



**Ngugi (Suing on His Behalf and on Behalf of the Estate of Wallace Ngugi  
Muniu) v Mungai & 16 others (Environment and Land Case 83 of 2024)  
[2026] KEELC 522 (KLR) (Environment and Planning) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 522 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND PLANNING  
ENVIRONMENT AND LAND CASE 83 OF 2024**

**MC OUNDO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**DAVID NJENGA NGUGI (SUING ON HIS BEHALF AND ON BEHALF OF THE  
ESTATE OF WALLACE NGUGI MUNIU) ..... PLAINTIFF**

**AND**

**JAMES NDUNG’U MUNGAI ..... 1<sup>ST</sup> DEFENDANT  
DAVID GACHAU NG’ANG’A ..... 2<sup>ND</sup> DEFENDANT  
CHRISTOPHER MWIKA NYONGI ..... 3<sup>RD</sup> DEFENDANT  
ELIZABETH KABURA GACAU ..... 4<sup>TH</sup> DEFENDANT  
KINOSTHE HARIE NDUNGU ..... 5<sup>TH</sup> DEFENDANT  
LUCY NJERI NGABAIYA ..... 6<sup>TH</sup> DEFENDANT  
JOHN KIMANI NJOROGE ..... 7<sup>TH</sup> DEFENDANT  
ROSE WAMBUI KABUGO ..... 8<sup>TH</sup> DEFENDANT  
CHARLES NJOGU MBUGUA ..... 9<sup>TH</sup> DEFENDANT  
VINCENT CHARAGU KIBUE ..... 10<sup>TH</sup> DEFENDANT  
THOMAS KIMONYI MBITHI ..... 11<sup>TH</sup> DEFENDANT  
MAFUMBI SELF-HELP GROUP ..... 12<sup>TH</sup> DEFENDANT  
CATHERINE WANJIRU NJUGUNA ..... 13<sup>TH</sup> DEFENDANT  
ALICE WAMBUI WAINAINA ..... 14<sup>TH</sup> DEFENDANT  
SAMSON KIMANI THIONGO ..... 15<sup>TH</sup> DEFENDANT**



**WANJIKU WAWERU (ALL SUED ON THEIR OWN BEHALF AND ON BEHALF OF ALL OTHER OWNERS OF SUB-PLOTS EXCISED FROM KIJABE/KIJABE BLOCK 1/1480) ..... 16<sup>TH</sup> DEFENDANT**  
**LAND REGISTRAR-NAIVASHA ..... 17<sup>TH</sup> DEFENDANT**

## **JUDGMENT**

1. Vide a Plaint dated 11<sup>th</sup> April 2023, the Plaintiff herein sought for the following orders:
  - i. A declaration that the sub-division and transfer of Kijabe/Kijabe Block 1/1480 was fraudulent, unprocedural and unlawful and that the said sub-division and transfer from the deceased to the Defendants therefore was and is null and void ab initio.
  - ii. A declaration that the bona fide owner of Kijabe/Kijabe Block 1/1480 is the late Wallace Ngugi Muniu and by virtue of his death, his estate through the Plaintiff.
  - iii. A mandatory order requiring the 17<sup>th</sup> Defendant to cancel the initial sub-division and subsequent transfer and sub-divisions of the sub-plots from Kijabe/Kijabe Block 1/1480 and entries thereof and restore the records relating to the said property as they were and in favour of the deceased and/or his estate as at 7<sup>th</sup> May 1985.
  - iv. A declaration that the titles held by the 1<sup>st</sup> to 16<sup>th</sup> Defendants and/or to those third parties that they have subsequently sold the sub-plots to, are null and void ab initio.
  - v. A mandatory order directing the 17<sup>th</sup> Defendant to recall and cancel all sub-titles emanating from Kijabe/Kijabe Block 1/1480 as held by the Defendants.
  - vi. A mandatory order requiring the 1<sup>st</sup> to 16<sup>th</sup> Defendants, their agents, servants, employees and/or transferees to within a period of thirty (30) days from the date of judgement hereto or such other reasonable period as the Honourable court shall deem expedient to unconditionally and at their costs to vacate and demolish all structures erected on the initial suit property Kijabe/Kijabe Block 1/1480 and all subsequent sub-divisions thereto and in default of which, the Plaintiff be at liberty to demolish the same at the said Defendants' costs.
  - vii. An order for payment of mesne profits and/or damages by the 1<sup>st</sup> to 16<sup>th</sup> Defendants.
  - viii. Costs of the suit
  - ix. Any other or further relief that the honourable court may deem just to grant.
2. Upon service, the 4<sup>th</sup> and 13<sup>th</sup> Defendants filed their undated Statement of Defence on 16<sup>th</sup> May 2023 denying the contents contained in the Plaint while putting the Plaintiff to strict proof to the effect that the Plaintiff lacked information, facts and/or history of the transaction of the sale of land between them and one Wallace Ngugi Muniu. That they were the bona fide owners of the subject land by virtue of a valid purchase value on the 21<sup>st</sup> November 2012 and 22<sup>nd</sup> March 2013 respectively, and registration having purchased the land from Wallace Ngugi Muniu in or around the year 2013.
3. That the Plaintiff's suit was frivolous and lacked the basis of previous investigations having been conducted by the Naivasha Police, wherein the said allegation was found to be drama and hot air. They thus reiterated their defence of the ownership of land as excised from the main parcel of land Kijabe/Kijabe Block 1/1480 and sought that the instant Plaint be dismissed.



