to Pexh.13 (xxviii), a report as PExh.5(c) and testified that the 2nd Defendant had invaded her land when the case was still pending before the court. PW2 also relied on the documents that the husband had filed.
14. Upon cross- examination by Ms Njoroge, PW2 stated that they lived on Plot No 17 with her late husband, Waweru Macharia, for over 20 years, from 1984. She denied claims that the 1st Defendant's wife had ever farmed wheat on their portion of the land. She however admitted that the original allottee, John Kamau Muigai, never gave her husband a title deed. PW2 further admitted she neither knew if the 2nd Defendant had a valid title nor had purchased the land from the 1st Defendant.
15. Upon cross-examination by Mr. Ndubi, PW2, stated that she was not aware whether there was a dispute between John Kamau and Francis and whether the land ever had land Reference No. 9712/3.

16. Upon re-examination by Mr. Kagucia, PW2 stated that the 2nd Defendant entered the land during the period when her family had vacated due to ethnic clashes. It was PW2's testimony that she was seeking the cancellation of the 2nd Defendant's title because he had consolidated Plot 16 and Plot 17 under a single title. She added that the 2nd Defendant was currently cultivating Plot No. 17, which was given to her husband by Mr. Kamau. She further told the court that she has never encroached on the 2nd Defendant's parcel.
17. PW3 Francis Wachira Mwiri, adopted his witness statement dated 25th April, 2019, and stated that he had been employed by the Plaintiff locally to construct houses.
18. Upon cross-examination by Ms. Njoroge, PW3 confirmed that he built the houses on Plot No. 17 near the river which was adjacent to both the tarmac road and the river.
19. On re-examination, by Mr. Kagucia, PW3 stated that he only knew the Plaintiff as the owner of the suit land and that the houses he had constructed were demolished during the ethnic clashes of 2007. He also stated that he was not involved in the rebuilding process following the clashes and that he was not aware of the current occupants of the suit parcel.

20. PW4, John Kamau Muigai adopted his witness statement dated 25th April, 2019, and testified that he sold Plot No. 17 to the Plaintiff. It was his testimony that he was originally given the land in the Moyasset Settlement Scheme by the Settlement Fund Trustee (SFT) by Jomo Kenyatta. PW4 stated that he entered into an agreement for the sale of Plot No. 17 with the Plaintiff who owns the suit land.
21. Upon cross-examination by Mr. Ndubi, he stated that he had visited President Jomo Kenyatta and stated that he was originally given 50 acres of land which he sold. He also told the court that in 1976, he gave Plot No. 16 to the 1st Defendant for free as a friend. He confirmed that Plots 16 and 17 were one big plot before the subdivision, and that the land was not fenced at the time of the sale. It was his evidence that both the Plaintiff and 1st Defendant were each entitled to 48 acres each.
22. PW4 told the court that he was not aware that Francis Murigu had written a letter to amalgamate Plot Nos. 16 and 17 and that he got a title in his name for 100 acres.
23. Upon cross-examination by Ms. Njoroge, PW4 stated that they used to plant wheat with Francis but later it was the Plaintiff who cultivated the land. He also stated that Waweru told him that someone had fenced the land. He confirmed that when he sold the land to the Plaintiff it did not have a title deed.
24. Upon re-examination by Mr. Mburu, PW4 stated that Francis was his business partner in the Kio sawmill and there was no relationship

between the sawmill and the plots. He did not request an exchange for the land but gave Plot No. 16 to the 1st Defendant as a friend. He confirmed that, within the Moyasset Scheme, he only held Plot Nos. 16 and 17.

