



**Kenga v Leshao & 18 others (Environment and Land Case
90 of 2019) [2026] KEELC 633 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 633 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 90 OF 2019
FM NJOROGE, J
FEBRUARY 4, 2026**

BETWEEN

KATANA CHARO KENGA PLAINTIFF

AND

JOHN MARK LESHAO & 18 OTHERS & 18 OTHERS DEFENDANT

JUDGMENT

The Plaintiff

1. The plaintiff dated 17th October 2019 in this case was filed on the same date. It is seeking the following orders:
 - a. An order to the Land Registrar Kilifi Land Registry canceling and/or nullifying the allocation and registration of the title number Kilifi/Mtondia/18 in the name of the 1st, 2nd, 3rd and 4th defendants and cancelling and nullifying all the resultant subdivisions created from the said title and cancelling all registration in the names of the 5th -19th defendants and reinstate (sic) the title of parcel of land known as title number Kilifi/Mtondia/118 and register the said title in the name of the plaintiff as the administrator of the deceased Ngala Yongo;
 - b. An order of vacant possession against the defendants who have erected houses thereon and orders of demolition of any house and structure erected by the said defendants on the land in dispute;
 - c. An order of permanent injunction against all the defendants restraining the defendants by themselves their servants and or agents from entering onto the suit properties and from further subdividing the suit properties and/or charging, leasing or selling or transferring the suit properties and/or from dealing with the suit properties in any manner whatsoever;



- d. Costs of this suit and interest thereon at Court rates and any other relief that this court may deem just to grant.
2. The plaintiff brings the suit in his capacity as the administrator of the estate of one Ngala Yongo deceased. He states that the deceased was the beneficial owner entitled to the exclusive possession of title number Kilifi/ Mtondia/118 (Original Number 502D/Tezo/Roka) (hereinafter also referred to as "the suit property"). He states that the suit land was allocated to the deceased by the land Adjudication and Settlement Department in 1967 during the establishment of the Mtondia Settlement Scheme. He avers that the deceased paid the requisite fees and charges and waited for the suit land to be discharged by the Settlement Fund Trustees. However, subsequently, on 7th February 1990, Ngala died before he could be registered or issued with a title deed but the plaintiff and the deceased's family have remained in physical possession and occupation of the suit land to date.
 3. Sometime in the year 2018, the 18th defendant claimed to be the registered owner of a portion of the suit property and commenced construction of a house thereon. It was after that event that the plaintiff made inquiries at the land registry on 2nd May 2019 and found that the suit property had been irregularly given to the 1st defendant who immediately transferred it to the 2nd defendant who then sold it to the 3rd defendant, and unknown to him and his family, the 3rd defendant had been registered as proprietor on 28th August 2006 and that the 3rd defendant had subsequently sold and transferred it to the 4th defendant on 7th September 2006.
 4. He also discovered that the 4th defendant had caused the suit land to be subdivided into 23 subdivisions namely, title numbers Kilifi/Mtondia/1765 to 1831. The 4th defendant thereafter retained title numbers 1766, 1768, 1769 and 1770 in his name but sold and transferred titles no 1765 to the 5th defendant, titles nos 1771, 1772, 1773, 1774, 1775, 1776 and 1777 to the 6th to 12th defendants respectively, and title number 1822 to the 13th defendant, titles nos. 1823, 1824, 1825 and 1826 to the 14th 15th 16th and 17th defendants respectively, titles nos 1827, 1828, 1829, and 1830, to the 18th defendant, and title number 1831 to the 19th defendant.
 5. The plaintiff contends that the allocation, transfer and subsequent registration of Kilifi/Mtondia/118 into the names of the 1st, 2nd, and 3rd defendants was obtained by mistake or fraud. He also contends that the subsequent transfer and registration of title number Kilifi/Mtondia/118 into the name of the 4th defendant and its subdivision into 23 subdivisions was obtained by "omission" or fraud. Further, he avers that the transfer and registration of Title Numbers 1765 to 1831 in the names of the 5th to 19th defendants was also obtained by fraud.
 6. The plaintiff avers that consequently, the titles created and registered in favour of the 1st - 4th defendants and subsequently the titles transferred to the 5th to the 19th defendants were obtained through an illegal process and are null and void and that the register requires to be rectified by cancelling and/or nullifying the allocation and registration of title number Kilifi/Mtondia/118 in the names of the 1st to 4th defendants, and cancelling all the resultant subdivisions and registrations in the names of the 5th to 19th defendants in order for the suit land to be registered in the name of Ngala Yongo.

The Responses.

The 5th To 19th Defendants' Statement of Defence and Counterclaim

7. In this pleading that was filed on 6th January 2020, the 5th to 19th defendants object to the plaintiff's capacity to institute the suit on behalf of the deceased estate. They averred that neither the plaintiff nor the deceased are legal or beneficial owners of the suit property. They also have averred that neither



plaintiff nor the deceased have ever been in exclusive possession of the suit land. The defendants further denied that the suit land was allocated to the deceased in 1967 by the Land Adjudication and Settlement Department. They denied that the plaintiff paid fees and land charges to the Settlement Department. They denied that the deceased ever expected the suit land to be discharged by the Settlement Department, and to be subsequently registered in his name. They aver that no discharge and/or registration fees were at any material time paid to the government by the deceased. They state that the deceased was just a short-term tenant for a period of 5 years on the suit property. They add that after the deceased stayed on the property for some time, his rights were extinguished by operation of the law.