4. That further, the Plaintiff lacked the locus to claim land that had been sold by the owner. That her complaint ought to have been raised in the Succession proceedings of the estate of Wallace Ngugi Muniu. They sought the dismissal of the Plaintiff's suit with costs.
5. The 2<sup>nd</sup> Defendant, through his Statement of Defence dated 15<sup>th</sup> May, 2025, denied all the allegations contained in the Plaint, putting the Plaintiff to strict proof while stating that he was the bona fide owner of the subject land by virtue of purchase value and registration, having validly bought the same from the 1<sup>st</sup> Defendant on the 26<sup>th</sup> June 2004 or thereabout. He also prayed that the instant suit be dismissed with costs.
6. In rejoinder, the Plaintiff reiterated the contents of his Plaint, stating that the late Wallace Ngugi Muniu was a bona fide owner of Land Parcel No. Kijabe/Kijabe Block 1/1480 and therefore all the resultant subdivisions, including land parcel No. Kijabe/Kijabe Block 1/7644 were null and void. The ownership of the aforementioned resultant parcels of land was under challenge because the deceased did not sell his property to anybody. That the Defendants ought to adduce in evidence the process under which they had obtained titles to their respective land parcels.
7. The Plaintiff contended that he had a legitimate cause of action against all the Defendants jointly and severally and sought for the 2<sup>nd</sup> Defendant's defence to be struck out with costs and judgment be entered in his favour as prayed.
8. Despite the service of Pleadings upon the Defendants, including through substituted service, the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>-12<sup>th</sup> and 14<sup>th</sup> to 16<sup>th</sup> did not enter appearance and/or file their defences.
9. The Plaintiff, 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants having complied with the pretrial directions, the matter proceeded for hearing on 17<sup>th</sup> September 2024 wherein PW1, David Njenga Ngugi, adopted his witness statement dated 11<sup>th</sup> April 2023 as his evidence in chief wherein he proceeded to testify that he was in court on behalf of the estate of his late father's pursuant to a limited Grant ad-litem dated 28<sup>th</sup> July 2021 issued in Limuru Succession Cause No. E030/2021. He produced the Grant ad-litem as Pf Exh 1.
10. He testified that his father, Wallace Ngugi Muniu (deceased), who died on 9<sup>th</sup> November 2020, was the proprietor of a land parcel known as No. Kijabe/Kijabe Block 1/1480, having been allocated through his shares by virtue of being a member of Maai Mahiu Kijabe Longonot Company. He produced the deceased's membership Card No. 2539 as Pf Exh 2.
11. He proceeded to testify that his father had also been given a letter dated 13<sup>th</sup> July 2020 by the company addressed to the Land Registrar confirming that he had been issued a certificate No. 2216, which was distinctive from No. 2485, for Plot No. 1480, and which letter he produced as Pf Exh 3. He then stated that it had been through the membership, that the deceased was given plot Nos. Kijabe, Kijabe 1555 and 1480. That the subsequent plot No. 1480 was stolen from the deceased, hence the subject suit.
12. His evidence was that after the deceased had been given the plot in the year 1985, the company advised him to follow up the title deed with the Lands Registry in Maai Mahiu. When he complied, he discovered that the same had been registered in the names of other persons.
13. That it had been during a land clinic that had been held in May 2019 that the deceased had found out that his land had been grabbed, wherein he had complained to the then Cabinet Secretary madam Karonei, who had asked for the file, wherein it had been confirmed as such. He produced the Notice of the land clinic as Pf exh 4. That subsequently, the matter had been reported at Naivasha Police Station, wherein the police had recorded statements of witnesses and taken the deceased's signature and his specimen signature. He produced the statements and Signature Specimen as Pf Exh. 5 (a - j) and 6, respectively.



