

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC CASE NO. 38 [E034] OF 2021**  
**AS CONSOLIDATED WITH ELC NO. 30 OF 2017**

**KANYARKWAT GROUP RANCH-----**  
**1<sup>ST</sup> PLAINTIFF**  
**JULIUS LONGUROKWANG-----**  
**2<sup>ND</sup> PLAINTIFF**  
**PHILIP CHEMALA RUTO-----**  
**3<sup>RD</sup> PLAINTIFF**  
**LOKORLUKA LOTUNALE-----**  
**4<sup>TH</sup> PLAINTIFF**  
**JOSEPH**  
**NGIRUYE-----5<sup>TH</sup>**  
**PLAINTIFF**

**VERSUS**

**MERINGIRO LOKADIR JOSEPH-----1<sup>ST</sup>**  
**DEFENDANT**  
**ANTONY MUKELUK TONGOLO-----2<sup>ND</sup>**  
**DEFENDANT**  
**LOMANGIRO INVESTMENT LIMITED-----3<sup>RD</sup>**  
**DEFENDANT**  
**THE LAND REGISTRAR,**  
**WEST POKOT COUNTY-----4<sup>TH</sup>**  
**DEFENDANT**

**JUDGMENT**

**(A) INTRODUCTION**

1. These two files were consolidated by the court through a ruling delivered on **14/7/2021**. At the

time of consolidation, **ELC No. 30 of 2017** was at the defence stage, hereinafter the 1<sup>st</sup> and 2<sup>nd</sup> suits.

**(B) PLEADINGS IN ELC NO. 30 OF 2017**

2. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, who are also the 1<sup>st</sup> and 2<sup>nd</sup> defendants in **ELC No. 38 of 2021**, sued the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants, claiming to be the joint registered owners of Land Parcel No. **West Pokot/Kanyarkwat B/3** measuring approximately **259 Ha**, previously under the Kanyarkwat Group Ranch, hereinafter the suit land and the Group Ranch, respectively.
3. It was the plaintiffs' case in the 1<sup>st</sup> suit that the Group Ranch was dissolved and its members advised to obtain the title deeds for their land parcels, to which the plaintiffs obtained the suit land, which they hold in trust for the family of Meringiro Ptusir, that is comprised of forty households.
4. The plaintiff in the 1<sup>st</sup> suit averred that in **2013**, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants forcefully, without any colour of right, trespassed and invaded part of the suit land, started acts of cultivation, erection of structures, and started occupation therein, following which they made a report to the Group Ranch Committee, whose resolution was that the

defendants had no right to the land, hence should vacate from the same forthwith, since the 1<sup>st</sup> defendant did not belong to the Group Ranch while the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants' family land was at Chepkemei, Adurkoit and Chepkemei areas, respectively.

5. The plaintiffs averred that the defendants' acts of trespass, wrongful occupation, misuse, wastage, destruction, and degradation of the land deprived them of the use and quiet enjoyment of their land.
6. The plaintiffs prayed for:
  - (a) **Declaration that the defendants, by themselves, agents, or any other person claiming through them, have no proprietary interest in the suit land, and should vacate the same and or be forcefully evicted.**
  - (b) **Permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants either by themselves or through their agents, servants or any one acting on their behalf or the case may be from cultivating, cutting trees, erecting construction, or putting up building, or any structure or improvements of whatsoever nature or damaging or committing acts of wastage or any other manner whatsoever, interfering with the plaintiffs' user, and occupation of the suit property.**

- 7.** The defendants opposed the suit through a statement of defence and counterclaim dated **4/3/2017**, denying the contents of paragraphs **1 - 16** of the plaint. To the contrary, the defendants denied that the suit land belongs to the plaintiffs jointly or that the Group Ranch had been dissolved as alleged or at all.
- 8.** Further, the defendants forcefully denied trespassing into any land belonging to the plaintiffs, or such a complaint having been referred to and having been resolved by the Group Ranch committee to the effect that the defendants had no right to the said land; otherwise, their late father was and still appeared as a group ranch member.
- 9.** The defendants averred that the plaintiffs had no land in the Group Ranch and that it was not true that the defendants' land was in a different locality as alleged by the plaintiffs, apart from the suit land. The defendants denied that there existed any title deed for the suit land issued in favour of the plaintiffs as alleged or at all, to be entitled to the reliefs sought in the plaint.
- 10.** By way of a counterclaim which had no titular heading or verifying affidavit accompanied by an

authority to plead and sue on behalf of the rest of the defendants, the defendants averred and insisted that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were never members of the group ranch, maintained that the group ranch was still in existence, and that no single member of the group ranch had processed a title deed.

**11.** The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants as plaintiffs in the counterclaim averred that they had not resolved to dissolve the Group Ranch and therefore no one should claim to possess a title deed for any group of people or the ranch, except as allowed by the group ranch officials.

**12.** The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants averred that they were occupying their rightful parcels of land in the group ranch as it was allocated to them by its committee members. The defendants counterclaim for:

**(a) Declaration that they were the legal owners of the land they occupy in the Group Ranch.**

**(b) Permanent injunction restraining the plaintiffs in the main suit, their servants, agents, and or any other person from entering, dealing, claiming, and or interfering with the land apportioned to them inside the Group Ranch.**

**(c) Declaration that the title deed held by the primary plaintiffs for West Pokot/Kanyarkwat B/3 was obtained fraudulently, and the same be cancelled forthwith.**

**(C) PLEADINGS IN THE ELC NO. 38 OF 2021**

**13.** The plaintiffs in the **2<sup>nd</sup> Suit**, by a plaint dated **29/6/2021**, led by the Kanyarkwat Group Ranch, suing through its duly elected officials with effect from **5/4/2017** and currently gazetted, and the initial registered owner of **West Pokot/Kanyarkwat A/1**, measuring **10,023 Ha**, hereinafter the mother title. It was the **2<sup>nd</sup> - 5<sup>th</sup>** defendants' contention that upon being elected as officials of the group ranch, they embarked on investigations to find out if the land belonging to the group ranch was intact, only to learn in **2017**, that it had been illegally and fraudulently transferred and registered jointly in the name of the **1<sup>st</sup>** and **2<sup>nd</sup>** defendants herein, yet they had no power at the time to move to court for lack of a certificate of incorporation.

**14.** The plaintiffs averred that recently they were issued with an application for dissolution of the Incorporated Group Representation, and one of the requirements of the group representation was to conduct

subdivisions of the group ranch parcel of land to individual members of the group.

- 15.** The plaintiffs averred that before they could commence the subdivision of the group ranch parcel of land, they opted to apply for a certificate of official search only to discover that the mother title had been illegally and fraudulently subdivided into four portions without the consent of its members, namely Title Nos. **West Pokot/Kanyarkwat B/3, West Pokot/Kanyarkwat B/4, West Pokot/Kanyarkwat B/5, and West Pokot/Kanyarkwat B/6.**
- 16.** The plaintiffs averred that in a further discovery, it was established that after the aforesaid illegal subdivisions, title Nos. **West Pokot/Kanyarkwat B/3 and B/6** were then illegally and fraudulently subdivided, transferred, and registered in the joint names of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, respectively.
- 17.** The particulars of the fraud levelled against the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendant individually and jointly with the 4<sup>th</sup> defendant, who is the Land Registrar included doing so with full knowledge that the 1<sup>st</sup> plaintiff or its nominee was the rightful owner of the mother title, and when they were neither members nor nominees of it, doing so while aware that the 1<sup>st</sup> plaintiff was

the owner and that its members were in full occupation of the same, colluding with other third parties to undertake the subdivision and issue or obtain for them title deeds without the consent of the 1<sup>st</sup> plaintiff or through a resolution of the members, purporting to be owner, when they knew that they had acquired the titles illegally and through fraudulent means, colluding with third parties to steal and or fraudulently obtain title deed of title No. **West Pokot/Kanyarkwat B/6**, while knowing that it is not a member of the 1<sup>st</sup> plaintiff or without seeking the consent of the 1<sup>st</sup> plaintiff, through obtaining its consent based on a resolution of the members.

- 18.** On the part of the 4<sup>th</sup> defendant, it was averred that it acted fraudulently and illegally by accepting the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants' documents lodged at the registry without confirming, generously registering the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants jointly, and the 3<sup>rd</sup> defendant as the owner of title No. **West Pokot/Kanyarkwat B/3 and B/6**, respectively, and lastly issuing the title deeds in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, all in collusion with the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants.

**19.** The plaintiffs averred that upon realising the fraud committed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, they lodged a caution dated **3/6/2021**. The plaintiff averred that there was a pending suit, the 1<sup>st</sup> suit herein, between some of the members of the group ranch and the 1<sup>st</sup> and 2<sup>nd</sup> defendants in this suit over title No. **West Pokot/Kanyarkwat B/3**.

**20.** The plaintiffs prayed for:

**(a) Permanent injunction against the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, their agents and assignees, from interfering, alienating, or dealing in any other manner to the detriment of the group ranch and its members over the Title Nos. West Pokot/Kanyarkwat B/3 and West Pokot/Kanyarkwat B/6.**

**(b) Declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants fraudulently obtained title deeds for West Pokot/Kanyarkwat B/3 and West Pokot/Kanyarkwat B/6, which were the properties of the Group Ranch.**

**(c) Cancellation of the title deeds for title No. West Pokot/Kanyarkwat B/3 and West Pokot/Kanyarkwat B/6, and an order compelling the 4<sup>th</sup> defendant to rectify the records for the suit land to revert to the names of the Group Ranch.**

**21.** The plaint was accompanied by a verifying affidavit sworn by the 2<sup>nd</sup> plaintiff and an authority to plead signed by the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> plaintiffs.

- 22.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants opposed the suit through a statement of defence dated **18/10/2021**, denying the contents of the plaint. While the 1<sup>st</sup> and 2<sup>nd</sup> defendants admit that title No. **West Pokot/Kanyarkwat B/3** initially was registered in the name of the 1<sup>st</sup> plaintiff; they insisted that the number is no longer in existence. The 1<sup>st</sup> and 2<sup>nd</sup> defendants denied that the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs were bona fide officials of the 1<sup>st</sup> plaintiff.
- 23.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants admitted that title No. West Pokot/Kanyarkwat B/3 was a parcel of land falling within Kanyarkwat Group Ranch with membership of **268** members, among them one Meringiro Tongoto, member No. **266**, who was their father. The 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that the 1<sup>st</sup> plaintiff was incorporated in **1971**, comprising ten villages, to which they have been in occupation of their parcel of land within one of the ten villages, namely Nasanai.
- 24.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that the 1<sup>st</sup> plaintiff was under the control and management of Group Ranch representatives, who were **10** members, and in the year **2005**, an annual general meeting was held on **8/10/2005** at Kanyarkwat

Centre, where the group ranch was dissolved, and members were advised to proceed to obtain title deeds for their respective portions of land.

- 25.** Further, the 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that upon dissolution of the group ranch, they obtained a consent and members were advised to process the respective title deeds of their portions, and in the year **2014**, they proceeded to the Land Control Board together with the officials of the group ranch, where a consent was obtained to subdivide the parcel of land.
- 26.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that after obtaining the consent, the officials of the Group Ranch signed the transfer forms and title deed, **West Pokot/Kanyarkwat B/3** was issued to them. The 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that the Group Ranch officials, upon the dissolution, were mandated to subdivide and transfer the property in the mother title to the beneficiaries, who were the members of the group ranch.
- 27.** In this case, the 1<sup>st</sup> and 2<sup>nd</sup> defendants averred that the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs had no mandate whatsoever to assume office, as alleged on **5/4/2017**, since the Group Ranch had already been dissolved in the year

**2005**, and the current officials, as at **21/5/2002** where mandated to proceed and subdivide the land comprised in the mother title and to transfer the same to the members.