8. The defendants further aver that neither the plaintiff nor the deceased ever took possession of the suit land, set up beacons or built on the land or had the land surveyed, and that the land was vacant. The 5th to 19th defendants aver that they acquired the land from the 4th defendant after having followed the lawful procedure and conducted due diligence and that the title procured thereby is absolute and indefeasible. The defendants deny fraud, misrepresentation, mistake or unlawfulness of transfer of the suit land to them. They aver that the plaintiff lacks any constructive or equitable interest in the land. They also aver that the orders sought in the plaint are baseless, fatally defective and unenforceable.
9. In the counterclaim, the 5th to 19th defendants in the main suit, as plaintiffs in the counterclaim, joined the plaintiff in the main suit and the first 4 defendants in the main suit as defendants to the counterclaim. They pleaded that the plaintiff in the main suit has threatened to unlawfully enter into the suit property and to interfere with the defendants' rights of enjoyment of the property and the developments therein, thus violating their right to property and their right to own land. They reiterated the matters in the plaint and sought the following orders:
 - a. The main suit be dismissed with costs to the 5th to 19th defendant therein;
 - b. A declaration that the 5th to 19th defendants in the main suit are the lawful owners of the suit property and that they are entitled to quiet possession without any interference from the plaintiff in the main suit his agents, servants, or anyone else claiming or acting through him;
 - c. An order of permanent injunction restraining the plaintiff in the main suit or anyone else from entering, invading, trespassing and or from interfering with the 5th-19th defendants' quiet possession and enjoyment of the suit property;
 - d. An order directing the plaintiff to demolish any illegal structures from the suit property at his own cost within 60 days from the date of entry of judgment;
 - e. A declaration that the plaintiff in the main suit is a trespasser on the suit property;
 - f. An order of compensation of (sic) damages for trespass by the plaintiff in the main suit;
 - g. In the alternative, an order directing that the 5th defendant to compensate the 1st to 15th plaintiffs in the counterclaim for any loss to the 1st to the 15th plaintiffs in the counterclaim stand to suffer should the court find that the 1st defendant in the counterclaim is the lawful owner of the suit property;
 - h. Costs of the suit.

Reply to Defence and Defence to Counterclaim of The 5th To 19th Defendant in The Main Suit

10. This pleading is dated 3rd January 2020. In it, the plaintiff in the main suit reiterated the matters in the plaint and prayed that the defence be dismissed with costs. He also denied all the allegations in



the counterclaim, particularly that he intends to trespass on the suit property and maintained that he has been in physical possession and occupation of the suit property since 1967 in his own right as the beneficial owner thereof.

1st And 2nd Defendants' Amended Statement of Defence

11. In this pleading filed on 10th May 2023, the defendants state that the plaintiffs' claim is time-barred. They deny the plaintiffs' claim. They state that at the time of obtaining the subject land, it was unoccupied and no farming activity was occurring thereon; that neither the plaintiff nor the deceased are legal or beneficial owners of the suit property and neither have they been in exclusive possession of the suit land. They maintain that the Settlement Office confirmed from the records that the suit land was virgin land with no structures erected thereon before allocating it to them. They deny that the suit land was ever allocated to the deceased by the Settlement Department and that in an event, there are no such records to be found in the offices of the said Department. They maintain that they got the land after following the due process and conducting due diligence, and their title is absolute and indefeasible. They deny fraud, mistake or misrepresentation, irregularity of title or unlawful transfer thereof. In all other respects the contents of the defence of the 1st and 2nd defendants resemble those in the defence of the 5th to 19th defendants in the main suit.

Reply to Defence of The 1st And 2nd Defendants in The Main Suit

12. Vide a reply dated 22nd May 2023, the plaintiff in the main suit responded to the 1st and 2nd defendant's statement of defence dated 25th April 2023, reiterating the contents of the plaint and denying the contents of the defence. He asserted that Ngala Yongo was already in possession and occupation of the suit property. He maintained that the suit land has remained in possession of the plaintiff and the deceased's family ever since the establishment of the Settlement Scheme and the allocation of the suit land and that they have carried out developments thereon, and neither the 1st nor the 2nd defendants ever taken possession of the suit land or utilized it in any manner whatsoever.

Evidence

Plaintiff's Evidence

13. The plaintiff testified alone on his own behalf. He adopted the contents of his witness statement dated 17th October 2019 as his evidence-in-chief and produced the documents in the list, also dated 17th October 2019, as his exhibits. According to him the suit land belonged to Ngala Yongo who died in 1990 and who was his grandfather. He obtained a grant of letters of administration to his estate. Ngala was given the land by the Adjudication Department, and he paid for it. Ngala yongo had receipts and his name was reflected at the Ministry of Lands. He pointed out that Ngala Yongo's was the 2nd last name on page 16 of plaintiff's Exh2, a document from the land adjudication office (that entry however reads "Ngala Kongo"); that the photographs produced in court show dwellings on the land which he termed as "our houses." He stated that they had been on the suit land for a long time. His further evidence was that at some unspecified time, he did conduct a search and found that the land had not been registered in his father's name; that when the 18th defendant came about wanting to build on the land, PW1 visited the lands office and found the land had been registered in another person's name, and so he came to this court for relief. He stated that the green card showed that the land was registered in the name of Paul Hato Kigamba who had sold it to Francis Waiganjo. He stated that at no point had he been informed that the allocation to his grandfather had been cancelled. He denied invading the land and asserted that he and his family had been living on the suit property from a long time ago. He is seeking that the land be restored to his grandfather's estate and that it be registered in his name.



14. Upon cross-examination by Mr. Kalimbo, he stated that he did not inquire into how allocation was effected in his grandfather's name. He maintains that his grandfather paid Kenya shillings 25/- per year. He never followed up to know why one of his exhibits, the receipt dated 30th October 1971 had been cancelled on its face by the lands officers and the words "reallocated to another person" written at its bottom. He could not account for the discrepancy between the name "Ngala Yongo" which name he attributed to his grandfather, and "Ngala Kongo" appearing in the list from the lands office. His grant of letters of administration contained authorized him to administer over the estate of "Ngala Yongo". He never filed any complaint with the land registry regarding the taking up of the land by the defendants.
15. Upon cross-examination by Miss Kamau, he stated that he was 54, having been born in 1972, and that he cannot confirm the things that happened in 1967 to 1971 regarding the suit land before he was born. He has never had any title to the suit land. However, he maintained that Ngala Yongo was given the receipt in 1971 and he did not know of the cancellation and reallocation; that Ngala died in 1990 and the plaintiff got the receipt thereafter in that same year, but he never took action regarding the land until 2019. He admitted that he had not produced an allotment letter or any conditions attached there to. Asked regarding the names, he did not know whether "Ngala Yongo" and "Ngala Kongo" are one and the same person. He admitted that he lives at Vipingo. He also admitted that he has pleaded at paragraph 13 of his plaint that the defendants are on the suit land and that he is seeking their eviction. He never visited the lands office to seek a discharge of charge.
16. His re-examination by Mr. Shujaa yielded nothing new.