DEFENDANTS' CASE

25. DW1, Edith Njeri Murigo adopted her witness statement dated 3rd July, 2023, as her evidence in chief and produced her list of documents dated 7th June, 2007 as Dex. No. 1 to 12 and Dex No. 12 to 14. She testified that the land was originally given to John Kamau Muigai, her husband's business partner in a sawmill business. It was her testimony that the two went to State House in 1976 where Kamau requested an exchange and he received another parcel while her husband was allocated plot No. 16.
26. It was DW1's evidence that they were allocated one plot, which Plot No. 16 was measuring 36.41 Hectares, and not two separate parcels as claimed by the Plaintiff. She stated that the suit land was transferred to her late husband in 1976. She further testified that her late husband repaid the SFT loan, the survey fees, and land rates to the Municipal Council of Nakuru. DW1 testified that her late husband sold the land to the 2nd Defendant in 2004.
27. Upon cross-examination by Mr. Mburu, DW1 confirmed that the husband sold the property to the 2nd Defendant after the transfer to her late husband had been finalized. She admitted that there was a transfer of

Plot No. 17 from John Kamau Muigai to the Plaintiff and that she never lived on the property.

28. On re-examination by Ms. Njoroge, DW1 stated that plot No. 17 was missing from the official area list, however the acreage listed in the area list was consistent with the acreage provided in the title deed. Further, that there were no structures on the land during the time her family was utilizing it.
29. DW2, Peter Njuguna Gitau adopted his witness statement dated 19th March, 2018, as his evidence in chief and produced his list of documents dated 19th April, 2018, as Dex No. 1 to 8. It was DW2's testimony that he purchased the suit property from the 1st Defendant vide a sale agreement dated 22nd December, 2004, at a consideration of Kshs. 9 million, after conducting a search at the Ministry of Lands in Nairobi on 19th February 2004 before purchase.
30. He testified that they got an order in CM's Civil Case No. 303 of 2003, restraining the Plaintiff from interfering with the suit land. He further stated that after payment of the purchase price, the 1st Defendant paid all the necessary fees and a transfer was effected in his name on 15th August 2013. He testified that he was the lawful owner of the suit land having purchased the same procedurally and was currently in possession of the land

31. Upon cross-examination by Ms. Njoroge, DW2 stated that he did his due diligence and confirmed that the land belonged to Francis Murigu the 1st Defendant.
32. DW2 admitted that the specific plot No. LR No. 9712/3, was not indicated in the sale agreement, further that he neither had the consent to transfer nor a transfer document from the 1st Defendant to himself. It was his testimony that he pays land rates to the county but did not file any receipts to prove these payments. He further stated that the area list actually included both Plot No. 16 and Plot No. 17.
33. Upon re-examination, by Ms. Bosibori, DW2 stated that IR No. 15970/20 found in his agreement matched the information in the application for registration. He added that the 1st Defendant (DW1) confirmed that he did not owe them any money for the purchase.
34. DW3, Eliab Kamau, the Deputy Director of the Directorate of Land and Settlement in Nairobi, produced the initial area list from the Directorate of Survey and a letter dated 31st October, 1983, and testified that the survey was conducted under the Registration of Titles Act (RTA) and was completed in 1983, but the official scheme map no longer used the old plot numbers and identified LR No. 9712/3 as a single parcel.
35. It was his testimony that plot No. 17 did not exist in the official Area List, and that the letter which referred to Plot No. 7912/3 was a clerical error. He added that the correct series for the area was 97 and not 79. DW3 confirmed that the parcel measured 36.41 hectares which acreage

tallied with the figures provided by the Surveyor. He testified that the original allottee transferred Plot No. 16 as a gift to the 1st Defendant. DW3 testified that once the SFT loan is fully repaid, the department discharges the property, at which point it becomes private property.