- 28.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants denied the alleged particulars of fraud levelled against them in the plaint, since the land they occupy and which was transferred and title issued to them was transferred to them by virtue of being beneficiaries of a land parcel within the group ranch, and the executive committee transferred the same after ascertaining that they were beneficiaries of the group ranch.
- 29.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants denied that the title to **West Pokot/Kanyarkwat/3** was as a result of dint with any element of fraud as alleged or at all. The 1<sup>st</sup> and 2<sup>nd</sup> defendants admit the existence of the 1<sup>st</sup> suit herein, save to add that they deny that such suit is against members of the group ranch, since it is against persons who forcefully occupied part of their titled land.
- 30.** The 3<sup>rd</sup> defendant opposed the suit through a statement of defence dated **14/10/2021**. It denied in toto the contents of paragraphs **5-14** of the plaint, terming the suit as defective, incompetent, frivolous,

and disclosing no known cause of action against it. In particular, the 3<sup>rd</sup> defendant maintained that the subdivision of the mother title was based on the application of the group ranch officials.

- 31.** The 4<sup>th</sup> defendant also relied on a preliminary objection dated **14/10/2021** that the suit be struck out for incompetence, being bad in law, misconceived, and contrary to the provisions of the Land Adjudication Act.
- 32.** The 4<sup>th</sup> defendant opposed the suit through a statement of defence dated **28/9/2021**. It denied knowledge of the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs as the officials of the 1<sup>st</sup> plaintiff, or that part of the Group Ranch land was fraudulently and illegally transferred or registered jointly in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, or to the 3<sup>rd</sup> defendant.
- 33.** The 4<sup>th</sup> defendant denied, or knowledge of or privity to the allegation of fraud pleaded and serialised in the plaint generally and in particular those against it. The 4<sup>th</sup> defendant termed the plaint as incurably defective, incompetent, a non-starter, frivolous, and devoid of merit, and disclosing no known cause of action against it.

- 34.** The 4<sup>th</sup> defendant averred that from available records, the 1<sup>st</sup> plaintiff was registered on **20/3/1978** under the Registration Section, **West Pokot/Kanyarkwat/1**, and that following an application by the alleged officials of the group ranch, the said parcel of land was subdivided to create, among others, title Nos. **West Pokot/Kanyarkwat/2** and **3**.
- 35.** The 4<sup>th</sup> defendant averred that the records show that the said officials caused title No. **West Pokot/Kanyarkwat/3** to be transferred to the 1<sup>st</sup> and 2<sup>nd</sup> defendants as joint owners, and a title deed joint issued to them on **26/11/2014**.
- 36.** Further, the 4<sup>th</sup> defendant averred that title No. **West Pokot/Kanyarkwat/2** was subdivided on the application of the said officials to give rise to title Nos. **West Pokot/Kanyarkwat/4, 5, and 6**, which were registered in the Kanyarkwat group ranch.
- 37.** The 4<sup>th</sup> defendant averred that title Nos. **West Pokot/Kanyarkwat/4** and **5** were retained in the name of the 1<sup>st</sup> plaintiff, while title No. **West Pokot/Kanyarkwat/6** was transferred and registered in the 3<sup>rd</sup> defendant on **14/7/2015**, on application of the said officials. The 4<sup>th</sup> defendant

averred that the decision to subdivide the Kanyarkwat Group Ranch was based on a formal application by the registered officials of the 1<sup>st</sup> plaintiff, and the 4<sup>th</sup> defendant acted on duly executed documents presented for registration.

- 38.** The 4<sup>th</sup> defendant averred that it had no knowledge of the parties herein, hence could not be accused of colluding with the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants. The 4<sup>th</sup> defendant maintained that the registration of the suit parcel of land in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendant was done absolutely in good faith and based on duly executed documents presented for registration and payment of relevant statutory fees.
- 39.** Further, the 4<sup>th</sup> defendant averred that if at all the entries made in the register for the suit property or its subdivision were not sanctioned as contended by the plaintiffs, the 4<sup>th</sup> defendant cannot be held liable for action of persons who presented themselves as officials of the 1<sup>st</sup> plaintiff, the 4<sup>th</sup> defendant was merely executing its statutory and constitutional function of registering duly executed documents.
- 40.** The 4<sup>th</sup> defendant contended that the impugned transactions were done based on duly executed documents presented by the 1<sup>st</sup> - 3<sup>rd</sup> defendants, and

the 4<sup>th</sup> defendant had no prior knowledge of any arrangement between the plaintiff and the 1<sup>st</sup> - 3<sup>rd</sup> defendants herein.

- 41.** In replies to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> statements of defence dated **6/1/2022, 14/10/2021, and 14/1/2021**, respectively, the plaintiffs reiterated the contents of the plaint.
- 42.** With respect to the 3<sup>rd</sup> defendant, the plaintiffs averred that they maintained that at the appropriate time, evidence would be called on the alleged fraud.
- 43.** Regarding the 4<sup>th</sup> defendant, it was averred that the 4<sup>th</sup> defendant was the one who effected transfers, and the onus was on it to interrogate the documents that were presented for authenticity before executing them, otherwise the officials of the 1<sup>st</sup> plaintiff could not decide on their own volition to transfer the group ranch land without sanction and or express authority of its group ranch members.
- 44.** The plaintiffs averred that the law obligates the 4<sup>th</sup> defendant, by the nature of its job, to scrutinise any document presented to it before being executed and thus failed in its job.

**(D) TRIAL IN ELC NO. 30 OF 2017**

- 45.** The trial in this suit commenced on **13/3/2018**. **Meringiro Lokadir Joseph** testified as **PW1**. He relied on a witness statement dated **20/2/2017** as his evidence-in-chief. He told the court that he had come to court together with the 2<sup>nd</sup> plaintiff as his brother after the defendants invaded their land and refused to vacate the same. PW1 said that the title they hold for **West Pokot/Kanyarkwat/259** is for other beneficiaries of the family. PW1 produced the title deed as **P. Exhibit No. (1)**.
- 46.** PW1 told the court that their father, Tongolo Meringuro, used to be a member No. **273** but No. **266** in the original register of the Group Ranch, and after a go-ahead was given to subdivide the land, following dissolution, he gave his son the mandate to have the land jointly registered under their names in trust for the entire family, based on minutes dated **7/7/2006** duly signed by the family members which he produced as **P. Exhibit No. (2)**. PW1 also produced the Group Ranch minutes on dissolution dated **8/10/2005** as **P. Exhibit No. (3)**.
- 47.** PW1 told the court that in **1978**, a conflict arose between Karamanjong, Sebei of Pokot, and they moved away to a peaceful place till **2000**, but later

returned slowly; otherwise, the defendants stayed on the land while awaiting peace to resume in their village, but have now refused to move away toward their land, which was farther ahead. PW1 said that the 1<sup>st</sup> defendant was never a member of the group ranch, while the rest of the defendants had land in the other villages; the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were members of the group ranch.

**48.** Again, PW1 said that several meetings were convened between the parties, the administrators, and the group ranch officials, after they had lodged their complaints, leading to a decision by the committee on **7/12/2010** and **12/1/2012**, ordering the defendants to vacate the suit land. He produced the minutes as **P. Exhibit No. (4)** and **(5)**. Similarly, PW1 produced a copy of the demand letter dated **11/10/2016** and its response dated **17/10/2016** as **P. Exhibit No. (6)** and **(7)**.

**49.** PW1 told the court that the ten committee members of the group ranch comprised the representatives of every village. In this case, PW1 said that his father was a member No. **266**, Nasanai village No. **213**, whose membership number he produced as **P. Exhibit No. (8)**. PW1 said that after families grew

and the sons from those families became adults, the membership of the group ranch increased.

**50.** PW1 said that demarcation of the boundaries was also undertaken as per the Kanyarkwat Map, which he produced as **P. Exhibit No. (9)**. Equally, PW1 produced an official search certificate for the title dated **15/12/2015** as **P. Exhibit No. (10)**.

**51.** In cross-examination, PW1 showed the general register of members. He confirmed that entries No. **14, 50, 58, and 127** showed the names of the 3<sup>rd</sup> and 2<sup>nd</sup> defendants and that of the 4<sup>th</sup> defendant's father. He could not tell how the 4<sup>th</sup> defendant's father's land was near his land, as he was from a faraway village. PW1 said that he took the minutes showing the dissolution of the group ranch in **2005** from the Land Adjudication and Settlement Office. He confirmed that the register was produced on **26/10/2016**, close to **268** members of the group ranch participated in the meeting, including the 3<sup>rd</sup> defendant as No. **99** in the attendance list.

**52.** PW1 said that the 1<sup>st</sup> defendant was not a member of the group ranch as per entry No. **127**. PW1 said that the defendants have stayed on the land for about **7** years. He confirmed that after the clashes, which

made them vacate the land, in **1978**, and that they returned to the land in **2002**, where the defendants found them in the land on their trespass. PW1 said that one of the signatories to the dissolution minutes was the 1<sup>st</sup> and 3<sup>rd</sup> defendants as No. **29**. PW1 said that Lopel's father was Kokonon and not Kangot.

**53. Meringiro Tongolo** testified as **PW2**. He relied on a witness statement dated **20/2/2017** as his evidence-in-chief. PW2 told the court that he comes from Kapchemutot village. He said that the suit land belonged to his late father, Meringiro Ptusir, who had seven wives and passed on in **1956**, leaving him as the lastborn. PW2 said that afterwards, he demarcated the land on behalf of the entire family within the Kanyarkwat Group Ranch as member No. **273**.

**54.** PW2 said that they lived on the land peacefully until a fight arose between the Pokot, Sebei, and Karamajong communities, forcing them to be evacuated to safer grounds. PW2 said that after the incessant fights subsided, they relocated back to the suit land, and found some of their portions encroached and occupied by the defendants herein.

- 55.** PW2 said that several meetings were held by the group ranch officials, where it was resolved that the defendants vacate the suit land to their portions. PW2 said that after the group ranch was resolved and members authorised to process their individual titles, his family met and resolved that, due to his health, the parcels of land belonging to him be transferred and registered in the name of the plaintiffs to hold in trust for the other family members.
- 56.** Further, PW2 told the court that he was born on the suit land, where his late father was also buried, hence the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants have no right to the land. He insisted that the 1<sup>st</sup> defendant was never a member of the group ranch. As to the 2<sup>nd</sup> and 4<sup>th</sup> defendants, he said that their family's land is at Chepkemei area, and he is the son of the secretary of the village committee. PW2 said that the 3<sup>rd</sup> defendant's family land is situated at the Pdurkoit area.
- 57. Chemeitoi Anira** testified as **PW3**. He relied on a witness statement dated **20/2/2017** as his evidence-in-chief. As a resident of Nasanai village, PW3 told the court that he is a neighbour of the plaintiffs on

the eastern side of the suit land. PW3 confirmed the clan fights, leading to the residents fleeing to safer places, resulting in displacement from the suit land and, thereafter, residents heading back to their respective initially occupied parcels of land, sometimes between **1980** and **2000**.

**58.** PW3 said that the defendants, while in transit to their initial land, unfortunately, occupied part of the plaintiffs' land, instead of their original portions situated in Aduokoi, Atelia, and Chepkemei villages. PW3 told the court that he was not only a member but also among the committee members of the group ranch belonging to Arror village, hence the information he was giving the court was within his knowledge.

**59.** PW3 told the court that it is true that members were authorised to process title deeds for their respective parcels of land and that the plaintiffs were among the first ones to do so. PW3 confirmed that the group ranch presided over the subdivision was Linagura after the ranch was wound up.

**60. Abraham Lotunyale** testified as **PW4**. He relied on a witness statement dated **30/2/2017** as his evidence-in-chief. PW4 told the court that he was the

clerk or secretary of the Group Ranch, having been elected into the office in **2000** up to **2016**. PW4 told the court that the group ranch was incorporated in **1974**, then comprised of **275** members, part of whom were the family of Meringiro Tongolo, the occupants of the suit land, at Nasanai village.