Defence evidence.

1st Defendant's Evidence.

17. DW1, Peter Njoroge Kiragu alias Peter Kiragu Kagunyu, adopted his witness statement dated 26th July 2022 as his evidence-in-chief and also produced at documents as per the list dated 26th July 2022 as D. Exh. Number 1 to 6. The Deed Poll D. Exh 3, shows his change of name. His evidence is that he got his land from John Mark Leshao, the 1st defendant, who sold it to him in 1980. When he purchased the suit land, there was only a small security structure otherwise the land was vacant. The houses the plaintiff alleges were not on the land. He was shown the receipt of 1971 by the 1st defendant who owned the land and who sold it to him; he did not farm on the suit land for a long time as the land was far from Mombasa where he stayed. Therefore, he looked for Peter Kamau, an estate agent, and instructed him to sell the land in the 1980s. For the time he was working on the land no one came to claim it.
18. On cross-examination by Ms Kamau, he stated that there was an allotment letter that was given to him by Mr Leshao.
19. Upon cross-examination by Mr Shujaa, he stated that he purchased the suit land for Kenya Shillings 20,000/- from the 1st defendant and that he obtained an allotment letter from him. He sought a buyer soon thereafter and released all the documents to the buyer. He never visited the settlement office. He farmed the suit land for only two or three or years and then gave up farming. He sold the land to one Peter Kamau Nganga. He did not have any agreement vide which he sold the land to Peter, and it was Peter who did everything that required to be done regarding that transaction.
20. Upon re-examination by Mr. Kalimbo, he stated that it is 45 years since he sold the land and he has not retained any records thereof.
21. At the end of his evidence, the 1st and 2nd defendant's case was marked as closed.



22. DW2, John Wachira Karanja, Land Adjudication and Settlement Officer, Kilifi, testified in the matter. His evidence is that his office received the letter dated 21st April 2021 and it responded via a letter dated 22nd June 2021. According to DW2, the 1st allottee of the land was John Mark Leshao. John transferred the land to Peter Kiragu Kagunyu. Thereafter the plot was transferred from Peter Kamau and thereafter to Mohamed Sheikh Abdulrahim. There is a letter of consent for transfer to Peter Kamau issued in October 1983. There is also a consent issued in 1985 for transfer to Sheikh Abdulrahim. Sheikh Abdulrahim then transferred the land to Paul Hato Kigamba. A discharge of charge was issued to Paul Hato Kigamba. DW2's office has an allotment letter in the name of Paul Hato Kigamba dated 6th January 1988. Demand notices in the file, dated 27th March 1992 and 1st of October 2000 and 25th September 2003 respectively, were issued against Paul Hato Kigamba. There is a Full Balance Statement dated 21st June 2006. All these were issued in the name of Paul Hato Kigamba. There is an official receipt dated 10th January 2006 for Kenya shillings 10,850/- and also a copy of discharge of charge in the name of Paul Hato Kigamba. Only Paul Hato Kigamba perfected the obligations of allotment. Mtondia and Tezo are 2 distinct Settlement Schemes. It is wrong to describe Kilifi/Mtondia/118 as Plot Number 502D-Tezo/Roka since these are 2 land parcels situated at different locations. Once an allottee is allocated a plot, the terms issued by the Settlement Department are that 10% of the amount due is supposed to be paid within 90 days and some development is supposed to be effected on the land. According to DW2, Ngala Yongo never fulfilled the requirements in order to make the land his. The nominal roll produced by the plaintiff at Page 16 of his bundle is thus not conclusive. That list is normally followed by the opening of the file and payment of 10% of the dues demanded by the Settlement Department. DW2 has a 2nd list that does not show the name of Ngala Kongo. That list bears the name of John Mark Leshao at item number 119 while item number one 118 reads "Thomas Benzi Baya."
23. Upon cross-examination by Mr. Kalimba, DW2 stated that he cannot see any receipt in the plaintiff's name or in Ngala Yongo's name in the file, and that John Mark Leshao was the 1st allottee.
24. Upon cross-examination by Mr. Shujaa, DW2 stated that the Mtondia Settlement Scheme was established in 1962; that the nominal roll that shows "Ngala Kongo" has a stamp dated 4th May 2001; that D. Exh. 2 indicates that the 1st allottee was Peter Kirago Kagunyu while his record shows that the initial allocation was to John Mark Leshao; that he does not have a letter of allotment to Peter; that any transfer effected while there was an encumbrance or a debt to the department meant that the transferee was liable to pay that debt.
25. Upon re-examination by Ms Kamau he stated that every new allottee is issued with a new letter of offer.
26. DW3 Macmillan Edwin Jengo, testified orally and also adopted his witness statement dated 17th December 2019 as his evidence-in-chief. He also produced documents in the list dated 18th February 2021 as D. Exh 6 - 53. According to him, the defendants conducted due diligence before purchasing the suit land. He purchased his plot alongside the other defendants named in the main suit. A certificate of official search in respect of Kilifi/Mtondia/118, dated 14th April 2011, was applied for on the same day and obtained in respect of the suit land. It showed that the suit land belonged to Francis Waiganjo Kimanga and not the plaintiff's father. DW3 dealt with the person named in the title. upon purchase of the parcels by the defendants the purchasers had the land subdivided as per the agreement with the seller. A power of Attorney was registered in the name of Advocate Nyamboye, donated by the seller, to assist in carrying out the subdivisions. DW3 exhibited the title to the suit land in Waiganjo's name, the Power Of Attorney, application for Land Control Board Consent for sale of the entire parcel Kilifi/Mtondia/118 to about 12 of the defendants in the main suit, the letter of consent for the sale to those defendants, an extract of the mutation showing how the suit land was to be subdivided, copies