14. That it had been during the investigations that the police had discovered that there had been an alleged sale agreement between the deceased and Elizabeth Kabura Gacheo, upon which the signature on the sale agreement was not the deceased's signature. He produced the Sale Agreement dated 21<sup>st</sup> November 2012 as Pf Exh. 7. There had also been another alleged sale agreement of 22<sup>nd</sup> March 2013 between the deceased and Catherine Wanjiru Njuguna, which agreement he produced as Pf Exh 8. He confirmed that he did not know those people.
15. That the police had also recovered banking slips dated 21<sup>st</sup> March 2013 for Kshs. 70,000/= from Catherine Njuguna, a slip dated 21<sup>st</sup> March 2013 for 500,000/= and a cheque dated 21<sup>st</sup> March 2013 for 500,000/=, to the effect that the deceased had received money. He produced the same as Pf Exh 9 (a-c). He maintained that the deceased would have sold the land and then gone to complain at the clinic.
16. That further, the police had discovered Green cards to land parcel No. 1480 showing that the title to the said land had been given to the deceased on 7<sup>th</sup> May 1985 by the Land Registrar. That could not have been true because that had been the title that the deceased had been looking for the land clinic. It was only after the land clinic that they got the documents. He produced the Green card as Pf Exh10.
17. That the land had subsequently been subdivided, not by the deceased, into 14 portions as per the Green cards herein produced as Pf exh 11 (a-n) and that these documents were recovered during the police investigations.
18. That their complaint had been vide a demand letter dated 7<sup>th</sup> December 2021, which he produced as Pf Exh 12. That the police had also, through the Chief of Maai Mahiu, summoned the following people: -
  - i. Catherine Wanjiru Njuguna.
  - ii. Elizabeth Kabura Gachau.
  - iii. Christopher Mwika Nyogi.
  - iv. David Gachau.
  - v. Jean Ndungu Mungai.
19. That these were persons whose names had appeared on the sale agreements that he had produced. He produced the said summons dated 11<sup>th</sup> April 2022 as Pf Exh 13 before testifying that he did not know if the said people had appeared at the police station since they were not also present in court. During the investigations, the police had also found title deeds in the name of persons like David Gachau. He produced the title to David as Pf Exh14. Furthermore, the police also recovered transfer forms and mutation forms to the suit property, which they gave them. He produced the same as Pf Exh15. After the investigations, the police had asked them to go to court.
20. He prayed that the land be returned to the deceased's name and the people in occupation of the land to be evicted. There was an exhibit memo that had escorted the exhibits for examination vide OB 56/25/8/2020, which memo he produced as Pf Exh 16. The report by the deceased made in OB 56/25/8/2020 was produced as Pf Exh17.
21. Lastly, he produced as Pf Exh 18 (a - c) receipts from Maai Mahiu Kijabe Longonot Company to show payment of fees to the company by the deceased.

There was no cross-examination.
22. PW2, Joseph Njoroge Kuria, also adopted his witness statement dated 11<sup>th</sup> April 2023 as his evidence in chief and then testified that on 9<sup>th</sup> May 2019 they had gone with one Wallace(deceased) who was his