**61.** PW4 told the court that during a meeting of group ranch members in **2005**, it was resolved that the ranch be dissolved after members were advised to process individual title deeds. PW4 told the court that the boundaries separating the parcel of land were corrected by the committee members in each village, after which the Land Adjudication and Settlement office visited each parcel and effected the demarcation, leading to the issuance of the title for **West Pokot/Kanyarkwat/3** in the name of the plaintiffs in trust for the family members.

**62.** PW4 confirmed that the 1<sup>st</sup> defendant was not a member of the group ranch, while the 2<sup>nd</sup> defendant was a member, but their land was situated in Chepkemei village, where his brother was the secretary to the village committee. PW4 said that the 3<sup>rd</sup> and 4<sup>th</sup> defendants' land was in Adurkoi and

Chepkemei villages within the Kanyarkwat group ranch land, hence the resolution by the group ranch committee after a complaint was lodged that the defendants vacate the plaintiffs' land parcels.

- 63.** PW4 confirmed that the membership of the plaintiffs' father was No. **73**. PW4 confirmed the authenticity of **P. Exhibit No. 4** as the minutes for the resolution of the dispute, while **P. Exhibit No. 3** was the minutes leading to the dissolution of the group ranch as per agenda item No. **(3)**. PW4 said that after the resolution, the minutes were forwarded to the lands office, after which the subdivision commenced procedurally and legally.
- 64.** PW4 said that he was aware of all the members of the group ranch falling within the nine villages, which also have their respective village committee leaders. In this case, PW4 said that he used to be the chairman of Kevenger village. PW4 said that he could authoritatively confirm that the 1<sup>st</sup> defendant is from Nabuyen village, the 4<sup>th</sup> defendant from Chepkemei, and the 3<sup>rd</sup> defendant from Aduokort village.
- 65.** PW4 said that the role of the committee members after the group ranch was dissolved included examining and resolving boundary disputes, and,

where necessary transfer the portions. In this case, PW4 said that **DMFI-No 1(a), (b), (c), and (d)** were reflective of who the genuine members were, but did not amount to issuing them with membership numbers. PW4 said that the group ranch members had powers to choose village committee whose mandate was to handle village disputes. In this case, once the decision was made at the village level, the location committee would make a final decision at their level. PW4 said that the decision that the land belonged to the plaintiffs was final; otherwise, **DMFI-No. 1(a), (b), (c), and (d)** had no relationship with Meringiro's land.

**66. Anthony Tongolo** testified as **PW5**. He relied on a witness statement of PW1 dated **20/2/2017** as his evidence in chief. PW5 confirmed that he is a joint owner of the suit land with PW1.

**67. Adomo Chelukuta** testified as **DW1**. He relied on a witness statement filed in court on **6/3/2017**. DW1, as the 2<sup>nd</sup> defendant, told the court that he has lived on the suit land for over **70** years and was among the people who established the group ranch in **1974**. DW1 told the court that he has established various

developments on the suit land. He denied being a trespasser on the land.

**68.** He confirmed that the land was demarcated in **2009** under the direction of group ranch officials, with no objection to the ownership of his land. DW1 said that it was only after the demarcation that the plaintiffs started a claim on his land, and the issue was amicably resolved; a decision by the committee was not appealed against until he received a demand letter from the plaintiffs in **2016**. DW1 produced a copy of the group ranch register showing his ownership number as **D. Exhibit No. (1)**.

**69.** DW1 said that he has never had a land dispute with the Meringiro family save for the one he had with Jacob's family, as per a resolution of **2015**, he produced as **D. Exhibit No. (2)** DW1 confirmed that each of the group ranch villages had a committee. In this case, DW1 confirmed that one of his sons lives in Chepkemei village and was a secretary of the village committee. DW1 insisted that his land was in Nasanai village and not Chepkemei village.

**70. Jacob Alelia Longorkern and Merkon Ngurakapel** testified as **DW2** and **DW3**, respectively. DW2 told the court that he was a member of the group ranch

and had lived on the land in issue for a long time until **2009**, when the plaintiffs started claiming the same. DW2 said that he has been farming and rearing cattle on his land. He denied that the group ranch was dissolved or title deed was issued after members were advised to individually process them.

- 71.** DW3, on his part, told the court that he has been a member of the Group Ranch for **34** years and has never occupied anyone's land. He confirmed that the demarcation of the land for each family took place in **2009**, with no objection to his ownership. DW3 said that he was shocked to learn that the group ranch was dissolved in **2005** and the plaintiffs, who are non-members, obtained the title deed for the suit land on behalf of the Meringiro family.
- 72.** DW3 said that he was born on the suit land and that his father was a member No. **(14)**. DW3 said that the group ranch had nine villages, and he comes from Nasanai village, acting as the committee secretary for the village. DW3 said that he was not aware that the plaintiffs are members of the group ranch or hail from his village; otherwise, they have never been their neighbours or disputants over the land with them.

- 73.** DW3 said that the only person they had a dispute with in **2015** was Hopatum Kiptogo, as per **D. Exhibit No. (3)**, which is a land boundary agreement dated **8/7/2015**. DW3 denied that the group ranch had been dissolved in **2005**. DW3 said **P. Exhibit No. (1)** was irregular, given that the land was surveyed and processed without his knowledge.
- 74.** DW3 said that the title deed did not follow the processes required for subdivision, approvals, resolution, and consents through the office of the Land Adjudication Officer and the Land Surveyor. DW3 said that it was not possible to issue a title deed to the plaintiffs on **26/7/2015**, soon after the meeting of **8/7/2015**. He said that the leaders of the group could not have conducted the disputes when the title deeds were out. DW3 prayed that the title deed be cancelled.
- 75.** As for Meringiro Tongolo, DW3 confirmed that he was a member of the group ranch, but could not tell if he was the plaintiff's father. DW3 said that **P. Exhibits No. (8), (3), and (1)** were clear on the dates, positioning, and listings therein. Regarding the secretary of the group ranch who testified herein, as to the authenticity of **P. Exhibits No. (1), (3), and**

**(8)**, after the dissolution of the group ranch, DW3 said that though there was a finding in a year he could not remember, to the best of his recollection, there was no resolution made to dissolve the group ranch as alleged in **P. Exhibit No. (3)**, showing his name in the attendance list as No. **5** and **19** of those who approved the resolution.

**76.** DW3 could not tell if those minutes were submitted to the land offices for action in the absence of a receipt stamp. Further, DW3 said that the group ranch secretary could not have signed **D. Exhibit No. (3)** if he knew that the Group Ranch had been dissolved. DW3 said that Group Ranch minutes were never given any report on the alleged dissolution on **3/6/2021**. As of **17/3/2022**, he had not been substituted by the time this matter was consolidated with the 2<sup>nd</sup> suit.

**77.** The court record shows that when this court became seized of this file, and directions were made, following an application by Miss Chebet, advocate for the plaintiffs, that though the files had been consolidated, and the plaintiffs had closed their case, the matter proceeded separately. An order was

therefore made that the proceedings henceforth shall be in the lead file, **No. E038 of 2021**.

**(E) EVIDENCE**

- 78. Philip Chemala Ruto** testified as **PW1**, relying on a witness statement dated **29/6/2021** as his evidence in chief. PW1 told the court that he was elected as the secretary of the group ranch on **3/4/2017** as per the certificate of incorporation dated **5/4/2017**, produced as **P. Exhibit No. (1)**. PW1 told the court that the purpose of electing new committee members was to ensure that members of the group ranch were issued with title deeds as evidence of ownership of their parcels of land.
- 79.** PW1 said that the 1<sup>st</sup> step they undertook was to establish the status of the mother title, from records held by the former committee, which were not forthcoming, until they could become duly registered officials. PW1 said that they conducted an official search at the lands office dated **18/2/2021** as per **P.Exhibit No. (2)**, which revealed that subdivision and transfer in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants by the 4<sup>th</sup> defendant, as per **P. Exhibit No. (3)**.

- 80.** PW1 said that by the time the title deed was issued on **26/11/2014** to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, they, as the officials of the group ranch, had not been elected, except the one dated **14/7/2018** to the 3<sup>rd</sup> defendant, though they were not involved in the process. PW1 said that according to the procedures of the group ranch, the land could not have been subdivided and transferred without the involvement of all nine village committee members and the resolution of the group members at a duly convened meeting, and after resolution by all the members of the group ranch.
- 81.** Equally, PW1 said that the group ranch could not be dissolved without such procedures being followed, coupled with the involvement of the Land Adjudication and Settlement Office, both locally and nationally. PW1 said that the members had to verify and authenticate the dissolution, forward the communication to the lands office for onward submission to the head office, as well as the Registrar of group ranches, who would then send a certificate of dissolution to the group ranch.
- 82.** PW1 said that upon receipt of the certificate of dissolution, the group ranch committee would

communicate the same to the group ranch members that a go-ahead has been given. PW1 said that a letter would have been sent to the County Surveyor, West Pokot, to institute the process of survey by granting the group ranch officials consent to subdivide and transfer the land. PW1 said that some members of the group ranch could not have been given some land, while the rest remained in the group ranch.

- 83.** PW1 told the court that at a meeting to call for and effect a dissolution, mandatory members in attendance would include the County Surveyor, the County Land Adjudication and Settlement Officer, and the officials of the group ranch. PW1 said that all the above processes were not followed. Equally, he said that **P. Exhibit No. (3) and DMFI-(6) and (12)**, were signed on **24/9/2019** when the signatories were not committee members, or followed the committee regulation.
- 84.** PW1 said that his committee took over the group ranch with effect from **2017** and therefore, as of **14/12/2018**, Emmanuel and Stephen were not officials of the group ranch, to have authority to bind it in any way.

- 85.** PW1 said that neither the 3<sup>rd</sup> defendant nor its directors are members of the group ranch. Equally, PW1 said that he had not come across any sale agreement between the group ranch and the 3<sup>rd</sup> defendant.
- 86.** PW1 said that the officials did not pass a resolution to grant the 3<sup>rd</sup> defendant any land. PW1 said that the portion claimed by the 3<sup>rd</sup> defendant was already under the occupation of over **40** members of the group ranch. PW1 said that the group ranch was not involved in any survey, subdivision, or transfer of the mother title until the official search certificates revealed the same.
- 87.** Shown the extract of the register of members (**DMFI-(2)**), PW1 confirmed that Meringiro Tongolo was a member No. **266**. PW1 confirmed that Emmanuel Patonyang and Stephen Lowasikou were former officials of the group ranch before **2017**, who signed and stamped **DMFI-(2)**. PW1 confirmed that **DMFI-No. (6)** was a duly filled transfer form duly signed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants as well as the former officials of the group ranch on **24/9/2014**. PW1 insisted that the group ranch was only dissolved after they were elected as officials in **2017** and not as per

the minutes dated **8/10/2005** marked as **DMFI- No. (5)**.

- 88.** PW1 confirmed that the said minutes had been certified by the Land Adjudication Officer on **12/10/2005**. PW1 shown **DMFI-No. (4)** confirmed that the officials of the group ranch, as per **21/5/2002**, were ten in number, inclusive of Emmanuel Palonyang and Stephen Lowasikou. PW1 confirmed that after the group ranch officials were incorporated, they did not report the alleged fraud to the police.
- 89.** PW1 confirmed **DMFI-No. (2)** was also accompanied by an application for Land Control Board Consent, a letter of consent, and a mutation form, **DMFI-No. (2), (3), (4), (5), (6), (7), (9), (10), (11), and (12)** were duly signed; it cannot be true that the right procedure was not undertaken by the defendants. PW1 confirmed that all the members of the Group Ranch are **275**. PW1 did not produce the minutes leading to his committee's election in **2017** before the court.
- 90.** PW1 told the court that his father used to be number **254**. PW1 admitted that he did not have both the original and the updated members register before

the court. PW1 said that he was not among the attendees in the meeting held on **8/10/2005**, according to **DMFI- No. (5)**. PW1 confirmed that the register of the group ranch mother title as per **DMFI- No. (8)** was opened on **20/3/1978** and closed on **24/9/2017** to give rise to **West Pokot/Kanyarkwat/2 and 3**.