- of transfers of the various plots executed by or on behalf of Mr. Waiganjo in favour of the defendants, copies of titles emanating from the subdivision of the suit land, and copies of certificates of official search showing that the defendants were the registered owners of the resultant subdivisions of the suit land. He also produced copies of council rates demand note. He stated that after purchasing, the buyers, with the local Chief's knowledge, engaged Mangi Charo Yaa, the erstwhile caretaker to keep out squatters. He denied that the defendants ever engaged in any unlawful dealings or fraud or misrepresentation over the suit land. DW3 stated that he has constructive occupation of his plot and the plaintiffs have never been in occupation thereof.
27. Upon cross-examination by Mr. Kalimbo his stated that no one was in occupation of the suit land save one person, and who was removed as a condition in the agreement; that he learned of the plaintiff's complaint upon being served with the present suit. In addition, the plaintiff's father's name and his grandfather's name never appeared in the land register.
 28. Upon cross-examination by Mr. Shujaa, he admitted that there was one person dwelling on the suit land but added that he did not get to know who exactly that person was at first, but he later came to learn that he was a caretaker who had returned after his services terminated, claiming ownership of the suit land. He does not know the plaintiff and he has never dealt with him.
 29. According to DW3, 12 people were purchasing the land and Mr Waiganjo gave a power of attorney to an advocate called Nyamboye. There was a transfer through the holder of the power of attorney. DW3 has a title deed in his name. On his Parcel, there were no squatters as at the time of purchase and even subsequently they never entered the parcel and it is still vacant.
 30. DW4 John Ndungu Kang'ethe, a resident of Shanzu in Mombasa testified orally and adopted his witness statement dated 17th December 2019 as his evidence-in-chief. He said that when he retired from the Kenya Navy, he wished to invest some of his proceeds in land, and he visited the site prior to the purchase and observed that the plot that he was purchasing had natural vegetation. It was vacant. He went to visit his plot in 2019 and some boys followed him. According to him, no one claimed the land between 2011 and 2019 and he would pay county rates for it. His plot is number 1773. It is still vacant to date. He stated that the structures on the photograph dated 23rd September 2019 are not on his property, and that if those structures came up nearby, they must have been erected after 2019 because he has never seen them.
 31. Upon cross-examination by Mr Kalimbo, he stated that he did due diligence during the time of purchase and no document in the land registry showed that the suit property belongs to the plaintiff.
 32. Upon cross-examination by Mr Shujaa, he reiterated that he conducted a search; that he obtained a Land Control Board Consent and title was issued; that when he conducted a search on the land register, he found that Francis Waiganjo owned it. DW4 stated that he attended the Land Control Board meeting for consent to transfer in respect of the mother title; that he paid stamp duty but he did not have a copy of the stamp duty receipt among his documents; that he had visited the land a year or so before the signing of the agreement and found that Francis Waiganjo was in physical possession of the Land by then even though there was no structure erected thereon.
 33. DW5, Matthew Nyaramba Nyabena testified orally and adopted his witness statement dated 17th December 2019 as his evidence-in-chief and was cross-examined. His evidence resembled that of DW3 and DW4 in all respects.
 34. Upon cross-examination by Mr. Shujaa is stated that a decision was made to subdivide the mother parcel, it became clear that there was a limit to the number of persons who could be included on the title deed. His title is number 1825. There was a Land Control Board Consent to transfer the plot to him



which was issued. The land was transferred to him by Francis Waiganjo. According to him, they were no squatters before the purchase, but some individuals trespassed on the land after purchase. He stated that he could not have bought land if there were squatters thereon. However, he was shown a letter dated 29th August 2021 stating that squatters should be removed from the land and cross-examined on it, and his answer was that the person on the land was formerly working for Mr. Waiganjo the seller. According to DW4, the caretaker had not been paid his wages and he was still on the land. DW4 sent Millicent Munene to attend to the matter. The caretaker was called Mangi Yaa. He was claiming his salary arrears. He was finally paid his salary arrears by Mr. Waiganjo. DW4 stated that he had visited the Land Adjudication Office and checked the records and seen that Mr. Waiganjo was the owner of the land, and that there was no dispute regarding the land. He was also aware that Mr. Waiganjo had purchased the land from some other person.

35. Upon re-examination by Ms Kamau, he stated that after the caretaker was paid his salary arrears, he left the land and some of the purchasers erected walls around their plots; that it was after the walls were erected that some hostility arose from some individuals who DW5 did not know.
36. DW6, Millicent Muthoni Munene, testified orally and adopted her witness statement dated 17/12/2019 as her evidence-in-chief. Her evidence is that her plot was vacant at the time of purchase, save for the caretaker who had not been paid his dues and who vacated upon being paid. According to him, the caretaker's wife claimed the suit land was her family's and the dispute was thus taken before the local chief for determination. DW6 had never heard of the plaintiff before. The structures on the suit land were the caretaker's. When DW6 began erection of a fence, some people started inquiring who the land belonged to. DW6 applied to the Land Surveyor Kilifi in 2019 and paid Kenya Shillings 10,000, for him to reinstate the boundaries, and he came with police escort and conducted the exercise. DW6 had divided his land into 5 portions and she sold 1 portion to a Mr. Thurania who put up a permanent house which is still on the land now and which is occupied by the owner; there are no squatters on any of her remaining plots except for a family living on a tiny portion with a grass-thatched hut and one block structure. Later on, her 3 portions were transferred to a Mr. Muraya and his wife and daughter. All purchasers save those of Mr Muraya's and his wife and daughter, purchased their land free from squatters and if any squatters came to their plots, then that was after the purchase. According to her, she did due diligence before purchase.
37. Upon cross-examination by Mr. Kalimbo, she stated that only Mr. Mangi Yaa and his family were on the land as at the date of purchase and invaders came to the land after the purchase of the property.
38. Upon cross-examination by Mr. Shujaa, she admitted that she was not party to the agreement dated 19th May 2011; that she purchased the land from Mr. Waiganjo alongside the other purchasers, but had her own separate agreement with Mr Waiganjo though she had not brought it to court; that she purchased her 5 parcels in May 2011. Mr Waiganjo transferred the parcels to her through a lawyer, a Mr. Nyamboye, to whom the seller had donated a power of attorney.
39. When re-examined by Ms. Kamau, she stated that her name was not in the agreement because she had proposed the inclusion of the name of her daughter, Kezia J.W.A. Okanga, whose name appears in the agreement dated 19th May 2011.
40. With the close of the evidence of DW6, the case of the 5th to 19th defendants were marked as closed and the court ordered parties to file their submissions.

Submissions

41. The plaintiff filed submissions dated 15th October 2023; the 1st and 2nd defendants filed submissions dated 6th November 2025 and the 5th – 19th defendants filed their submissions dated 25th October 2025.