36. Upon cross-examination, DW3 confirmed that the transfer document dated 3rd July, 2001 from John Kamau Muigai to the Plaintiff for Plot No. 17 bore an official stamp from the Nakuru Settlement office. He was referred to the demand letter dated 15th February, 2012 addressed to the Plaintiff, and stated that the officer in Nakuru who signed the notice did not have the authority to sign on behalf of the Director in Nairobi.
37. DW3 confirmed the existence of a boundary dispute involving Plot Nos. 15, 16, and 17, and stated that Plot No. 17 ceased to exist in 1983 following the final survey. He added that because the plot was no longer in the official Area List by that time, it was not possible to transfer it in 2002. He admitted that Plot No. 16 and 17 were consolidated into LR No. 9712/3, and that Moyasset Scheme list originally showed John Kamau Muigai as the owner of both Plot Nos. 16 and 17.
38. According to DW3, land with an active SFT loan could not be transferred without the direct involvement and consent of the SFT, further that his office did not have records of any payments made by the Plaintiff to John Kamau Muigai, as the Plaintiff was not considered an official allottee since there was no record of a transfer in his favor within the Nairobi files.

39. DW3 confirmed that his records showed that the 1st Defendant had paid the SFT loan for LR No. 9712/3 and that the transfer was officially registered in his favor.
40. On re-examination, DW3 stated that Plot No. 17 was not in existence in 2001, and that the transfer document dated 4th July, 2001 emanated from the settlement office in Nakuru. He confirmed that the officer who signed the demand Notice worked in their office, and that there was no relationship between 7912/3 and LR No. 9712/3.

PLAINTIFF'S SUBMISSIONS

41. Counsel for the Plaintiff filed submissions dated 11th November, 2025, and identified the following issues for determination:
- a) *Whether the Plaintiff (Deceased) is the lawful and legitimate owner of that portion (originally Plot No. 17) measuring approximately 48 acres out of parcel of land comprising Land Reference No. 7912/3.*
 - b) *Whether the amalgamation of Plot numbers 16 and 17 and the registration of the 1st Defendant (Deceased) as the proprietor of the resultant L.R NO 9712/3 was fraudulent, irregular and unlawful.*
 - c) *Whether the purported sale and transfer of LR NO. 9712/3 by the 1st Defendant (Deceased) to the 2nd Defendant was illegal and/or unlawful.*
 - d) *Whether the Plaintiff (Deceased) is entitled to the reliefs sought.*

42. On the first issue, counsel submitted that a valid and enforceable agreement for the sale of plot 17 existed whether in the original oral form or as a written agreement. Counsel further submitted that it is trite that prior to the amendment of the Law of Contract Act in 2002, there was no strict requirement for sale of land to be in writing so long as the validity of the sale was proved.
43. It was Mr. Mburu's submission that in this case the sale transaction was validated by the events that took place thereafter such as:
- a) Payment of the purchase price of kshs 192,000/ which John Kamau Muigai acknowledged*
 - b) Taking possession of Plot No 17 since 1984, building a residence and other structures thereon,*
 - c) Farming of wheat, maize beans and other crops on the land,*
 - d) Rearing cattle chicken and goats*
 - e) Issuance of consent to transfer by the Land Control Board and*
 - f) Burying their son and grandson on the land*
44. Counsel relied on **Section 38(2) (b) of the Land Act** and the case of **Maiyebei v Chesebe (Environment and Land Appeal E022 of 2023) [2025] KEELC 5294 (KLR) (10 July 2025) (Judgment)**, and submitted that the subject matter in the agreement was described as a portion of L.R NO 9712/3 measuring approximately 48 acres, He further submitted that the portion referred to in the written agreement was plot

No.17, of which PW1 produced the crucial documents like application for LCB consent, consent to transfer, and transfer.