- 91.** Since he was not a member of the Group Ranch in **2014**, PW1 admitted that he was not in a position to know its affairs at the time. PW1 did not produce any evidence on whether minutes leading to the election of new officials in **2017** were forwarded to the Land Adjudication and Settlement Office or the Registrar of Group Ranches. Equally, PW1 had no letter from the Registrar of Group Ranches forwarding any certificate of incorporation to the Group Ranch, either directly or through the Land Adjudication and Settlement Officer. PW1 could not tell when the group ranch received the certificate of incorporation or dissolution of the Group Ranch.
- 92.** PW1 said that as of **2017**, he was not aware that the ranch had been dissolved in **2005**. PW1 admitted that by the time he and the 2<sup>nd</sup> plaintiff were elected in **2017**, they were not members of the Group Ranch;

otherwise, any attendance of the meetings of the group ranch before **2017** was as children of their late parents, who were members. PW1 admitted that there were no cautions or restrictions that had been registered against the title register by them as soon as they were elected as officials in **2017**.

- 93.** PW1 confirmed that he had no OB number before the court or evidence that investigations were commenced, and that anyone charged with an offence relating to the alleged fraud over the subject properties. PW1 said that even though he was the group ranch secretary with effect from **2017**, he was not involved in or aware of the transfer of the land to the 3<sup>rd</sup> defendant.
- 94.** PW1 said that **Section 8** of the Land Group Representatives Act provides for the procedure to be followed with respect to subdivision and registration of land in a group ranch. PW1 denied that Abraham Lotunyale was a member of the group ranch and an official before **2017**.
- 95. Julius Longurokwang** testified as **PW2**. He relied on a witness statement dated **29/6/2021** as his evidence-in-chief. PW2 told the court that he was elected the chairman of the 1<sup>st</sup> plaintiff on **3/4/2017**

and assumed office immediately following issuance of a certificate of incorporation as a *bona fide* official dated **5/4/2017** (produced as **P. Exhibit No. (1)**).

**96.** PW2 said that after that, among the many meetings convened for the members was that of **5/2/2021**, where members resolved to subdivide the mother title, only to discover illegal subdivisions and transfers of the Group Ranch land to third parties. PW2 said that conflict arose, following the discoveries which resulted in the County Commissioner intervening and also the Office of the Director of Public Prosecutions, as per a letter dated **19/5/2021** produced as **P. Exhibit No. (4)**.

**97.** Further, PW2 said that they were later told that if the mother title was not subdivided by **30/6/2021**, it would resort to community land as per a letter from the Land Adjudication and Settlement Officer dated **15/1/2021**, produced as **P. Exhibit No. (5)**. PW2 said that it is at that juncture that they applied for an order to suspend the application of the Community Land Act as per a ruling dated **14/7/2021**, which was declined. PW2 said that he then wrote to the Land Registrar, West Pokot, through the Land Adjudication and Settlement Officer, asking for the nullification of

the illegally acquired titles as per the letter dated **23/3/2021**, produced as **P. Exhibit No. (6)**.

**98.** PW2 said that the Group Ranch has **276** members as per the adjudication record, produced as **P. Exhibit No. (7)**, again, PW2 said that the court order to dissolve the group ranch was issued on **20/5/2017**, since the former officials had applied for the same as per the minutes referred therein of **15/8/2013**. PW2 produced a consent for dissolution dated **20/5/2017** as **P. Exhibit No. (8)**.

**99.** PW2 said that this committee was not in office when minutes for dissolution were given, but the consent came out during their regime. PW1 said that it appeared that by the time the consent was issued, subdivision of the land to the mother title had occurred, and they were not aware of going by the title deed issued to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants.

**100.** PW2 said that without such consent, there was no way the subdivision could have taken place. PW2 said that the Land Registrar did not call his officials to authorise or sign supporting documents for the transfers in favour of the 3<sup>rd</sup> defendant in **2018**, yet they were already in office. PW2 said that the said transfers were certified through a certificate of

incorporation dated **21/5/2002**, produced as **P. Exhibit No. (9)**, though the list of officials did not include Abraham Lotunyale.

- 101.** PW2 said that the signatories to **DMFI-Nos. (6), (14), and (20)** were not authorised officials of the group ranch in **2018**. PW2 said that they have been unable to subdivide the land to its bona fide members, given that, as per **P. Exhibit No. (10)**, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants have acquired approximately **750** acres and **272** acres of the land.
- 102.** PW2 urged the court to nullify the titles in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants for the land to revert to the situation it was as per the green card produced as **P. Exhibit No. (11)**, for **West Pokot/Kanyarkwat/1**, for all the members to be given their rightful shares. PW2 told the court that he was standing in for member No. **233** of the Group Ranch.
- 103.** PW2 confirmed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants' father was a member of the group ranch No. **266** as per **P. Exhibit No. (7)**. Equally, PW2 confirmed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants obtained transfer documents as per **DMFI-No. (6)**, before they were issued with a title deed as per **DMFI-No. (1)**,

following minutes of **8/10/2005**, dissolving the group ranch. PW2 confirmed that his letter to the Office of the Director of Public Prosecutions, produced as **P. Exhibit No. (4)** was not responded to. PW2 confirmed that other than **P. Exhibit No. (4)**, he had no record to show that he lodged a complaint over the fraud with the police.

**104.** Regarding **DMFI-No. (2)**, PW2 said that his officials were not involved in or notified of the transaction. PW2 confirmed that both PW1 and he were not members of the group ranch as per the adjudication register. PW2 said that the Group Ranch has **1024** Ha, originally comprised of **275** members, among them his late father as member No. **239** as per **P. Exhibit No. (7)**, passed on in **1997**. PW2 said that he had yet to obtain letters of administration in respect of his father's estate. PW2 confirmed attending the meeting of **8/10/2005** as per **DMFI-No. (5)**, as the attendance list No. **98** on behalf of his late father. He said that he was not aware if the said resolutions were effected by the former Group Ranch officials.

**105.** PW2 said that the letter dated **20/5/2017**, produced as **P. Exhibit No. (8)** shows that the 4<sup>th</sup>

defendant gave consent to the chairman of the group ranch to subdivide the land. PW2, therefore, confirmed that, going by his attendance in **2005**, the meeting was privy to the dissolution of the ranch before he was elected in **2017**.

**106.** PW2 denied that he came in as a chairman to cause unnecessary confusion in the land, while aware of the dissolution in **2005**. PW confirmed that he did not lodge any amendment over the mutation form dated **6/9/2014** by the then officials of the group ranch. Further, PW2 confirmed that those former officials who authorised the mutation, subdivision, and transfers both in **2014/2017** and in **2018** have not been joined in this suit on account of fraud, abuse of office, or misrepresentation as officials of the group ranch.

**107.** Further, PW2 confirmed that in this suit, the subdivision of the Group Ranch land into two portions as per **DMFI No. (8)** on **24/9/2014** is not being challenged, going by **DMFI-No. (8), (9), and (18)**. PW2 confirmed that the 1<sup>st</sup> plaintiff did not challenge the transfers undertaken as for **DMFI-No. (5)** At the time, PW2 clarified that the plaintiff had not pleaded for the cancellation of parcels of Nos. **West**

**Pokot/Kanyarkwat/4** and **5**, which were also undertaken by the former officials of the group ranch, some of whom were also purporting to be such officials, like Abraham Lotunyale. PW2 insisted that under Cap **287**, the mother title was held in the name of the Group Ranch on behalf of their members.

**108.** In this case, the officials who were in office as per **P. Exhibit No. (9)** did not individually own the land but had to act in trust for the members. PW2 said that the officials acted without the knowledge and permission of the members in subdividing and transferring the suit parcels of land in **2014** and **2018**.

**109.** PW2 could not ascertain if Julius Longurokwang was the secretary of the Group Ranch in **2005**, presented the dissolution minutes to the Land Adjudication and Settlement officer, and obtained a certificate of dissolution. PW2 said that he had yet to receive a copy of the minutes of the meeting held on **15/8/2013**, which appear to have given the then officials authority to subdivide the land.

**110.** **Anthony Mukeluk Tongolo** testified as **DW1**. He relied on a witness statement dated **20/10/2021**

as his evidence-in-chief. DW1 told the court that his father was member No. **266** as per the copy of the land register marked as **DMFI-No. (2)**.

**111.** DW1 told the court that after his father became elderly, he gave authority in a family meeting held on **7/6/2006** that the land be registered under the joint names of his sons on behalf of the over thirty households, since his father had eight wives. He produced a copy of the minutes as **D. Exhibit N. (3)**. DW1 said that after the permission, they went to the committee of the group ranch, which referred them to the lands office, and before the Land Control Board.

**112.** DW1 said that the officials of the group ranch, including Stephen Lowasikou and Emmanuel Palonyang, gave them a copy of the certificate of incorporation of the group ranch, produced as **D. Exhibit No. (4)**. DW1 said that the group ranch had been dissolved on **8/10/2005**, and members were directed to process individual title deeds, going by the agenda of the minutes produced as **DMFI-No. (5)**.

**113.** DW1 said that an application was then made to the Land Control Board, generating a land control

board consent dated **9/10/2014**, which led to the signing of a transfer form, which was duly received at the lands office on **24/1/2014**. DW1 said that at the lands office, he paid for the title deed as per a receipt dated **11/2/2015**. DW1 relied on the certified copies as **D. Exhibit No. (6)**, after which they collected a title deed issued to them on **26/1/2015**, produced as **D. Exhibit No. (1)**.

**114.** DW1 said that the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs were not their immediate neighbours. DW1 said that in suit No. **ELC No. 30 of 2017**, they came to court for vacant possession after some trespassers defied the directive by the 1<sup>st</sup> plaintiff's officials to have the defendants vacate the land as per the minutes for a meeting held on **8/12/2010**, produced as **D. Exhibit No. (7)**.

**115.** DW1 denied the allegation that the title deed was obtained through fraud; the title issued on **26/1/2015** was not challenged until **2021**. DW1 said that the subdivision and transfer were undertaken by the then *bona fide* officials of the 1<sup>st</sup> plaintiff. DW1 urged the court to dismiss the suit, more so since the plaintiffs have not sued the former officials who

subdivided and transferred the land to them, and allow the eviction of the defendants in the 1<sup>st</sup> suit.

**116.** DW1 acknowledged that **D. Exhibit No. (6)** and the Land Control Board did not reflect the signatories of the transferees as acting on behalf of the group ranch. DW1 said that the entry of the trespassers to the suit land occurred in **2000**. DW1 said that, according to him, the dissolution of the group ranch meant that the land was being moved to the individual members. DW1 said that after the dissolution, the role of both the Land Adjudication and Settlement Officer and the Land Registrar was merely to implement the resolution.

**117.** Following the transfer of the court, the matter came before me on **11/3/2025**. By directions through consent of parties on **17/11/2025**, this matter proceeded from where it was.

**118.** **Abraham Lotungale** testified as **DW2**. He relied on a witness statement dated **20/10/2021**. DW2 told the court that he was a resident of Kurenger village and was initially a secretary of the 1<sup>st</sup> plaintiff following the election in **2000**, until his term ended in **2017**.

- 119.** DW2 told the court that the group was incorporated in **1974**, comprised of ten villages with **275** members, among them the family of Meringiro Tongolo, residing in Nasani village. DW2 told the court that following a meeting of members held in **2005**, a resolution was made to dissolve the Group Ranch, and members were advised to, if able, process individual land titles for their portions.
- 120.** DW2 said that the boundaries separating the portions were corrected by the respective committees in each village, after which the Land Adjudication Officers visited and demarcated the portions. DW2 said that the 1<sup>st</sup> and 2<sup>nd</sup> defendants approached the committee and the group ranch seeking subdivision and transfer of their parcel of land, which the affidavits confirmed its locality with the neighbours.
- 121.** Thereafter, DW2 said that an application was presented to the Land Control Board to subdivide and transfer the parcels to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. DW2 said that as the officials of the group ranch, they signed the transfer form in favour of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as representatives of the family of Meringiro Tongolo for title No. **West**

**Pokot/Kanyarkwat/3** measuring **259** Ha on **26/11/2014**. DW2 said that he was not only a member but also an authorised official of the 1<sup>st</sup> plaintiff when, after he was co-opted, following the dissolution of the group in **2010**.