Plaintiffs Submissions

42. The plaintiff's counsel framed two issues for determination as follows:
- a. Whether Ngala Yongo had been allocated the suit land then known as Kilifi/Mutondia/118 upon establishment of the Mtondia Settlement Scheme;
 - b. Whether the defendants acquired the suit land legally or by means of fraud and/or mistake or misrepresentation and or omission;
43. Counsel for the plaintiff submitted that the claimant has by way of production of the nominal roll of the settlement scheme shown that the deceased was the initial allottee of the suit land (page 16 of the plaintiff's list of documents); that some receipts (at page 19 to 23 of the plaintiff's bundle of documents) were also produced showing that the deceased paid for the suit land upon being allocated the same; that even if there are words written on the face of the receipt dated 30th October 1991 that the suit land was re-allocated to one Mr. M. Otieno, no evidence has been adduced that shows that they said Otieno was actually allocated the suit land and what happened to that allocation. In particular, he singled out the evidence of DW2, the District Land Adjudication and Settlement Officer as not having addressed that issue; that in any event, no evidence was adduced demonstrating that the allocation to the deceased was cancelled prior to re-allocation to any subsequent person, and also no evidence was adduced of the reasons for the cancellation, and whether requisite notices were issued to the deceased of the intention to cancel his allocation. It is thus his submission that the allocation to the deceased was not revoked; that there was no publication of the intention to re-allocate the suit land, or any availability of the land for re-allocation, followed by an invitation to the deceased who was still in position to participate in the reallocation exercise.
44. It was also submitted that DW2 was not the Land Settlement Officer present when the scheme was established; that he did not have the Nominal Roll of the scheme at the time of his testimony; that he appears to have selected from the records held at his office only those documents favorable to the 5th to the 19th defendants, but left out those relating to the deceased; that DW2's evidence that the land was first allocated to Peter Kiragu Kagunyuu, the 2nd defendant, contradicted that of the 2nd defendant, who testified under oath that the suit land was transferred to him by the 1st defendant; (this court has re-checked the record and found that the evidence of DW2, the Land Adjudication officer, was that the first allotment was to John Mark Leshao); that the question now arises that, if the 2nd defendant was the 1st allottee as testified by DW2, what is the explanation for his name not appearing on the nominal roll of the scheme?
45. Counsel submitted that DW2 did not produce records showing that the 2nd defendant was, prior to the discharge and transfer of the suit land to the 3rd defendant, the allottee of the suit land; that no documents supporting the allocation of the suit land to the 2nd defendant or to the 3rd defendant were produced and therefore the letter dated 22nd June 2021 is of no evidential value; that DW2 did not effectively differentiate plot number 502D from the suit land; that he did not produce any records for Tezo/Roka; that the PExh 2 (the nominal roll) indicates that plot number 502D was the old number for the suit land at the establishment of the scheme; that even if the 2nd defendant was an allottee, he did not produce any evidence showing that he had paid any fees or land charges for the suit land, and neither was any evidence produced showing that the person to whom he sold the suit land ever paid any fees or land charges for the land which is a prerequisite upon allocation of land within a settlement scheme; that there is no evidence that Mohamed Sheikh Abdulrahim, who is alleged to have sold the suit land to the 3rd defendant ever paid in the fees or any land charges for the suit land before he purported to transfer the land to the 3rd defendant; that in view of the above omissions, if the land



had not been legally allocated to the deceased, then it remained land owned by the Settlement Fund Trustees as neither the 1st nor the 2nd defendant paid any amount; that neither did Muhammad Sheikh have any proprietary interest in the land capable of being sold or transferred to any person. Counsel premised such conclusion on the ground that a mere allotment of land does not give rise to proprietary interest in the land until the conditions in the allotment have been fulfilled, which are the acceptance of offer and payment of the requisite fees and charges.

46. Counsel further posited that, even for argument's sake, if Muhammad Sheikh could legally resell the land to the 3rd defendant, that could not legally effect a transfer to the 3rd defendant without the consent of the Director of Settlement granted in writing, given that the suit land was still owned by the SFT, that is, if it had not already been allocated to the deceased, Ngala Yongo; that in any event, there was no evidence that Mohamed Sheikh had been allocated the suit land; that the letter dated 22nd June 2021 stated that he had bought the suit land from Peter Kamau Nganga, who was also not an allottee of land in the settlement scheme, but who had purportedly bought the land from the 2nd defendant; that for that reason, Mohamed Sheikh had nothing to sell to the 3rd defendant. The case of *Torino Enterprises Limited Versus Attorney General* Petition 5 Of 2023 KESC 79 KLR was relied on in this regard.
47. Overall, it was submitted that the 2nd defendant failed to exhibit documents to prove that the 1st defendant has been allocated the suit land by the Settlement Department; that there was nothing to show that the 2nd defendant ever undertook any agricultural activities on the suit land; that the allegation by the 2nd defendant that he purchased the suit land from the 1st defendant contrasts or conflicts with the contents of the letter dated 22nd June 2021 which stated that the 2nd defendant was the 1st allottee of the suit land; that the 2nd defendant did not demonstrate that he had completed the conditions necessary for allotment of the land within a settlement scheme; that the 1st and 2nd defendants were, according to evidence on record, strangers in the settlement scheme area. The 2nd defendant did not know whether the 1st defendant paid for the land. The 2nd defendant also did not produce a sale agreement between himself and the 1st defendant and there is no proof that he bought the land from the 1st defendant; that then, his claim has not been proved as required by Sections 107, 109 and 112 of the *Evidence Act* Cap. 80. It was submitted that given that the deceased had paid fees and land charges for the suit land, there was no land upon which another allocation could be made in accordance with the holding in *Swaleh Mohamed Waziri & 3 Others Versus Houd Muhammad Athman & Another* 202 KLR; that the suit land remained allotted to the deceased as per the nominal roll and the receipts, given that there was no revocation of his allocation; that the titles for the 3rd and 4th defendants having been obtained illegally, then any subsequent subdivision and issuance of title in the names of the 5th to 19th defendants are all invalid, and the doctrine of innocent purchaser for value without notice is inapplicable to those Defendants; that mere issuance of title deed does not confer a status of indefeasibility of title as seen in *Funzi Development Limited & Others Versus County Council Of Kwale* 2014 eKLR.
48. The titles of the 3rd to 19th defendants having been challenged for non-compliance with conditions for issuance of allocation and no proof of allocation of the suit land to the 1st to 3rd defendants having been brought to court then no valid titles could pass to the 4th to 19th and defendant; that Section 26(1) b of the *Land Registration Act* removes the protection from an innocent purchaser in that estate was impeachable so long title was obtained from an invalid title. It was further submitted that photographs exhibited by the plaintiff showed that the houses on the suit land cannot have been erected recently, and the letter dated 29th August 2011 written by the defendant lawyers to the vendor's lawyers demanding the removal of squatters from the land as a condition for completion of the transaction show that there



was occupation on the land before the defendants agreed to purchase the land. It was submitted that that occupation should have warned the 5th to 19th defendants not to purchase the land.