- neighbour to Naivasha for a land clinic to confirm whether their land was available and also to take the title deed for those who did not have the same as the land registrar was issuing them out. The deceased was following up on the title deed for his land parcel No. 1480 Kijabe Kijabe Block 1.
23. He explained that the deceased had bought the land through shares in Maai Mahiu Kijabe Longonot Company and was member No. 2539. That it had been when the deceased had reached out to the Registrar and was told that the land had been taken, there arose a small confrontation wherein the Land Registrar had called for the Green card, which then confirmed that indeed the deceased's title deed had been taken. The deceased had been following up on the Green card for about 4 years. That subsequently, he was advised to report to the police.
  24. That whereas the Green card had been opened on 26<sup>th</sup> May 1985, it had indicated that the deceased had allegedly been issued the title on 7<sup>th</sup> May 1985. It was from the Green card that they had discovered that the land had been subdivided into many parcels of land. That accordingly, land parcel No. Kijabe/ Kijabe Block 1/7644 had been registered to James Ndungu Mungai, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant herein. That land parcel No. Kijabe/Kijabe Block 1/7645 had further been subdivided into Nos. Kijabe/Kijabe Block 1/14922 and 14923.
  25. That whereas the initial land No. 1475 had been registered in the deceased's name, the resultant parcels of land had been issued to the Defendants herein, wherein there had been further subdivisions which had been registered to different people, even though the deceased never received any land consent from the Land Control Board.
  26. That he was involved in the police investigations and maintained that, without the LCB consent, the transfers were illegal. That he had escorted the deceased to the DCI, wherein persons who had been summoned to produce their titles, only produced the first page of the titles; the second pages were blank. The police had also found that the deceased's signatures had been fraudulently appended to the sale agreements. He confirmed that he knew the deceased's signature and that he had been present when the deceased's specimen signature had been given to the police. He confirmed that the signatures on the sale agreement and the deceased's signature specimen were different. That they had sat at the clinic for about 4 hours, after which they had gone with the deceased to the Lands Registry, wherein the deceased had requested that all the titles be cancelled.
  27. That they searched for the green card for a long time as the parcel file had gone missing. That it was after Faridah Karoney, the then CS, refused to leave the Registrar's office that the parcel file was retrieved/ found. At the time, there had been many complaints lodged against the land registrar. That there were no mutation forms in the file, and they were informed that the surveyor who had subdivided the land could not be found. That there were no passport photos of the Defendants on the transfer forms.
  28. That despite being summoned by the police, Catherine Wanjiru, Elizabeth, and the rest of the Defendants did not appear at the police station. That the deceased denied having received any cheques or having sold the land. He confirmed that the deceased, who died on 9<sup>th</sup> November 2020, had registered a complaint vide OB No. 56/25/8/2020 as he wanted the people who had taken his land to be arrested.
  29. That the old men at the land clinic and their family had asked him to help the deceased. He produced the deceased burial programme as Pf Exh19 and sought that the suit property be returned to the deceased's family, they be compensated, and the people in occupation of the deceased's land be evicted, and the structures therein be brought down. He pleaded that the court come to the aid of the deceased's family, as there was rampant stealing of land in Maai Mahiu.