45. According to counsel, John Kamau Muigai and the Plaintiff (Deceased) engaged in a lawful sale transaction with the knowledge and approval of the Settlement Officers as a result the Plaintiff (Deceased) replaced John Kamau Muigai as the legitimate allottee of Plot No. 17.
46. Counsel relied on **Sections 107 (1) (2), 109 and 112** of the **Evidence Act** and the Court of Appeal case in **Mumbi M'nabea V David M. Wachira [2016] eKLR**, and submitted that PW1 testified that the records in the Settlement Department did not show that plots 16 and 17 were amalgamated giving rise to L.R NO. 9712/3.
47. It was counsel's submission that the 1st Defendant's assertion that he was given the suit land in 1976 by the late Mzee Jomo Kenyatta was a concocted story intended to deny the Plaintiff his property which he acquired from PW4 at a consideration.
48. On the second issue, as to whether the amalgamation of Plot Nos 16 and 17 and registration of the 2nd Defendant as the proprietor of the resultant L R No 9712/3 was illegal fraudulent and irregular, counsel submitted in the affirmative and stated that the initial list of settlers of Moyasset Scheme showed that John Kamau was the original allottee of plot No. 16 and 17 measuring 48 acres each.

49. He submitted that the amalgamation of the plots was done without the knowledge of PW4, and the original allottee. It was his submission that the 1st Defendant (Deceased) colluded with officers of the Settlement Office to deny the Plaintiff his suit parcel.
50. He added that there was defiance of the Director of settlement orders vide the letter dated 19th August, 1987 which admitted that there was an error in the consolidation of the two plots.
51. On the third issue, counsel submitted that having established that the amalgamation of the plot Nos. 16 and 17 and the transfer by the SFT to the 1st Defendant was irregular, it follows that the 1st Defendant did not obtain a good title that could subsequently be transferred to the 2nd Defendant.
52. Mr. Mburu submitted that had the 2nd Defendant conducted a comprehensive due diligence into the ownership of the suit parcel, he would have established that the Plaintiff (Deceased) was the rightful owner of the portion measuring 48 acres LR 912/3 originally plot 17. Further that the 2nd Defendant did not adduce evidence to show that he paid valuable consideration for the suit land. Counsel relied on the Court of Appeal case of **Samuel Kangethe V Land Registrar [2015] eKLR** and Section 26 of the Land Registration Act.
53. On the fourth issue counsel relied on the case of **Republic V Land Registrar Muranga & Another [2024] eKLR** and submitted that from

the evidence tendered by PW1, PW2 and PW4 they confirmed that the Plaintiff was the beneficial owner of plot number 17.

54. It was counsel's submission that the Plaintiff having proved his case, he is entitled to the reliefs sought in the plaint, and relied on the case of **Kenya Power & Lighting Co. Limited V Sheriff Molana Habib [2018] eKLR.**

1ST DEFENDANT'S SUBMISSIONS

55. Counsel for the 1st Defendant filed submissions dated 3rd December 2025 and gave a brief background to the suit land and the evidence adduced. Counsel relied on Section 3 of the Law of Contract Act and submitted that the Plaintiff maintained in her pleadings and evidence that her late husband entered into an oral agreement with John Kamau Muigai in 1982 who sold him plot No. 16 and during the hearing she produced an agreement dated 6th March 1990 for purchase of 48 acres being a portion of L R No 7912/3 together with the buildings and improvements therein at a consideration of kKhs. 192,000/
56. Counsel further submitted that the final settlement lists produced by PW3 clearly show that Plot No. 17 does not exist on the area list and that the Plaintiff did not adduce any evidence to show that Plot Nos. 16 and 17 were amalgamated to create parcel No. LR No 9712/3 measuring 58.87 Hectares.

57. Ms. Njoroge submitted that the application for consent from the land Board by John Kamau to Francis Murage could not be accurate as it is the Settlement Fund Trustees who apply to the Land Board to transfer upon payment of the dues owed to SFT.
58. Counsel relied on Section 26 of the Land Registration Act and the cases of **R. G Patel v. Lalji Makanji [1957] EA 314**, **Musonga vs Nyati [1984] KLR 425** and **Katende Vs Haridas and Company Limited [2008] E.A 173**, **Vijay Morjaria vs Nansingh Madhusingh Darbar & Anor [2000] eKLR**, and submitted that the Plaintiff has not established the allegation of fraud against the 1st Defendant and urged the court to dismiss the case with costs.