49. Citing *Munyu Maina Versus Hiram Gathiha Maina Civil Appeal 239 Of 2000*, counsel submitted that that the 5th to 19th defendants ought to have established a good root of title, and that should have been done by establishing whether the process leading up to the issuance of title documents to the 3rd and 4th Defendants was valid. None of the defendants produced documentary evidence demonstrating that the process employed to obtain their respective titles, starting from the root, was valid and there is no background as to how the subdivisions from the suit property came to be registered in their names; that there is no evidence save the letter of consent of the Land Control Board that was obtained in respect of 5 transferees, to show how each of the 5th to 19th Defendants was registered as owner of their respective parcels.

1st And 2nd Defendant's Written Submissions

50. These defendants identified the following as the issues for determination
- a. Whether the suit is time barred;
 - b. What are the plaintiff has locus standi;
 - c. What are the plaintiffs grandfather ever held valid title;
 - d. What are the 5th to 19th defendants hold valid and indivisible titles;
 - e. Whether the defendants' counterclaim ought to succeed.
51. Regarding the first issue, counsel for the defendants cited Sections 17 and 18 of *Evidence Act* Cap 80 and *Barclays Bank of Kenya Limited Versus Evans Ondusa Onzere CACA Number 236 of 2008 (Nairobi)* regarding admissions in suits, and stated that once an admission has been made in law the admitting litigant is estopped by Sections 24 and 120 Of Cap 80 from giving contradictory evidence in a suit. In this regard it was submitted that the plaintiff had admitted to have filed the suit to recover the suit property 29 years after finding out that the cause of action had accrued, contrary to the provisions of Section 7 of the *Limitation of Actions Act* which provides that no action for the recovery of land may be brought to court after the end of 12 years from the date on which the cause of action accrued. The present suit is therefore time-barred and the court lacks jurisdiction to handle it. The case of *Phoenix of East African Assurance Company Limited Versus S.M. Thiga t/a Newspaper Service CACA No 244 Of 2010 Nairobi* was cited in support of that submission. It was further submitted that the plaintiff is an indolent pleader who slept on his rights and who is guilty of inordinate delay in bringing the suit contrary to the maxim of equity "equator aids the vigilant and not the indolent."
52. Regarding whether the plaintiff has locus standi, it was pointed out that the grant of letters of administration issued on 25th September 2019 for the Estate of "Ngala Yongo", yet according to the evidence produced by the plaintiff, and specifically the scheme records, plot number 502D reflects the name "Ngala Kongo" and not "Ngala Yongo". The plaintiff never produced any grant to the Estate of "Ngala Kongo". The case of *The Matter of the State of Grace Runji Kiande & Another Versus Ndwiga Muthara & Anor HC SUCC. No. 1668 of 2011 Embu* was relied on regarding this issue.
53. On the 3rd issue as to whether the plaintiff's grandfather ever held valid title, it was submitted that DW2 testified that once a person has been allocated land through an allotment letter, no proprietary interest over the property is created until set out conditions are satisfied; that contrary to Section 107 of Cap 80, the plaintiff produced no letter of acceptance, receipts for payment in full, or any of the evidence required to support his case; that on the contrary the plaintiff admitted that the alleged allotment was



cancelled, as exhibited in his own receipt dated 30th October 1971, and the land reallocated to another person.

54. Regarding the 4th issue, it was submitted that DW1 testified as to how he obtained the land and how he disposed of it, and his evidence was uncontroverted and was corroborated by the evidence of DW2 using records from the Land Adjudication Office. The defendants relied on the Munyu Maina Versus Hiram Gathiha Case (supra).
55. Regarding the 5th issue, the defendants submitted that the counterclaim ought to succeed and relied on Rhoda S. Kisilu Versus Jianxi Water and Hydropower and Construction Kenya Limited (citation unstated) for the proposition that a permanent injunction and damages are deserved by the defence.

5th -19th Defendants' Submissions.

56. Counsel for the 5th -19th defendants identified 7 issues for determination as follows:
 - a. Whether the suit is time barred;
 - b. What are the plaintiff has capacity to sue;
 - c. What are the plaintiffs grandfather ever held valid title;
 - d. What are the 5th to 19th defendants hold valid and indefeasible titles;
 - e. whether the defendants' titles were procured through fraud;
 - f. whether the suit is fatally defective and incapable of yielding effective reliefs;
 - g. Whether the defendants' counterclaim ought to succeed.
57. As to the whether the suit is time barred, as to whether the plaintiff has capacity to sue, and as to whether the plaintiff's grandfather ever held a valid title, the defendants reiterated the submissions of the 1st and 2nd defendants as analyzed here in above. Spin Knit Dairy Limited vs Mwaniki Anderson [2019] eKLR, Iga Vs Makerere University [1972] E.A. 62 and Dhanesar Mehta V Manilal M. Shah [1965] EA 321 were relied on in the limitation issue.
58. Regarding whether the 5th to 19th defendants hold valid title, counsel submitted that they do, and cited the case of Lawrence P. Nukiri (Attorney of Francis Muroki Mwaura) Versus The AG & 4 Others Land Case Number 169 of 2008 and Benja Properties Limited Versus HH Dr Syedna Mohammed Burhannuddin Saheb and Others Civil Appeal Number 79 of 2007.
59. As to whether the defendants' titles were fraudulently obtained, counsel referred to Black's Law Dictionary for the definition of fraud and also the case of Re Estate of Samuel Muiruri Nganga (Deceased) Succession Cause E 088 of 2013 2025 KEHC 179 KLR, and stated that the standard of proof for allegations of fraud is higher than on a balance of probabilities though not as high as beyond reasonable doubt, which burden the plaintiff failed to discharge by:
 - a. Failing to call any witness from the Land Adjudication Office;
 - b. Failing to demonstrate that his grandfather satisfied the allocation conditions;
 - c. Failing to demonstrate the steps taken after the alleged fraud was discovered.
60. As to whether the suit is fatally defective and incapable of yielding effective reliefs, it was submitted it was pointed out that the Land Adjudication Officer has not been joined to the suit; that, relying on the case of Dina Management Ltd Vs County Government Of Mombasa And 5 Others Petition 8 Of