30. When he was examined by the Court, he confirmed that he knew that the deceased had 3 wives. It had been at the land clinic that he had been asked to help the deceased. He also stated that he did not know the whereabouts of the deceased's children.
31. Martin E. Papa, a trained document examiner with 28 years' experience, testified as PW3 and confirmed that he had filed a report regarding the instant matter. That he had received instructions from J. M. Njenge Co. Advocates on the 23<sup>rd</sup> April 2024, wherein he had been supplied with 5 documents with disputed signatures and two documents that contained samples of the signatures. That he had examined the signatures of one Wallace Ngugi Muniu on the documents marked as A 1 – A5 and compared the said signatures with sample signatures marked as B 1 – B2 where he did not find an agreement between the signatures. That basically, the writer of the sample signatures was not the source of the signature on samples marked as A1 – A5. He produced his report dated 3<sup>rd</sup> July 2024 as Pf Exh. 20.
32. He went on to state that the specimen signatures had been supplied by the instructor, wherein the disputed documents were the sale agreement between Catherine Wanjiru and Wallace, dated 22<sup>nd</sup> April 2013 – (A1), a sale agreement between Elizabeth Kabura Gachau and Wallace (A2), A3, on the other hand, was a transfer of land parcel No. Kijabe/Kijabe Block 1/7644 by Wallace to Jane Ndungu Mungai, whereas A4 had been a mutation that had been registered on 2<sup>nd</sup> April 2015. The aforementioned documents had an alleged signature of Wallace Muniu.
33. That the sample document, on the other hand, had been a statement that had been written by the police and which was the one that he had compared with the disputed documents. The method that he had applied was a comparison of pictures appearing in one signature against a sample signature, as shown in his illustration on Pages 6, 7 and 8 of the chart.
34. He confirmed that B1 – B2 were the individual's characteristics of writing and explained that if the characteristics did not tally, then they were not the individual's signature. He thus stated that the writer of the sample signature was not the source of the disputed signatures. He maintained that the signature appearing on the sale agreement was not the same as the sample signature. He ended his evidence by asking to be paid KSh. 15,000/= which were his charges.
35. In cross-examination by the counsel for the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants, he confirmed that he was an expert in the field of forensic document examination with 28 years' experience and that he had qualified as a forensic document examiner in the year 1997. That he studied at the CID Training School and had a certificate dated 2<sup>nd</sup> July 1997 issued by CID, which he admitted had not been attached to the report.
36. He explained that he was not a public Servant to be gazetted. When he was referring to paragraph 1 on page 4 of his report, he clarified that there had been a typo error since 1997 to date, which was 28 years. He confirmed that he had been paid a sum of Kshs. 35,000/= to prepare the report.
37. He confirmed that the "Spectral Forensic Services" was a registered business name with Registration number No. BN – PC 22XE8, although he had not attached the Certificate to his report. He confirmed that whereas they did not have a forensic regulator, there were several experts in the county and that one could refer to DCI Headquarter forensic lab for reference.
38. That whereas he was licenced to do the business and had an office in Nairobi at Uchumi Road – Orange house, he had not attached his business permit to the report, although he had it. He confirmed that for the year 2025, they had paid a sum of KShs. 10,000/= to the County Government of Nairobi for the business permit, although they had not attached the permit. He, however, explained that he had forwarded the said documents to the instructor, whom he believed had them.



39. That he had received a certificate at the Criminal Investigation Directorate, which was issued after a month. He reiterated that the firm of J. M. Njenge & Co. Advocates had instructed him, wherein the instructing person had been Mr Njenge himself, who neither gave him the history of the case or had a session with him. That he neither knew him, met him, nor did he know where the documents had come from. He explained that the scope of his work had only been between him and the instructor.
40. That apart from the documents, he had been asked whether the signatures on the disputed documents matched the samples. Neither got the identity card of Wallace Muniu nor did he inquire where he was, since his scope of instructions did not include inquiring where Wallace was so that he could interview him. That subsequently, he did not know whether he was dead or not, as his scope was within the documents. While it was important to find out whether Wallace was alive, his scope was limited to him, and the instructor only examined the document. That he had been informed that the purpose of the report was because of a dispute over the sale and transfer of land in a matter that had a case.
41. From the documents, probably the complainant was the seller. He confirmed that he was given the sale agreement and transfer documents. That the documents had shown who the seller and buyer were.
42. When he was referred to the Sale Agreement marked as A1, he confirmed that the seller was Wallace Ngugi and that there was a report marked B1, which was the statement to the police that had shown the complaint. That he knew the sale did not take place. The significant variances between the sample signatures and the disputed documents showed that the signatures were not by Wallace. That he was now aware of the outcome of the complaint that had been made to the police. That, whereas he had looked at the specimen against the disputed documents, he did not give a recommendation on any criminality as it was not part of his scope of instruction. However, he was not aware of any report that had been made to the police on forgeries and that he would not be surprised if the complaint had not been made since the same was upon the complainant.
43. He confirmed that he had charged Kshs. 15,000/= to come to court, the court fee was Kshs.10,000/= and the facilitation fee was Kshs. 5,000/=. He explained that they fall under expert's category for remuneration and that he was a document examiner. He maintained that he knew that experts were paid Kshs. 10,000/= by the court.
44. In re-examination, he explained that for him to come to court, he had incurred expenses, that he had used his personal car, hence the charge of Kshs.15,000/=. That he had charged Kshs. 35,000/= for a report which had already been filed. He confirmed that his Certificate from CID is No. 1315 dated 2<sup>nd</sup> July 1997, while the number of his Certificate of business licence dated 17<sup>th</sup> May 2020 was BN – RBC22XE8.
45. That he was qualified to practice as a forensic document examiner and that his office was situated in South B of P. O. Box 12155, although he was currently using P.O Box number 26177-00504, Nairobi. His official e-mail address was specialservices20@gmail.com, while the registration mobile number was 0702035665.
46. He maintained that the sample signature had been supplied by the instructor together with a bundle of documents, including the disputed documents, which samples were: B1 – Statement from Police, B2-identification report from the National Registration Bureau dated and extracted on 30<sup>th</sup> March 2018. He explained that B1 was a police statement with an OB No. of 56/25/8/2020. He reiterated that from the statement, he knew that there had been a complaint. From the instructions, there had been no bearing to influence his report. That indeed, from the documents that had been produced, any other forensic examiner would have come up with the same finding; that there was no similarity