2ND DEFENDANTS SUBMISSIONS

59. Counsel for the 2nd Defendant filed his submissions dated 25th November, 2025 and identified two issues for determination:
- a) *Whether the Plaintiff is entitled to the reliefs sought in the further amended plaint.*
 - b) *Who should bear the costs of the suit.*
60. On the first issue, as to whether the Plaintiff is entitled to the reliefs sought, counsel relied on Section 26 of the Land Registration Act and the case of **Tabitha Kinyanjui & Another V Stephen Kinyanjui Mburu, Nakuru ELC 159 of 2012**, and submitted that the Plaintiff has not established the allegation of fraud against the defendants

61. He submitted that the failure by the Plaintiff to sue the Settlement Fund Trustee who was a key player in the entire process renders the Plaintiff's claim of fraud unfounded and unsubstantiated. Counsel further submitted that there was no evidence that there existed two separate allotment letters for plot numbers 16 and 17, as they were one parcel.
62. Mr. Ndubi relied on the case of **Torino Enterprises Limited V Attorney General (Petition 5 [E006 of 2022] (2003) KESC (KLR))** and submitted that John Kamau Muigai had not paid anything in the form of loan repayment as a borrower to have acquired proprietary rights of plot No. 17.
63. It was counsel's submission that the Plaintiff took advantage of the status quo orders by occupying the land locking out the 1st Defendant as the registered owner of the land, and relied on the case of **Civil Appeal No. 83 of 2016 Cooperative Bank of Kenya Ltd V Patrick Kangethe Njogu & Others.**
64. On the final issue of costs, counsel relied on **Section 27 of the Civil Procedure Act** and the case of **Republic V Rosemary Wairimu Munene Ex parte Applicant V Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review application no. 6 of 2014**, and urged the court to dismiss the Plaintiff's suit with costs.

ANALYSIS AND DETERMINATION

65. The issues for determination that arise from the pleadings are as follows:

- a) *Whether the Plaintiff (Deceased) is the lawful and legitimate owner of that portion (originally Plot No. 17) measuring approximately 48 acres out of parcel of land comprising Land Reference No. 7912/3.*
- b) *Whether there was any amalgamation of Plot Nos. 16 and 17 and if so whether the registration of the 1st Defendant (Deceased) as the proprietor of the resultant L.R NO 9712/3 was fraudulent.*
- c) *Whether the purported sale and transfer of LR NO. 9712/3 by the 1st Defendant (Deceased) to the 2nd Defendant was illegal and/or unlawful.*
- d) *Whether the Plaintiff (Deceased) is entitled to the reliefs sought.*

66. This is a case where the transactions started with friendships, business partners working together to the extent of offering to give land for free in the spirit of brotherhood and friendship. The history of the parcel of land started in the 1970's when land was still plenty and the Settlement Fund Trustee was settling the landless through identification in settlement Committees and being given loans whereby the land was charged and only discharged upon payment of loan.

67. The evidence in this case is captured above including the submissions by counsel. On the first issue as to whether the Plaintiff is the rightful owner of that portion of land (originally Plot No. 17) measuring approximately

48 acres out of parcel of land comprising Land Reference No. 7912/3, the question that must be answered is whether Plot No 17 exists.

68. It is not in dispute that the initial list of settlers of Moyasset Scheme showed that John Kamau Muigai was the original allottee of plot No. 16 and 17 measuring 48 acres each. In fact John Kamau Muigai was the one who brought the other parties into the picture of acquiring land in this settlement scheme.
69. The documents produced by the Plaintiff bear the name of John Kamau and Francis Murigo and the transfers that were done in respect of Plot No. 16. From the onset it is important to note that PW1, an Assistant Director Land and Settlement Nakuru, testified that the official records showed that Plot No. 16 and 17 were distinct parcels, and there was no evidence of consolidation or amalgamation of the two plots. It was his evidence that the original allottee of plot 16 was John Kamau Muigai, who executed a charge on the land in October 1973, and later transferred the plot to the 1st Defendant on 6th April, 1976 and a Land Control Board consent was issued later in the same year.
70. PW1 further testified that plot 17 was also initially held by John Kamau Muigai until it was transferred to the Plaintiff who was the lawful owner according to the department's records. It was his evidence that there was a boundary dispute between 1980 and 1983 which was resolved by each party retaining their specific parcel and that the issue did not involve the consolidation of parcels No. 16 and 17 land.