**122.** DW2 termed the certificate of incorporation dated **5/4/2017** as fake, and **D. Exhibit No. (4)** dated **21/5/2002** as the only valid one.

**123.** **Sehean Kimyonga** testified as **DW3**. He relied on a witness statement dated **30/10/2021** as his evidence-in-chief. DW3 told the court that he was a beneficiary of the group ranch land, though he had yet to be issued with a title deed for membership No. **98**.

**124.** **Chemeitoi Anira** testified as **DW4**. His evidence was similar to that of DW3.

**125.** **Moses Roptui Lowasikoi** testified as **DW5**. He relied on a witness statement dated **14/10/2021** as his evidence-in-chief. DW5 told the court that he is one of the directors of the 3<sup>rd</sup> defendants which was registered on **11/5/2017** and acquired title No. **West Pokot/Kanyarkwat/6** following due process. He relied on a copy of a green card, a mutation form, a letter of consent, a transfer form, and a certificate of

incorporation as **D. Exhibit No. (11) - (15)** respectively.

**126.** DW5 told the court that the board resolution authorising him to represent the 3<sup>rd</sup> defendant is not before the court. DW5 said that his late father was a member of the 1<sup>st</sup> plaintiff, hence the company became a member of the group ranch on behalf of the family.

**127.** DW5 said that following the death of his father in **1982**, DW5 was appointed as legal administrator of his estate. DW5 said that the suit land was lawfully and procedurally transferred to the 3<sup>rd</sup> defendant by the bona fide officials of the 1<sup>st</sup> plaintiff as per **D. Exhibit No. (4)** dated **24/9/2018**. DW5 admitted that he had no minutes from the 1<sup>st</sup> plaintiff showing that the 3<sup>rd</sup> defendant was a co-opted member of the Group Ranch in place of his late father.

**128.** Answering questions from the court, DW5 said that he had no papers where his late father had nominated any of his sons to take up his shares No. **73** in the Group Ranch. Equally, DW5 said that he had no family minutes authorising the children of his late father to assume ownership of share No. **73** in the Group Ranch.

**129.** Following the non-attendance of witnesses on behalf of the 4<sup>th</sup> defendant, the statement of defence dated **10/3/2022** was marked closed.

**(F) SUBMISSIONS**

**130.** The plaintiffs in the 2<sup>nd</sup> suit, represented by Arusei Chepchumba & Co. Advocates, rely on written submissions dated **5/12/2025**. It is submitted that titles Nos. **West Pokot/Kanyarkwat B/3, 4, 5, and 6** are irregularly, illegally, and fraudulently obtained, and therefore, this court should grant the reliefs sought.

**131.** The plaintiffs isolated five issues for the court's determination. It is submitted that the argument by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants that in a meeting held in **2005**, or thereabout that a resolution was made to dissolve the group and for members to obtain title deeds, the plaintiffs submit that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants argument is not only misplaced but also misleading with the sole intention of justifying their illegal actions.

**132.** The plaintiffs submit that **Section 13** of the Land Group (Representative) Act, Cap **287**, provides that a group representative may apply to the registrar for his consent for dissolution, and the

application must be signed by a majority of the group representatives. Minutes in support must accompany the application, and the resolution must be delivered to the registrar within **14** days from the date the resolution is made.

**133.** The plaintiffs submit that until such conditions are met, a consent shall not issue, dissolving the group representative immediately or at a future date specified by the registrar. The plaintiffs submit that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants failed to provide any documents to demonstrate that the above laid down procedure was followed and the requisite consent dissolving the group representative by the registrar given.

**134.** The plaintiffs submit that what is being relied upon by the defendants for dissolution are minutes of the meeting held in **2005** and nothing else.

**135.** As to whether the 2<sup>nd</sup> - 5<sup>th</sup> defendants are legally in office as the group representatives of the 1<sup>st</sup> plaintiff, and whether they have the capacity to file this suit, the plaintiffs submit that **Section 8(3)** of the Act confers the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs the mandate by virtue of the certificate of incorporation dated **5/4/2017** produced as **P. Exhibit No. (1)**, which has

not been challenged by the defendants, making them legally in office with the capacity to file the suit.

**136.** On the transaction involving the subdivision and transfer of titles Nos. **West Pokot/Kanyarkwat B/3**, to the 1<sup>st</sup> and 2<sup>nd</sup> defendants, and **West Pokot/Kanyarkwat B/6** to the 3<sup>rd</sup> defendant, the plaintiffs submit that the same was irregular, illegal, and fraudulent in that:-

*(i) There is no explanation on how the said defendants arrived at the exact acreages/shares that they allocated to themselves in the name of taking over their father's shares.*

*(ii) The suit land was owned by the 1<sup>st</sup> plaintiff as a group ranch, and no member could claim a definite share unless the subdivision is done and each member's share is determined. Reliance is placed on **John Mbugua Getao -vs- Simon Paroiyet Mocar Petition No. 9 of 2020**, where the court held that the Group Ranch was owned by members of the group in equal and undivided shares, and as such, each co-owner was as much entitled to possession of any part of the land as the others.*

**137.** The plaintiffs submit that the 1<sup>st</sup> and 3<sup>rd</sup> defendants in this case irregularly allocated themselves huge portions of land without due care to other group members' equal ownership of the said land, and now want to use the said title deeds to

evict some members of the 1<sup>st</sup> plaintiff from the affected portion.

**138.** Further, the plaintiffs submit that, guided by the foregoing case law, the court should nullify the action of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants in allocating themselves the disputed portions of land, without proper and legal subdivision being undertaken by the authorised group representatives, which was highly irregular and amounts to unjust enrichment that should not be condoned by this court.

**139.** The plaintiffs submit that the purported subdivision by the 1<sup>st</sup> plaintiffs mother title into four portions was fraudulent, as there was:

**(a)** *No consent to subdivide was granted by the Director of Land Adjudication & Settlement to officially subdivide the land in **2014**, other than that issued on **20/5/2017**.*

**(b)** *The transfer forms were signed by non-officials of the 1<sup>st</sup> plaintiff, whose names did not appear in the former or current certificate of incorporation as one of the group representatives.*

**(c)** *The individual purporting to represent the group representatives committed criminal acts contrary to **Section 21 of Cap 287**.*

**140.** The plaintiffs submit that the court should not sanitise the illegal and fraudulent manner in which

the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendant obtained their title deeds.

**141.** On the nullification and or cancellation of title deeds after subdivision of title, **West Pokot/Kanyarkwat A/1**, the plaintiffs submit that upon obtaining titles, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed the 1<sup>st</sup> suit seeking to evict some legitimate members of the 1<sup>st</sup> plaintiff from portions that the said members have occupied and utilised for years. The plaintiffs submit that such action by the 1<sup>st</sup> and 2<sup>nd</sup> defendant goes against the decision in **John Mbugua Getao**(*supra*), as the 1<sup>st</sup> and 2<sup>nd</sup> defendants have no superior rights against the other members of the 1<sup>st</sup> plaintiff over the suit land and it is for that reason that the title deed should be cancelled under **Section 26(1)** of the Land Registration Act. Reliance was placed on **Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR, Dina Management Ltd -vs- County Government of Mombasa [2023] KESC 30 [[KLR], Vijah Morjaria -vs- Nansingh Darbar & Another [2000] eKLR**, and in **Moses Parantai & Another suing as the legal representative of the estate of Sospeter Mukuru Mbeere -vs- Stephen Njoroge Macharia [2020] eKLR**.

- 142.** The plaintiffs submit that, though they had not pleaded and given particulars of fraud in those pleadings, they have gone ahead to establish the same at the hearing after establishing that the transfer documents lodged at the lands office were executed by non-officials of the 1<sup>st</sup> plaintiff, who lacked authority.
- 143.** The plaintiffs submit that the court should find the title deed held by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants irregular, illegal, and fraudulently obtained and direct for cancellation under **Section 80(1)** of the Land Registration Act.
- 144.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants rely on written submissions dated **15/12/2025** and isolated 6 issues for this court's determination. On whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants are entitled to land parcels within the Group Ranch by virtue of being beneficiaries of their late father's membership, the 1<sup>st</sup> and 2<sup>nd</sup> defendants submit that they are beneficiaries of a land parcel in the Group Ranch, since their late father was member number **273** in the register.
- 145.** Regarding whether the 2<sup>nd</sup> and 5<sup>th</sup> plaintiffs are *bona fide* members of the Group Ranch to sue on behalf of the 1<sup>st</sup> plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> defendants,

relying on **Section 13(1)(b)** of the Land (Group Representatives) Act, submit that the Group Ranch was dissolved on **8/10/2005** and thus the plaintiffs have no capacity to sue and if they were appointed as officials, the same was irregular. The 1<sup>st</sup> and 2<sup>nd</sup> defendants submit that there was no resolution of the members in filing the suit on their behalf.

**146.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants submit that Abraham Lotunale was not a stranger but a secretary of the Group Ranch. Further, the 1<sup>st</sup> and 2<sup>nd</sup> defendants submit that the defendants' defence and counterclaim have not pleaded with specificity, the particulars of fraud on the part of the plaintiff, to warrant the orders sought. Reliance is placed on **Order 2 Rule 10(1)** of the Civil Procedure Rules.

**(G) ANALYSIS**

**147.** The court has carefully gone through the pleadings, evidence tendered, and written submissions. The issues calling for my determination in the 1<sup>st</sup> suit are:

**(a) *If the plaintiffs in the 1<sup>st</sup> suit are absolute and bona fide holders of title to West Pokot/Kanyarkwat B/3, to be entitled to vacant possession and permanent injunction.***

**(b) If the defendants in the 1<sup>st</sup> suit have proved any possessory and occupation rights of the suit lands, preceding the issuance of title to West Pokot/Kanyarkwat B/3.**

**(c) If the defendants in the 1<sup>st</sup> suit have proved any irregularities, illegalities, or fraud against the said title and superior rights over the suit lands, to be entitled to the reliefs sought in the counterclaim.**

**(d) What is the order as to costs?**

**148.** A cause of action arises when there is a breach of a legal right or duty. In **DT. Dobie & Company Kenya Limited -vs- Muchina 1982 [KLR]**, a cause of action was defined as acts on the part of the defendant which give rise to a cause of complaint by the plaintiff.

**149.** In the 1<sup>st</sup> suit, the cause of action as pleaded by the plaintiffs at paragraphs **8, 9, 10, 11, 12, 13,** and **14** of the plaint dated **20/11/2017**, is that after the dissolution of the Group Ranch, the plaintiffs proceeded to obtain a title deed for the suit land in **2014**, when the defendants had already invaded, encroached, and or trespassed onto part of the suit land, started acts of cultivation, and put up structures therein.

- 150.** The plaintiffs aver that the defendants had no proprietary rights or interests on the suit land, as their family land is situated in a separate village, as determined and resolved by the group ranch committee, and that they should vacate the land. In view of the neglect or denial of the plaintiffs' exclusive, uninterrupted, and unimpeded right to possession and occupation, the plaintiffs seek a declaration of ownership, vacant possession, or eviction and a permanent injunction.
- 151.** The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants deny that the suit land exclusively belongs to the plaintiffs as a family or based on an alleged issuance of a title deed. The defendants deny that the group ranch was dissolved as alleged or at all, and members were directed to process and be issued with individual title deeds. The defendants deny that the plaintiffs hold a valid and lawfully obtained title deed to be entitled to the relief sought.
- 152.** Trespass as held in **Kenya Power and Lighting Company Ltd -vs- Ringera & Others [2022] KECA 104 [KLR] (4<sup>th</sup> February 2022) (Judgment)**, is provided by **Section 3(1)** of the Trespass Act, as a tort committed when a person

enters onto, or upon property in the possession or occupation of another with the intention to commit an offence or intimidate, insult, or annoy any person lawfully in possession or occupation of such property.