since the same was a scientific finding. That there had been no recommendation for a criminal charge. He confirmed he had attached all certificates to his report.

47. PW4, one Patrick Mutinda Musembi, a land surveyor with an experience of about 18 years, testified that he had conducted a survey on the suit property on 16<sup>th</sup> October 2024 and prepared a Report dated 24<sup>th</sup> October 2024. That he had obtained his diploma in land survey from the Kenya Institute of Survey and Mapping – Nairobi, and he had done courses on GAS. That he also has a Geospatial degree from Jomo Kenyatta University of Agriculture and Technology (JKUAT).
48. That his instructions had been to establish the history of the parcel of land No. Kijabe Kijabe Block 1/1480, and whether it existed on the ground. That he obtained the relevant documents from the survey department, including the RIM Sheet No. 3, after which he went to the ground and tried to establish the beacons. That he found that the parcel of land had already been subdivided into many portions, which finding he had reported back to the client. That he also obtained a letter from the Land Registry which showed that the land had already been sub-divided hence parcel No. 1480 no longer existed.
49. That the initial subdivision of land parcel No. Kijabe/Kijabe Block 1/1480, which measured 2.02 Hectares, resulted in land parcel No. Kijabe/Kijabe Block 1/7644 – 7646. That land parcel No. Kijabe/Kijabe Block 1/ 7646 measured 1 acre, parcel No. Kijabe/Kijabe Block 1/7645 measured 1.05 hectares, while parcel No. Kijabe.Kijabe Block 1/7644 measured 0.8145 hectares.
50. He confirmed that the 1<sup>st</sup> entry showed that the land initially belonged to Wallance Ngugi, then it was registered to Elizabeth, then Christopher, wherein it had been subdivided. He maintained that his instructions had been to find out whether or not the property had been subdivided.
51. That he obtained the copies of the Green Cards and confirmed that parcel No. Kijabe/Kijabe Block 1/1480 had been subdivided into many parcels of land. He produced the report dated 24<sup>th</sup> October 2024 as Pf Exh 21 and confirmed that he had charged a sum of Kshs. 50,000/= to produce the report and to attend court.
52. On cross-examination by the Counsel for the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants, he confirmed that he was a qualified surveyor, although he did not have his certification in court, but could produce it if need be. He confirmed that he worked for “Acorn Company” although he had not produced his appointment letter in court. He reiterated that he had qualified from the Kenya Institute of Survey Mapping, although he had not produced his diploma certificate in court.
53. He further confirmed that he was a gazetted surveyor, having been so gazetted in the year 2012 again, although he had not produced the said gazette Notice. That he had an identity card, which he did not annex to his report. He admitted that he did not have his licence for the year 2025, and neither had he produced his registration in court.
54. He confirmed that “Acorn Survey and Engineering Company” was a Limited Company which had a certificate of incorporation, and which certificate he had not produced in court. He also confirmed that he had not been advised to bring the aforementioned documents to court. His evidence was that he was not a licensed surveyor but a registered surveyor. That he was currently working for Portland and had also worked for Konza City, although he did not produce the documents in court.
55. He confirmed that M/S J. M. Njenga Advocate was his instructing client. When he was referred to page 2 of the Pf Exh 21, he confirmed that, according to what he had been told, J. M. Njenge’s client was Wallace. He confirmed that David Njenge was Wallace’s father but reiterated that his client was