71. The evidence of PW1 established that plot John Kamau had been allotted Plot Nos. 16 and 17 which he later sold plot No 17 to the Plaintiff and gave the 1st Defendant plot No 16.
72. The evidence of PW1 was crucial as it emanated from the Settlement Office which had the records of the transactions in respect of the suit land. PW1 told the court that they did not have any documentation in respect of the amalgamation of Plot. Nos 16 and 17.
73. PW2 on the other hand stated that they have stayed on plot No. 17 for the last 20 years apart from the intermittent absence due to ethnic clashes during 1992 and 2007 elections. How did the defendants allow the Plaintiff to bury her son and grandson on Plot No. 17 if they were laying claim on it. Where were they or their caretaker when the burial took place and there is no evidence of resistance or an order to stop the burials or to exhume the bodies? Burying a body on a disputed land or otherwise does not prove ownership.
74. The documents produced in support of the Plaintiff's case in respect of the transaction that led to the acquisition of the suit land point towards a legal beneficial interest in the suit land. The Plaintiff and the 1st Defendant were to share the land measuring 48 acres each and surprisingly, that the land was later amalgamated or consolidated to give the 1st Defendant a larger parcel of land which he subsequently sold to the 2nd Defendant. It follows therefore that the evidence that Plot Nos 16

and 17 were 48 acres each for the plaintiff and the 1st Defendant who decided to sell the whole parcel to the 2nd Defendant.

75. PW4's testimony was crucial as he was the surviving party in the original transaction as the Plaintiff and the 1st Defendant whom they dealt with are deceased. His evidence was corroborated by the evidence of PW1 and DW3 Eliab the Deputy Director of Land and Settlement Nairobi who stated that the original allottee transferred plot No 16 to the 1st Defendant as a gift which is what John Kamau said.
76. John Kamau the original allottee stated that plot Nos 16 and 17 were initially one big parcel which was later subdivided and that the Moyasset scheme list originally showed that John Kamau Muigai.
77. It should be noted that the Plaintiff is only interested in a portion measuring 48 acres out of L R No 9712/3 and not the whole portion and more particularly the original plot No. 17 which they have been in possession of. He is not claiming Plot No 16 which is a portion of L R No 9712/3 which was lawfully given to the 1st defendant who sold to the 2nd defendant.
78. On the 2nd issue on the legality of the amalgamation of plot Nos. 16 and 17, having found that Plot Nos 16 and 17 were originally distinct, were allocated to John Kamau Muigai who later gave plot No. 16 as a gift to the 1st defendant, if there was any amalgamation or consolidation, then the same was done without the knowledge of the Plaintiff. There are several correspondences in respect of a boundary dispute between Plot

Nos, 15, 16 and 17, and the relevant parties are John Kamau Muigai, Francis Murigu the 1st Defendant and Gideon Thuo.

79. In a letter dated 11th October 1985 Njogu & Co. Advocates wrote to the Director of Settlement about the apparent consolidation of Plot Nos. 16 and 17 into parcel No L R No. 9712/3 measuring about 36.41 hectares, each parcel was approximately 48 acres. The Advocate wrote a letter requesting that the completion of the deed plan be withheld until the anomaly has been resolved to the satisfaction of the parties involved.
80. The Director of Settlement replied to the letter dated 11th October 1985 vide a letter dated 19th August 1987 whereby he stated “***that he had already discussed the matter with the client and accepted that L R No. 7912/3 should be subdivided into two equal portions in accordance with the enclosed copy of the development plan at his expense so that eventually Francis Murigu Murage becomes the owner of plot No. 16 and your client the owner of Plot No. 17.***”
81. From the correspondences, it is clear that the Director of Settlement admitted that there was a mistake in the consolidation and ordered that the two plots be subdivided equally for John Kamau Muigai and Francis Murigu at their own costs. This is an anomaly, which was never corrected leading to the 1st defendant acquiring a title to the two parcels of land without first subdividing.
82. In the case of ***Elijah Makeri Nyangwara –Vs- Stephen Mungai Njuguna & Another [2013]*** the Court held that:

“The evidence in this case puts no one in doubt that the title to the 1st Defendant was obtained illegally, unprocedurally or through a corrupt scheme. The documents that conveyed title to him were forged. The title could not therefore have been obtained legally or procedurally. I am satisfied that the provisions of Section 26 (1) (b) have been met and that the title of the 1st defendant is liable to be cancelled. I therefore proceed to cancel the title of the 1st defendant and his registration as proprietor of the suit land. The Plaintiff should be registered as owner of the suit land. It is regretful that the 1st defendant was snared by the scheme perpetuated by the 2nd defendant. I sympathise with him, but I must ensure that the real title holder is protected and that he is registered as the proper owner of the suit land.”

83. The 1st Defendant obtained his title unprocedurally, knowing that he was not entitled to the two parcels of land namely Plot No. 16 and 17. He was only entitled to one plot No. 16. He was aware of the correspondence from the Director of Settlement on the issue that the plots had been consolidated by error but went ahead and procured a title for the whole parcel. It is also telling that the 1st Defendant went ahead and sold the land to the 2nd defendant without disclosing that a portion of the land did not belong to him. Waving of a title for the whole parcel of land does not make it indefeasible as if the same was acquired illegally or through corrupt schemes, then Section 25, and 26 of the Land Registration Act come to aid and correct the anomaly.

84. In the case of **Dina Management Ltd vs County Government of Mombasa & Another [2023] KESC 30 (KLR)**, the court held that a title is not an end in itself but rather the culmination of a legally sound process. The mere fact that an individual's name appears on a green card does not, in and of itself, validate the integrity of their title, particularly in cases where the court is called upon to investigate the root of ownership.

85. The court is empowered under Section **80** (1) of the Land Registration Act to cancel a title which was procured unprocedurally. The Section provides as follows:

“(1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2)The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

86. I have considered the pleadings, the evidence on record, the submissions by counsel and find that the Plaintiff has established his case on a balance of probabilities and proceed to make the following determination:

- a) *A declaration is hereby made that the amalgamation of plot Nos. 16 and 17 Moyasset Scheme was illegal and unlawful.*
- b) *An order is hereby issued to the Land Registrar cancel title No. LR 9712/3 I.R 69839 issued to the 1st Defendant on 9th July, 1996.*
- c) *A declaration is hereby made that the transfer of L.R 9712/3 to the 2nd Defendant on 15th August, 2013 was illegal.*
- d) *An order is hereby issued for the cancellation of the transfer of L.R Number 9712/3 I.R 69839 by the 1st Defendant to the 2nd Defendant effected on 15th August, 2013.*
- e) *An order is hereby issued directing the Registrar of titles or his successors to issue a certificate of title to the Plaintiff in respect of the parcel of land originally known as plot No. 17 Moyasset Scheme measuring 48 acres approximately.*
- f) *A permanent order of injunction is hereby issued restraining the 1st and 2nd Defendants by themselves, their agents or servants or any other person/persons acting under them from entering, remaining on, wasting, encroaching, subdividing, transferring, evicting or in any other way interfering with the Plaintiff's ownership and occupation of a portion of the suit land originally known as plot Number 17 Moyasset Scheme.*
- g) *Costs of the suit to the Plaintiff.*

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF
JANUARY 2026.**

**M. A. ODENY
JUDGE**