**153.** The court cited **M'Mukunya -vs- M'Mbijiwe [1984] eKLR**, that trespass is a violation of the right to possession and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land, which is different from ownership. In the said suit, the appellants were held liable for trespass even as they had intentionally entered the plot, even though they honestly believed that the land was their own, and that they had a right of entry on it, or that they had done so under an inevitable mistake of law or fact.

**154.** In **Margaret Iminza Luyayi -vs- Moses Opudo Mudaka [2019] eKLR**, the court observed that there was no wrongful entry or violation of the plaintiff's right of possession since it was the plaintiff who had, in the 1<sup>st</sup> instance, invited the respondent to the suit property as her man-friend. In **Ochako Obincho -vs- Zachary Oyoti Nyamongo [2018] eKLR**, the court cited *Clark & Lindesel on Torts 18<sup>th</sup> Edition, page 923*, that the onus was on the plaintiff

in a claim for trespass to prove that he was the owner of the suit land and that the defendant had invaded the same without a justifiable cause.

**155.** In this suit, the burden of proof is on the plaintiffs to prove the source of their title to the suit land, when the defendants entered into the suit property, and that their continued occupation of the said property from the first date of entry amounts to trespass or remains as such so far as it is unauthorised by the Group Ranch members.

**156.** In **Vaz -vs- Oyatsi & Others Civil Appeal No. E035 of 2022 [2025] KECA 251 [KLR] (21<sup>st</sup> February 2025) (Judgment)**, the court said that trespass as defined in *Black's Law Dictionary 8<sup>th</sup> Edition*, is in a nature of a permanent invasion on another's right and that every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues. The plaintiffs' basis of the title deed is title No. **West Pokot/Kanyarkwat/1**, which, from the copy of the register, was opened in **1978** in the name of Kanyarkwat Group Ranch.

**157.** The repealed Land (Group Representatives) Act **1968** allowed for land to be legally issued to groups,

each with a freehold title deed, held and managed on behalf of the entire group for their collective benefit. The plaintiffs' case is that the group ranch was legally dissolved in **2005** through a resolution by the members, and the membership was allowed to proceed to process individual titles. It is the plaintiffs' contention and evidence that the bona fide officials of the group ranch legally and procedurally subdivided and transferred the title deed to them in **2014**, hence the same is absolute and indefeasible.

**158.** The defendants, on the other hand, have pleaded and testified that the title held by the plaintiffs is defeasible, for there was no compliance with the law on subdivision and transfer of land belonging to a group ranch. The defendants submit that although fraud and illegality have to be specifically pleaded and proved, they have tendered evidence to prove fraud, notwithstanding that the particulars were not pleaded in the statement of defence and counterclaim.

**159.** **Section 8(1)** of the then Land (Group Representatives) Act conferred on the group representative powers to sue and be sued in the corporate name upon issuance of the certificate of

incorporation of the group representatives. See **Nkoirisha Ole Ntompoto Kereru & Others -vs- The Chairman Lorngosua Group Ranch & Others[2001] eKLR.**

**160.** In **James Mbugua Getao** (*supra*), the court held that the Land (Group Representatives) Act (repealed) was introduced to enable the inhabitants of large swathes of land in largely semi-arid pastoral areas to hold such land as a group, under one title. The court said that, through this regime, a title could be issued to and held by elected representatives on behalf of the group, which acquires a corporate character, legally insulated from the tragedy of the commons.

**161.** The court said that a group ranch is owned by the members of a group in equal, but indivisible shares, until such time that each member acquires their individual titles. The court emphasized that the tenure created in the ranches is a community of ownership as opposed to a community or communal ownership, where each member has an undivided share, and where members devise their security of tenure qua members of that community - that is to say tenancy in common as opposed to joint tenancy.

**162.** The facts in *James Mbugua Getao* (*supra*) involved a dispute over land allocation in a group ranch following its dissolution. The appellant, as administrator of the deceased, challenged the allocation of a different parcel in the estate, claiming it violated the right to property and equality. The trial court ordered an eviction, which the Court of Appeal upheld. The Supreme Court dismissed the appeal, affirming that equality in undivided shares of a group ranch is based on acreage and not value.

**163.** The court held that members of the group ranch are tenants in common, each with distinct undivided shares until subdivision. The court observed that:

*“At common law, each co-owner is as much entitled to possession of any part of the land as the others. He cannot point to any part of the land as his own to the exclusion of the others; if he could, there would be a separate ownership and not co-ownership. No one co-owner has a better right to the property than another. Tenants in common hold an undivided share. Each tenant in common has a distinct share in the property, which has not yet been divided among the co-tenants. The only fact that brings them into co-ownership is that they both have shares in a single property, which has not yet been divided among them. Therefore, while the tenancy in common lasts, no one can say which of them owns any particular parcel of land.”*

- 164.** The court said that on account of the appellant, for as long as the group ranch remained undivided, his share was equal to the other members, until each member went their separate ways, having acquired their individual titles.
- 165.** The plaintiffs in the primary plaint and as the defendants in the 2<sup>nd</sup> suit invoke the indefeasibility of the title held by them as absolute owners whose titles were regularly, procedurally and legally obtained after the Group Ranch was lawfully dissolved in **2005**, following a resolution by members, and subsequently through a regular subdivision process and transfer duly sanctioned by *bona fide* officials of the Group Ranch.
- 166.** The 3<sup>rd</sup> defendant in the 2<sup>nd</sup> suit equally takes the view that the title deed in its possession was regularly and procedurally issued and registered.
- 167.** The defendants in the 1<sup>st</sup> suit jointly with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> plaintiffs in the 2<sup>nd</sup> suit, attack the title deeds held by the plaintiffs in the main suit and the 1<sup>st</sup> - 3<sup>rd</sup> defendants in the 2<sup>nd</sup> suit as irregularly, unprocedurally, illegally and fraudulently obtained from the 4<sup>th</sup> defendant to defeat their rights as group ranch owners and members.

- 168.** When a title deed is under challenge, it is not enough to waive the instrument of ownership without showing that the process of acquisition was formal, legal, procedural, and free of any encumbrances, including interests that need not be recorded in the register. See **Munyu Maina (supra), Dina Management Ltd (supra), and Torino Enterprises -vs- Attorney General [2023] KESC 79 [KLR]**.
- 169.** In **Samuel Kamere -vs- Land Registrar Kajiado [2015] eKLR**, the court held that an applicant must prove that he acquired a valid and legal title, after carrying out due diligence to determine the lawful owner from whom he acquired the legitimate title, and thirdly, that he paid valuable consideration for the purchase of the suit property.
- 170.** In **Caroget Investment Limited -vs- Aster Holdings Limited & 4 others [2023] KECA 1559 (KLR)**, the court observed that where parties assert competing proprietary interests over one parcel of land, each must produce evidence in support of their claim. Similarly, in **Samuel Otieno -vs- Municipal Council of Malindi & Another [2015] eKLR**, the court held that a claimant will succeed on the strength of his own case and not on a weakness of

the opponent's case. See also **Chief Land Registrar & 4 others -vs- Nathan Tirop Koech & 4 others [2018] eKLR**

**171.** In **Mbarak -vs- Freedom Ltd [2024] KECA 160 [KLR]**, the court held that though the right to immovable property is not entirely dependent on formal registration and issuance of a title deed thereto, particularly where the process is shown to have been irregular, whatever the case, possession carries the day as held in **Bandi -vs- Dzomo & 76 others (Civil Appeal 16 of 2020) [2022] KECA 584 (KLR) (24 June 2022) (Judgment)**, reiterating the holding in **Benja Properties Ltd -vs- Syedna Mohamed B. Sahed & Others [2015] eKLR**, that all titles to land are ultimately based upon possession, which is nine-tenth ownership.

**172.** In **Dina Management Ltd (supra)**, the court said that a title issued without compliance with the law is not indefeasible and that **Article 40** of the Constitution entitles every person to the right to property, subject to the limitations set out therein and that under **Sub-Article (6)**, the said rights do not extend to property that has been found to have been unlawfully acquired.

- 173.** Fraud or illegality is a conclusion of law. The facts alleged to have been fraudulent or unlawful must be set out, and evidence led thereon to prove fraudulent intent. Fraud, as held in **Kagina -vs- Kagina & Others [2021] KECA 242 [KLR]**, is proved as a fact by evidence whose standard is beyond a balance of probabilities, but not beyond a reasonable doubt. Fraud or illegality must be specifically pleaded, particularised, and proved, as held in **Vijah Morjaria (supra)**.
- 174.** It is through pleadings that parties state their claim and respective defences. Facts or elements establishing fraud or illegality must be set out in the pleadings. See **Ann Wairimu Wanjohi -vs- James Wambiru Mukabi [2021] KECA 476 [KLR]** and **Raila Odinga & Others -vs- Independent Electoral and Boundaries Commission & Others [2017] eKLR**,
- 175.** In **Freedom Ltd -vs- Mbarak, Petition No. E009 of 2024 [2026] KESC 2 [KLR] (23<sup>rd</sup> January 2026) (Judgment)**, at issue at the High Court and on appeal was who, between the appellant and the respondent, had established seisin as the root of title thereto, or who had an indefeasible proprietary right

over the suit property. At the Supreme Court, the issue was who between the two had a valid title.

**176.** The Supreme Court remitted the matter for rehearing due to some factual lacunae on what was the current legal status of the land, at what stage and through what legal process did the respondent come into vacant possession, and for how long, when, and through what legal process was the suit property subdivided, surrendered to government and transferred to the appellant, if it was agricultural land, and how come there was in existence two different titles of land.

**177.** In ***Katana Ndule -vs- Fiolabchen Co. Ltd & Others Civil Appeal No. E013 of 2023***, the appellant had directly challenged the validity of the respondent's title. The court reiterated the holding in ***Embakasi Properties Ltd & Another -vs- Commissioner of Lands & Another [2019] eKLR***, that although a certificate of title is generally conclusive evidence of proprietorship and confers absolute and indefensible ownership under **Section 26** of the Land Registration Act, such protection is not without limits, if there was fraud, misrepresentation to which the proprietor is shown to

have been the party, or where the title was acquired illegally, unprocedurally, or through corrupt scheme.

**178.** In this suit, the plaintiffs in the 1<sup>st</sup> suit and the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants in the 2<sup>nd</sup> suit have to tender documents to show that the paper title that they used to obtain title followed the law. The starting point is that the mother title was opened in **1978** as title No. **West Pokot/Kanyarkwat Group Ranch A/1**. Secondly, the plaintiffs in the 1<sup>st</sup> suit have the burden to prove that the occupation of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants in the 1<sup>st</sup> suit is wrongful, amounts to trespass, and is unjustified in law.

**179.** On the other hand, the defendants in the counterclaim in the 1<sup>st</sup> suit have the burden to prove the contents of their defence and the reliefs in the counterclaim, that the title to the suit land is subject to their rights as Group Ranch members.

**180.** The law governing group ranches before **2016** was the Land Group Representatives Act, hereinafter referred to as the Land (Group Representative) Act and Cap **287. Section 13(2)** thereof states that for dissolution, there must be an application to the Registrar of Group Ranches in writing, signed by the

majority of the Group Land Representatives, supported by a copy of minutes of the meeting at which the resolution to make the amendment or effect the dissolution was passed, which must be delivered to the Registrar within **14** days after the day on which the resolution was passed.

**181. Section 8** of the Land (Group Representatives) Act vested only in the Group Representatives the right to hold any property and to exercise such powers on behalf and for the collective benefit of all members of the group and to fully and effectively consult the members of the group on such exercise.

**182.** The Registrar's role included ensuring that the group representatives kept proper records of membership. A group ranch under the Act refers to a demarcated area of range land to which a group of pastoralists who graze their individually owned herd have official land rights.