2021 {2023} KESC 30 KLR and Pashito Holdings Ltd & Anor Vs Ndungu & 2 Others 1997 KECA 423 KLR, any challenge to title must involve the Land Adjudication Officer since it has been alleged that the Land Adjudication Office fraudulently allocated the suit land to the defendants.

61. Lastly, it was submitted on the last issue that pursuant to the provisions of Sections 24,25 and 26 of the [Land Registration Act](#), the rights of the defendants are absolute and indefeasible and the counterclaim should succeed.

Analysis and Determination

62. The issues for determination in the present suit are as follows:
- a. Does the plaintiff have locus standi?
 - b. Is the plaintiff's claim time barred?
 - c. Were the defendants' titles procured through fraud?
 - d. Does the defendant's counterclaim have merit?
 - e. What orders should issue?
63. The first two issues that may dispose of the suit on a preliminary level.
64. As to whether the plaintiff has locus standi, it was submitted for the defendants that he does not have any capacity to sue. This submission is premised on the evidence the plaintiff himself produced. The plaintiff's evidence is to the effect that his grandfather is known as "Ngala Yongo" while the nominal roll said to have been procured from the Settlement Fund Trustees or the Settlement Department stated that the allottee of Plot No 502D went by the name of "Ngala Kongo"; that plot no 502D is the manner in which the suit land was referred to before title was issued over it. It was further submitted that the plaintiff had not produced any grant of letters of administration in respect of "Ngala Kongo", that the court cannot assume that "Ngala Kongo" and "Ngala Yongo" are one and the same person.
65. Section 45 of the [Law of Succession Act](#) Cap 160 provides as follows:
- “ 45. No intermeddling with property of deceased person
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall —
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”



66. Section 82(a) of the *Law of Succession Act* Cap 160 provides as follows:

“ 82. Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise ...”

67. In *Jane Rwamba Mwaniki v Ndwiga Muthara & another* [2013] KEHC 2031 (KLR) the Petitioner filed a Petition for letters of administration to the estate of a deceased person on 13/5/2011, and on 23rd September 2011, she filed an application under the *Law of Succession Act* for restraining orders against the respondents who she accused of intermeddling with the deceased’s property. A Preliminary Objection about the locus standi of the Petitioner in filing the application was raised by the respondents, that since the application was filed before the issuance of the grant it was a nullity. The court in that case, citing *Peter Maundu Mua –V- Leonard Mulinga & Another* Machakos High Court Civil Case No.305/95, *John Kasyoki Kieti –V- Tabitha Nzivulu Kieti & Another* Machakos H.C.C. No.95/01, *Virginia Edith Wambui Otieno –V- Joash Ongo & Another* [1982 – 88]1 Kar 1048 as well as the renowned *Troustik Union International & Another –V- Jane Mbeyu & Another* Nairobi Civil Appeal No.145/91 held that:

“ The position is that a party is not entitled to bring an action as administrator before he/she taken out letters of administration. If he does, so, the action is incompetent at the date of inception...

The Applicant’s application is on intermeddling of the deceased’s property which has yet to be vested in her as she does not have a grant. The matter is even complicated more because the title of the property complained of is in the names of other persons. Hence the issue of ownership must be sorted out first. And this can only be raised by a person who has letters of grant. The issue of locus standi was properly raised. The Petitioner/Applicant lacked locus standi to file the application dated 23/9/2011.”

68. From the above statutory provisions and case law, it is clear that no person can deal with the property of a deceased person or enforce any claim on the deceased’s behalf without a Grant of representation issued under Cap 160. This court resorted to an examination of the grant produced by the plaintiff to establish if there were any aliases that the plaintiff’s deceased grandfather had. It found that there were none. This objection is crucial and reasons therefor will appear later in this judgment when the court delves into the issue of the receipts the plaintiff produced issued in the name of “Ngala Yongo”, and the fact that the last of them had been cancelled, leaving the plaintiff only with reliance on the nominal roll which bears the name “Ngala Kongo”.

69. This court thus agrees with the defendants’ submission that the variance in the two names is material in this case. It can not be assumed that the names refer to one and the same person unless evidence is adduced to that effect. The burden of proving that the two names refer to one and the same person was upon the plaintiff. This court is not satisfied that he discharged that burden. Consequently, the Grant of letters of administration dated 25/9/2019 in respect of the estate of “Ngala Yongo” does not grant the plaintiff any capacity to sue in respect of the estate of “Ngala Kongo” and the suit herein, in



so far as it relates to land that the plaintiff states was originally allocated to “Ngala Kongo”, ought to fail for lack of capacity on the plaintiff’s part to lodge or prosecute it.

70. However, this court must, in the event that it is incorrect that the plaintiff lacks locus, examine the issue of Limitation in depth. Regarding whether the plaintiff’s claim is time barred, it was submitted on behalf of the defendants that the plaintiff that the claim offends the provisions of Section 7 of the Limitation of Actions Act. The provisions of that section are as follows:

“7. Actions to recover land

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

71. This court finds that the plaintiff’s evidence is that he discovered the receipts issued in the name of Ngala Yongo in the year 1990 after his grandfather died. He never took any action until the year 2019 when he filed the present suit. However, his evidence is that it is only after the 18th defendant came to build upon the land that he conducted a search and found that the land had been registered in the names of other persons. According to his pleadings, the date on which he became aware of the alleged fraud and illegality is therefore the year 2019 and not the year 1990. He lodged this suit in the same year, 2019. The objection to the present suit on the basis of limitation therefore lacks basis and is hereby dismissed.
72. Again, in the event that this court’s finding on the first issue is incorrect, it is worthwhile to examine the merits of the plaintiff’s claim. It has been submitted by the plaintiff’s counsel that given that the deceased had paid fees and land charges for the suit land, there was no land upon which another allocation could be made; that the suit land remained allotted to the deceased as per the nominal roll and the receipts, given that there was no revocation of his allocation. This has prompted this court to examine the plaintiff’s evidence regarding payment in depth.
73. On the merits, in summary, this court found that the plaintiff’s own evidence comprised of receipts of various dates between 1967 -1971. The last receipt is dated 30/10/1971. The plaintiff stated that in 1990, he found that receipt, among others, to have been in the deceased’s possession. First and foremost, it is noteworthy that the contents of the receipts do not evince an allocation. The sums therein paid are described as plot rent for various periods between 1967- 1971. Receipt no C805902 is for plot rent between 1/1/1967-31/12/1967. Receipt no D445519 is for plot rent between 1/1/1968-31/12/1968. Receipt no D665885 is for plot rent between 1/1/1969-31/12/1969. Receipt no E663273 is for plot rent between 1/1/1970-31/12/1970. Receipt no G454777 is for plot rent between 1/1/1967-31/12/1967.
74. There is no possibility that the deceased would have been charged plot rent by the SFT if he had been allocated the suit land. The contents of the said receipts evince a situation whereby the deceased was occupying the land on a temporary basis and not under an allotment letter that could lead to issuance of title to him.
75. It is not surprising therefore that the receipt that came last in the range of dates appears to have been cancelled and the writings thereon indicate that the land was reallocated to another person. Neither is it surprising that there is no other receipt produced by the plaintiff bearing a date that is subsequent to the date of that receipt. Finally, it is also not surprising that the plaintiff produced no letter of offer or acceptance, or receipts for payment in full for the allocation of the land to him (not for plot rent). These facts support the defendants’ submission that Ngala Yongo was only temporarily occupying and was never allocated the suit land.



76. It is significant that the receipt dated 30/10/1971 is the document that has the most recent date among the documents produced by the plaintiff, and that it has cancellations and an indication that the land has been re-allocated to another person. That receipt has words to the effect that the land mentioned therein had been reallocated to one M. Otieno, apparently in 1975, about 4 years after it was issued. On the face of the said receipt are the words “plot rent plus penalty for the period 1/1/1971 to 31/12/1971”. Plot rent denotes a tenancy and tenancy can not be equated with proprietorship but is subservient to it. the ownership of the suit land remained with the SFT until it allocated it to the person who paid the demanded dues and was registered. Therefore, the very evidence the plaintiff has brought to this court has demonstrated that the plot temporary assignment to Ngala Yongo was revoked and the plot was “re-allocated” to another person. The language used on the receipt may not matter. Of great consequence is the fact that Ngala Yongo’s temporary assignment evinced by the description of the sums paid as “plot rent”, was terminated in 1975. Without any other evidence from the settlement department to demonstrate that the plot was reinstated to the deceased either on a temporary or permanent basis for eventual titling, the plaintiff can not succeed in convincing this court that the plot belonged to the deceased even as at the date of his demise.
77. The very fact that the deceased never followed up on the plot between 1971 -1990, a period of 29 years is persuasive, constructive evidence, that he knew that the plot was not his. The plaintiff does not state in his evidence that the deceased informed him that the plot still belonged to him. Besides, there is no evidence that the plaintiff his grandfather and their families were residing on the suit land. Even claims of burial of deceased kin on the suit land, though not conclusive as to ownership, as have been very common in other cases did not arise in the present case. Sections 107 and 108 of the *evidence Act* provide as follows:
- “ 107. Burden of proof.
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. Incidence of burden.
- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
78. The plaintiff remained with the burden of proof from the start, whether the defendants raised their defences to his claim or not. Merely stating facts that he could not prove did not automatically call upon the defendants to disprove them. The defendants could not be expected to fill in gaps in his claim or evidence. For those reasons the plaintiff’s claim must fail.
79. As to whether the counterclaim should succeed, I find in the positive. The defendants have demonstrated that they have title to the land. The evidence of DW2 that the land was allocated to the 1st defendant was not controverted. His further evidence of a series of transfers leading to ownership of the suit land by Francis Waiganjo Kimanga from whom the defendants purchased the suit land as a group with a view to subdivision amongst themselves was also not controverted. Title was issued long ago in the name of Francis Waiganjo Kimanga, the person who sold the suit to them. He in turn had purchased the suit land from another person John Hato Kigamba, who according to DW2’s uncontroverted evidence, had perfected all the conditions that had been set by the allocating authority



and who had thus become the registered owner of the suit land having full capacity under the law to dispose of it. DW2 testified that land could be transferred even when it was encumbered by dues to the SFT, and that the transferee would inherit those dues, to pay them on demand.

80. The evidence of the defendants showed that they had taken action in compliance with the law to have the land transferred to them. There was no controversy that a Land Control Board Consent was issued, dated 7/11/2011 for the transfer of the entire parcel to the defendants. There could not have been expected any other consent for the transfer of individual portions to the defendants as suggested by the plaintiff. There was no evidence brought before court by the plaintiff to cast doubt that the Land Board issued the letter of consent to transfer, or that Stamp Duty or County Land Rates for the suit land were paid. The copies of transfers of some of the subdivisions were produced as evidence. Searches showed that the resultant subdivisions were transferred to the defendants and they are the current registered owners.
81. The plaintiff was not able to establish that the suit land was taken away from his grandfather illegally and fraudulently by the 1st defendant or any of the other defendants. The plaintiff arose to challenge the defendant's title only recently. The plaintiff having failed to prove his claim, and the defendants not being persons claiming against one another in this case so as to fault each other's title, the court finds that all the steps that were necessary were followed by the defendants in the procurement of their titles. And thus the counterclaim succeeds and I issue the following final orders:
- a. The plaintiff's suit is dismissed with costs;
 - b. The defendant's counterclaim is allowed as prayed in prayers nos (b), (c), (d), and (e) thereof;
 - c. No damages will be awarded to the defendants as none were proved by way of evidence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 4TH DAY OF FEBRUARY 2026.

MWANGI NJOROGE,

JUDGE, ELC, MALINDI.