**183.** As regards membership under **Section 28** of Land (Group Representative) Act where a question arises whether a person is a member of group, a certificate signed by a majority of group representatives shall be conclusive of the question, provided that a person who is aggrieved by the issue

of such a certificate may apply to a District Magistrate in having jurisdiction in the area to determine the question, and in such a case the determination of the court shall be conclusive.

**184.** Regarding the dissolution of a group ranch, the evidence was that a consent would be sought both from the Registrar of Group Ranches and the Director of Land Adjudication & Settlement, who would write to the chairman of the group, confirming that the group ranch will be dissolved after signing all the necessary documents transferring the created subdivided parcels to the individual members of the group. The letter would indicate that the chairman must obtain a Land Control Board consent for the subdivision after fulfilling the aforesaid, and every member of the group has obtained his or her title deed, inform the office, which will finally dissolve the group ranch.

**185.** The chairman will also then record the proposed criteria of subdivision by the committee with the surveyor based on a scheme plan as per Section Physical Land Use and Planning Act, to ensure that all members of the group ranch will get their equal shares, while considering previous settlement, and to

ensure that no member is moved away from their place due to bias or favour.

- 186.** The members would then unanimously resolve that the group ranch be subdivided with delay. The Director of Land Adjudication & Settlement would perhaps tour the ranch to confirm that the survey subdivision plan is completed and submitted to the relevant officers for approvals under **Section 58(6)** of the Physical Land Use and Planning Act.
- 187.** The Registrar Group Ranches was and is the designated officer to supervise and administer all the group ranches in Kenya as per **Section 4** of the Land (Group Representative) Act. He was the one under **Section 15** thereof who could call for an election in his supervisory and administrative capacity, of the group ranch officials as provided under **Section 9**, and to issue a certificate to the duly elected officials under **Section 17** of the Land (Group Representative) Act.
- 188.** A group ranch was supposed to maintain its own register. An application for an amendment of the register under **Section 13** thereof shall be in writing and signed by the majority of the group representatives and shall be supported by a copy of

the minutes of the meeting at which the resolution to make the amendment was passed. The same has to be included, provided that if the consent is given, the incorporated group representatives shall stand dissolved thereupon or at a future date specified by the Registrar. **Section 13(4)** of the Land (Group Representative) Act provides that, as a conclusion of this process, the Registrar of Group Ranches shall give to the Land Registrar such directions as may be necessary to reflect the dissolution.

**189.** After establishing that as of **1978**, when the register was opened, the land was registered in the name of the 1<sup>st</sup> plaintiff in the 2<sup>nd</sup> suit, the next issue to determine is whether the 1<sup>st</sup> plaintiff was dissolved, and if so, if the law was followed to dissolve and a consent issued, to subdivide the land among its members. Tied to this issue is also who had the mandate after the dissolution to preside over and undertake the process of subdivision and transfer of any.

**190.** Kameri Mbote, in her seminal paper “Wildlife Conservation and Community Property Rights in Kenya, <https://www.tetra.org>, says that group ranches were designed for groups of herders shown

to have customary rights over the range or pasture land in question, governed by the Land (Group Representative) Act, as an attempt to formalise traditional community structures.

**191.** In “The Land Question in Kenya Legal and Ethical Dimension,” <https://www.lclc.org>, Prof. Mbote posits that group ranches gave a window through which group or community ownership could be exercised in Kenya. Due to the myriad problems, the National Land Policy **2009** recommended the transition from group ranches to community land, so as to provide stronger protection, control, and security for the local communities, for sustainable development. It is for this reason that **Article 62** of the Constitution came up with a definition of community land, and the enactment of the Community Land Act, **2016**, with clear guides on land registration, governance, and dispute resolutions.

**192.** In ***Elangata-Ewuas Group Ranch (Suing through its Registered Group Ranch Representative Officials) -vs- County Government of Kajiado & 2 others (Environment & Land Case 443 A of 2017)***

**[2024] KEELC 4189 (KLR) (13 May 2024)**  
**(Judgment)**, the issue was whether the procedure leading to the subdivision and the transfer of the group ranch was conducted as per the law. The court made a finding that the County Government, the Land Registrar, and the Land Surveyor under **Section 14** of the Land Registration Act had powers which could not be washed away and could not be directed to perform their duties and excuse their power as the approval of the development and survey scheme plan. See **Tamei & 416 others -vs- Kayie & 9 others ELC No. 99 of 2019** and **Kelvin & 5 others -vs- Ng'aari Group Ranch & 7 others (Environment & Land. Case E005 of 2020)**  
**[2025] KEELC 3051 (KLR) (12 March 2025)**  
**(Judgment)**.

**193.** The plaintiffs in the 1<sup>st</sup> suit urged that the Group Ranch had been dissolved and that titles to the suit land were processed in line with the law. It is not disputed that the Land (Group Representative) Act was repealed by the Community Land Act **2016**, which came into effect on **21/9/2016**. By the effective date, the plaintiffs in the 1<sup>st</sup> suit and the 1<sup>st</sup>

and 2<sup>nd</sup> defendants in the 2<sup>nd</sup> suit had been issued with title deeds.

**194. Section 47(4)** of the Community Land Act **2016** provides that documents issued to the group representatives under the repealed Land (Group Representatives) Act shall continue to be in force until new titles are issued in the names of the respective communities or other institutions in accordance with the law.

**195. Section 46(3)** thereof provides that any instrument executed before the effective date whereby any disposition permitted under this Act, is completed may be presented for registration in the prescribed register and the question whether any instrument so presented is to be registered should be determined by the Registrar by reference to the law in force at the time of its execution and subject to the provisions of paragraph (a), the provision of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

**196.** It is the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants in the 1<sup>st</sup> suit and the 1<sup>st</sup>, and 2<sup>nd</sup> plaintiffs to the 2<sup>nd</sup> suit who are alleging that the Group Ranch was not dissolved in **2005** as alleged by the plaintiffs and that the

officers who undertook the subdivision of the mother title, transfer and registration in favour of the plaintiffs in the 1<sup>st</sup> suit and the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants in the 2<sup>nd</sup> suit had no authority from the Registrar of Group Ranches and did not seek and obtain a certificate of dissolution and or consent to subdivide the Group Ranch title into **West Pokot/Kanyarkwat B/3, 4, 5, and 6.**

**197.** Proof refers to evidence that satisfies the court as to the truth or falsity of a fact. The burden of proof lies on he who alleges. The 2<sup>nd</sup> - 5<sup>th</sup> defendants in the 2<sup>nd</sup> suit allege that they are the bona fide officials of the group ranch, who now have a *bona fide* certificate of incorporation and who now have a mandate to subdivide the group ranch among its members.

**198.** The question of capacity under **Section 5** of the officials to sue or be sued and to undertake statutory powers comes into play. I say so since the Act has been repealed, and that undissolved group ranches fall under the Community Land Act. Therefore, the burden is on the alleged *bona fide* officials to prove that **Section 5** of the Land (Group Representative) Act was fully complied with and that the alleged

certificate of incorporation issued under **Section 8** confers on them the power and mandate to deal with the suit property.

**199.** The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants in the 1<sup>st</sup> suit and the plaintiffs in the 2<sup>nd</sup> suit did not bring before the court authenticated documents from the Registrar of Group Ranches and or call the officers, Land Registrar, and the Land Adjudication and Settlement Officer to authenticate that the 1<sup>st</sup> plaintiff in the 2<sup>nd</sup> suit was not dissolved in law or is in existence in law legally represented by the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs in the 2<sup>nd</sup> suit in line with **Sections 7, 8, 9, and 10** of the repealed Land (Group Representative) Act. See **Simon Tapai Santeto Kimunyak Ole Sale & 78 Others -vs- Ita Ole Bulati & 8 Others [2011] Kehc 2533 (Klr)**, cited in **Bowen -vs- Kwonyike (Environment and Land Appeal E006 of 2022) [2023] KEELC 17626 (KLR) (26 April 2023) (Judgment)**.

**200.** The law, as stated above, is that the adjudication register under the Act means an adjudication register prepared under the Land Adjudication Act, Cap **284**. Group Representatives means group representatives incorporated under

**Section 7** of the Act. Register means the register kept under **Section 4** of the Act. The custodian of the register for group representatives is the Registrar under **Section 4** of the Act. It is the Registrar under **Section 5** of the Act who has the mandate to convene meetings, to adopt a group constitution, and to elect group representatives under **Section 5**.

**201.** The Registrar also has the mandate, after the election, upon receipt of an application and the constitution of the group, to incorporate and issue a certificate of incorporation of the group representatives. Further, it was the Registrar who had the mandate under **Section 9** to receive notice of any changes to the group representatives, amend the register, and direct the Land Registrar to amend the register.

**202.** Further, it was the Registrar under **Sections 10, 11, 12, 13, and 15** of the Act who had the mandate to handle and settle disputes among officers and members of the group ranches, issue a variation of certificate of incorporation, adopt rules, issue an amendment of the Constitution, and consent for dissolution of the incorporated group representatives,

convene meetings including annual general meetings.

**203.** The Registrar, under **Section 17** of the Act, ensured that every group maintained a register of its members in the prescribed form. **Section 24** of the Act provided that in any legal proceedings, a paper purporting to be a copy of an extract from any register or document kept by the Registrar and purporting to be certified by the Registrar as a true copy of the extract, shall be admissible as prima facie evidence of the contents of the register or document.

**204.** Flowing from the foregoing, the plaintiffs and the defendants in this two suits, have tendered contradicting evidence, starting with whether or not the 1<sup>st</sup> plaintiff's group representatives were dissolved through a resolution of members, if the dissolution took place, when the dissolution took place, who convened the meeting on dissolution, and when the meeting(s) for dissolution took place, whether there were elections for the group representatives, when were elections of the group representatives, who was and was not elected the group representative, who were and are the current

bona fide group representatives and above all whether there was a resolution to subdivide the group ranch and issue individual title deeds and the mode of sharing or subdivision of the group ranch. More importantly, the parties in this suit have made contradictory statements and tendered evidence on who was and was not a *bona fide* member of the Group Ranch.

**205.** The answer as to who is and is not a member of the group ranch should have been answered by calling the Group Ranch Registrar, who is supposed to supervise group ranches in terms of them keeping updated records of membership. The Form (register) of members produced as **D. Exhibit No. (1)** is certified by the Land Adjudication Officer, West Pokot, on **26/10/2016** and not the Registrar of Group Ranches. The register of members has only two filled columns. It lacks the signatures of the office holders of the group since **1974**, from its page numbers **5801** to **5830**.

**206.** More importantly, the signature and the certifications of the Registrar of Group Ranches are missing, yet it is the Registrar who has the statutory powers to authenticate all matters relating to

membership and the officials of the group ranch in question.

**207.** Of critical importance, however, in the register of members is the column regarding the qualification of membership. It is indicated as customary rights for all the members in the register. Be that as it may, there is also another issue of a document produced as an adjudication register - **P. Exhibit No. (1)** has been produced by the plaintiffs in the 1<sup>st</sup> suit as the adjudication record showing their father as member No. **273** in the register. The extract of the register was also produced as **D. Exhibit No. (2)**. The 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs in the 2<sup>nd</sup> suit have produced **P. Exhibit No. (1)** a certificate of incorporation dated **5/4/2017** stating that they are *bona fide* officials. The plaintiffs in the 1<sup>st</sup> suit termed the same as fake, for the group had been dissolved on **8/10/2005**.

**208.** What the 1<sup>st</sup> - 5<sup>th</sup> plaintiffs in the 2<sup>nd</sup> suit produced as Register of Kanyarkwat Group Ranch members as at pages **42-73** of the list of documents dated **29/6/2021**, runs from membership No. **1 - 273**. It is not certified, signed, or authenticated by both the Registrar of Group Ranches, the Land

Adjudication Officer, and the then *bona fide* officials of the group representatives of the Group Ranch.

**209.** **Section 17** of Land (Group Representative) Act provides that the group shall maintain a register of its members containing the name of each members, the date he became a member, his qualifications for membership and on his ceasing to be a member, the date on which and the circumstances in which he ceases to be a member and in case of a member under a disability, the name of his guardian, the nature of his disability and if he is a minor.

**210.** Proceedings, activities, and dealings on group ranch affairs were governed by the Land (Group Representatives) Proscribed Form Regulation (**1970**). The regulation covers forms and the method of submission to the Registrar, the register, application for incorporation, certificate of incorporation, register of members, determination of membership, changes in group representatives, variation of certificate of incorporation, amendment, certification of documents, powers of group representatives, and inspection of registers.

**211.** What the plaintiffs and the defendants have supplied before this court is not anywhere near the

statutory forms **A, B, C, D, E, F, G, H, I, J, K, L, M,** and **N** in line with **Rule 7, Sections 28, 9, 11, 13, 23, 16, 8(1), and 15(4)** of the repealed Act.

**212.** Looking at the annual general meeting minutes for **5/2/2021** appearing on pages **74-83** of the list of documents produced by the plaintiffs in the 2<sup>nd</sup> suit, there is no indication if the Group Registrar was in attendance, had been notified or authorised the meeting to take place and or whether within **14** days of the resolution, the minutes were submitted to his office as required by law. The minutes are also not signed by at least three *bona fide* officials of the Group Representatives.

**213.** Regarding the letter dated **20/5/2017**, the maker of the letter was not called to testify or produce it. The date when the letter was received by the chairman of the Group Ranch is not stated. A stamp of the Group Ranch acknowledging receipt of the same is not affixed. The letter refers to an application and minutes of **15/8/2013**, which are not before this court. Consent to subdivide is a statutory form and not through a letter. Consent to subdivide land and to dissolve a group ranch is governed by **Section 7(3)** of the Land (Group Representative)

Act. It is issued after an application is made in writing, signed by the majority of the group representatives and supported by a copy of minutes in which the resolution to effect the dissolution was passed, and has to be delivered within **14** days from the date of the resolution.

**214.** The purported consent was given four years after it was sought. By that time, the Community Land Act had become operational, and the Land (Group Representative) Act repealed. Therefore, the purported letter dated **20/5/2017** by S.G. Mayaka for the Director of Land Adjudication and Settlement was being issued under a non-existent law repealed with effect from **21/9/2016**, rendering it of no legal consequence. See **Section 47(5)** of the Community Land Act.

**215.** As to the letters dated **15/1/2021** by the Director of Land Administration and Settlement, again its receipt by the plaintiffs in the 2<sup>nd</sup> suit since they were not the addressee is not clear. Nevertheless, the letter clarified the law that, under **Article 61** of the Constitution and **Section 47** of the Community Land Act, undissolved group ranches fell under the Community Land Act.

**216.** In these suits, the parties are unable to agree on when or whether the Kanyarkwat Group Ranch is in existence or not. Capacity to sue in law is key. The plaintiffs in the 2<sup>nd</sup> suit rely on a certificate of incorporation dated **5/4/2017**, issued under **Section 7** of the Land (Group Representative) Act, Cap **287**, by Stephen G. Mayaka, the alleged Registrar of Group Representatives, Cap **287**, which was repealed by the County Land Act **2016**. Once the Land (Group Representative) Act was repealed by the Community Land Act, it is doubtful whether the Group Registrar would have had a mandate in the repealed law to grant capacity to the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs in the 2<sup>nd</sup> suit as group representatives of the 1<sup>st</sup> plaintiff based on a non-existent law.

**217.** The plaintiffs in the 2<sup>nd</sup> suit did not call the maker of their documents, who issued them a certificate of incorporation after the law had been repealed. Under that law, it was the Registrar who had the mandate to deal with any disputes on ownership of the suit properties, member disputes, and the entitlements or shares of those memberships in relation to the suit properties. Dealings with the

group ranch property other than in accordance with the law also fell under the Registrar.

**218.** The centrality of the role of the Group Ranch Registrar in relation to group ranches runs throughout the two suits. The critical issue for determination, which this court is called out to determine, is whether the Group Ranch's title was fraudulently and illegally subdivided and transferred without the consent, knowledge, or approval of the members.

**219.** Illegality refers to the state of being contrary to or forbidden by law. What the plaintiffs in the 2<sup>nd</sup> suit and the defendants in the 1<sup>st</sup> suit are alleging is that the plaintiffs in the 1<sup>st</sup> suit and the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants in the 2<sup>nd</sup> suit hold titles to the suit properties, irregularly or illegally obtained from land that belonged to the group ranch.

**220.** In **Nthiri & Others -vs- Muchungu & Others Civil Appeal NO. 210 of 2019 [2025] KECA 559 [KLR] (1<sup>st</sup> March 2025) (Judgment)**, the issue involved the registration of Gekara Group Ranch as property of L.R. No. **Mbeti/Gachariri/172**, with a contestation that it belonged to the Gekara clan, hence had been fraudulently registered to the group

ranch, with an intention of benefiting only a few individuals instead of the entire clan. The resultant subdivisions and transfers had been challenged as nullities. The trial court found the process of registration fraudulent. See **Olalui Group Ranch & another -vs- Konchellah & 609 others (Environment and Land Case. 23 & 24 of 2022 (Consolidated)) [2025] KEELC 7788 (KLR)** and **Marigat Group Ranch & 3 others -vs- Joshua Kisenger [2014] KEELC 425 (KLR).**

**221.** In this suit, the plaintiffs in the primary suit take the view that there was a consent to dissolve the Group Ranch and to subdivide the subject land among the individual group members. The burden was on the plaintiffs in the 1<sup>st</sup> suit to demonstrate that everything that was done to dissolve the group ranch, subdivide, and transfer the land to them complied with the law.

**222.** As indicated above, compliance with Cap **287** required the Group Representatives and the Registrar to abide by statutory forms **A, B, C, D, E, F, G, H, I, J, K, L, M,** and **N** in line with **Rule 7** of the **1970** Registration, as read together with **Sections 28, 9,**

**11, 13, 23, 16, 8(1), and 15(4)** of the Land (Group Representative) Act.

**223.** As held in **James Mbugua Getao** (*supra*), a group ranch is land held in tenancy in common owned by members of the group in equal but undivided shares, until such a time that each member acquires individual titles. It is a community of ownership. No one co-owner has a better right to the property than another. No one can say which of them owns any particular parcel of land to the exclusion of others. A tenant in common has an equal right to possession of the whole of the property.

**224.** **Section 91 (1)** of the Land Registration Act defines co-tenancy as ownership of land by two or more persons in undivided shares. A co-owner under **Section 91 (6)** of the Land Registration Act cannot deal with the suit property without the consent of the other, as no one co-owner has a better right than the other.

**225.** **Section 91 (6)** of the Land Registration Act provides that no tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the

consent in writing of the remaining tenants, but such consent shall not be unreasonably withheld.

**226.** In **Saiqua Sultana Hassan Haroon & 2 others -vs- Abdul Malik [2016] eKLR**, the court held that until a tenancy in common is severed by the subdivision of land so that each tenant in common can have his share of the land, each tenant in common owns the “whole” land in an unidentifiable manner.

**227.** In this suit, it is not disputed that, as the register of members produced herein indicates, all the group members were holding customary land rights as of the repeal of the Land (Group Representative) Act. Customary land rights were rights conferred by or derived from African Customary Law, customs, or practices, as long as they are not inconsistent with the Constitution.

**228.** As of **21/9/2016**, Registrar meant the County Land Registrar. **Section 5(2) and (5) and 14** of the Community Land Act protected the rights of all the group members after **2016** as subsisting rights to occupy the suit land. **Section 34** of the Community Land Act granted any person the right to use and occupy any part of community land, under any law,

to continue to use and occupy such land under that right. **Section 34(2)** of the Community Land Act is clear that any conversion commenced after the **2010** Constitution shall be null and void.

**229.** Conversion of community land to any other category is governed by **Section 21** of the Community Land Act. Apart from the Land Registration Act, the Community Land Registrar and the registered community had to be involved by seeking and obtaining their approval in a special meeting convened for that purpose.

**230.** **Section 46** of the Community Land Act relates to saving and transitional provisions. **Section 47** of the Act relates to Group Representatives and land held under Cap **297**. The law provides that the respective group representatives, together with the committees they represent, shall be registered as a community in accordance with the provisions of this Act, and that upon registration, the respective group shall cease to hold office.

**231.** **Section 47(3)** provides that land held by group representatives shall not be sold, leased, or converted to private land before it has been registered under this Act. **Section 47(2)** provides

that title documents issued to group representatives under Cap **287** shall continue to be in force until new titles are issued in the names of the respective communities.

**(H) DETERMINATION AND RELIEFS**

**232.** From the foregoing provisions of the law, after the coming into force of the **2010** Constitution on **27/8/2010**, the subject land fell under community land by dint of **Article 63(2)(a)** of the Constitution, since it was land lawfully registered in the name of Kanyarkwat Group Ranch Representatives under Cap **287**. **Article 63(4)** of the Constitution provides that community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of each community individually and collectively.

**233.** The implication of the Community Land Act to the mother title, which was opened on **20/3/1978** in the name of Kanyarkwat Group Ranch measuring **10,024** Ha, remained intact up to **27/8/2010**, and thereafter until **24/9/2014**, when the title was closed for subdivision. Any dealings on the title and its resultant subdivisions on **24/9/2014**, **26/11/2014**,

**6/5/2015**, and **7/9/2018**, other than in accordance with the law, amounted to nullities *ab initio*.

**234.** The mutation form registered on **24/9/2014**, sketch development plan, field diagram, land control board application, form (undated), land control board consent dated **14/8/2014**, mutation form received on **7/9/2018**, sketch or development plan dated **2/1/2018**, LCR No. **162/17**, land control board consent dated **7/12/2017**, transfer form received on **24/9/2014**, application for land control board consent, LCR **37/14**, land control board consent dated **9/10/2014**, transfer form received on **14/12/2018**, and land control board consent date **6/7/2018**, and title deeds **West Pokot/Kanyarkwat B/3** issued on **26/1/2015**, **West Pokot/Kanyarkwat B/4**, **West Pokot/Kanyarkwat B/5** and **West Pokot/Kanyarkwat B/6**, were all instruments of illegalities and are hereby declared null and void.

**235.** The consequence is that the **5** titles are hereby cancelled and invalidated, and the land shall revert to its status as of **2013**. The court finds that the 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs lack the capacity to represent the 1<sup>st</sup> plaintiff based on the certificate of incorporation issued on **5/4/2017** on non-existent law; otherwise,

they should have complied with **Section 47** of the Community Land Act.

**236.** The upshot is that the plaintiffs' suit in the 1<sup>st</sup> suit is dismissed with costs, and the 1<sup>st</sup> plaintiff's suit in the 2<sup>nd</sup> suit is allowed in terms of **prayer (e)** by invalidating and cancelling any entries to the register of Title No. **West Pokot/Kanyarkwat A/1** and its **4** resultant subdivisions and Titles Nos. **West Pokot/Kanyarkwat B/3, West Pokot/Kanyarkwat B/4, West Pokot/Kanyarkwat B/5, and West Pokot/Kanyarkwat B/6.**

**237.** The Community Land Registrar, West Pokot County, is directed to, within **3 months** from the date hereof, initiate the process of registering the community by forming a management committee in charge of the Kanyarkawa Group Ranch, to deal with the land in accordance with the law.

**238.** There will be no orders as to costs.

**239.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **11<sup>th</sup>** day of **February 2026.**

**In the presence of:**

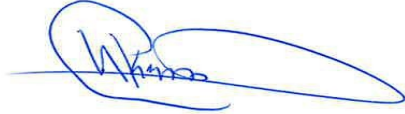
Court Assistant - Dennis

Gemenet for the plaintiffs in the original ELC No.38 of 2021

Sugut for Chebet for the 1<sup>st</sup> & 2<sup>nd</sup> defendants in ELC No.  
38 of 2021

Bororio for the 3<sup>rd</sup> defendant present

No appearance for the Hon. Attorney General



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

ORIGINAL