- Njenge and Company Advocate. Although he was sure that Wallace was Njenge's father, he did not have a session with David Ngugi.
56. His evidence was that among the documents he had been given was Pf Exh 3, and that before one went into someone's land, the person needed to have documents of ownership. That he did not know where Wallace Muniu was since it was not his business to know, since his scope was to deal with the Advocate. He, however, confirmed that the Advocates had informed him that the said Wallace was deceased. That whereas he was not given a letter of Administration, he was given Pf Exh 3 and a copy of the Certificate.
  57. That he could not remember the source of information on the subdivision of land parcel No. Kijabe/Kijabe Block1/1480, and he did not have an occasion to sit with any land registrars since he did not want to get into issues about the subdivisions. That, whereas the Land Control Board (LCB) had to give consent for subdivisions, he was not instructed to investigate the subdivisions. Furthermore, he did not find any irregularity or complaint from the LCB. That he got the information that the "subdivision had been carried out without consent" from the Advocate J. M. Njenga Advocate, but he could not answer as to who exactly had told him the said information since he could not remember.
  58. He admitted that he did not confirm the information because it would have involved obtaining the certified copies of Green Cards and verifying the transfers. From the Green Cards he got, he did not see any anomalies.
  59. In re-examination, he confirmed that he had gone to Survey block No. 1480, wherein he had found that the same had been subdivided. That the subdivided portions were in his report. That he had been given the letter from the District Land Registrar dated 13<sup>th</sup> July, 2020 (Pf Exh 3).
  60. That he had also been issued with a Certificate of Shares for Wallace (Pf Exh 2), which two documents were sufficient. After finding that the land had been subdivided, they had also obtained the RIM (Sheet 3). He confirmed that his office is situated in Wakulima House and that he is a registered surveyor. His credentials to that effect could be checked online using his full name.
  61. He confirmed that his address is 67066 – 00200 Nairobi and that J. M. Njenga was his instructing party. He contended that the information on his report could not change even if his instructing party was different.
  62. On 20<sup>th</sup> September 2025, PW1 was recalled for cross-examination, wherein he confirmed that Wallace Ngugi (deceased), the proprietor of parcel of land No. Kijabe/Kijabe Block 1/1480 was his father's. That the deceased died on 9<sup>th</sup> November 2020. In the year 2012, he and the deceased used to live in Uplands. That, however, at the time of his death, he had retired and was working on the land/shamba.
  63. That whereas he would not know what the deceased had done on 21<sup>st</sup> November 2012, as he had his own business, he was sure that the deceased did not sell any land to Elizabeth Kabura, because he would have told them. He confirmed that the deceased was still living in Uplands in the year 2013, but he would not know what the deceased had done on the 22<sup>nd</sup> March 2013, although there had been no land sale on that date by the deceased.
  64. He, however, admitted that he would not be in a position to know if on that day the deceased had entered into any sale agreement. He confirmed that in the year 2004, the deceased was still living in Uplands and that personally, he had lived in Uplands all his life. That he would not know how the deceased had utilised his day on 26<sup>th</sup> June 2004 or whether he had sold a piece of land to David Gachau, since he had not seen any agreement to that effect.
  65. In re-examination, he confirmed that the deceased had bought land No. Kijabe/Kijabe Block 1/1480 in the year 1985 from Mahi Mahiu Company, which was to give him a title deed. However, they had



- been asked to get the title deeds from the land office. He maintained that the deceased did not sell any land. It was while the deceased was following up on his title from the Naivasha Lands office that he had heard, while at a land clinic in Mahi Mahiu, that he had sold land. That while he did not know Elizabeth, Catherine or David, it was not true that the deceased had sold to them land.
66. That they had a good relationship with the deceased, who would tell them about his properties. That Mwika had been asked to look after the land, but his name appeared on one of the titles. He maintained that if the deceased had sold land, he would have told them because he would not have done so privately.
67. PW2 was also re-called for cross-examination, wherein he confirmed that he knew the deceased, who was his friend, a neighbour, and also a family friend. That the deceased had land and that they all had certificates of membership alongside other old men. The deceased did not tell him that he had sold land, but that he was following up on the title deed.
68. When he was referred to the third paragraph of his statement, he confirmed that he had known the deceased during the land clinic on 25<sup>th</sup> April 2019. That he did not know that the 3<sup>rd</sup> Defendant was a caretaker, but that he had heard his name on the 25<sup>th</sup> April 2019 during the clinic. He confirmed that they had gone to the land after it was said that the same had been stolen.
69. He explained that when the Cabinet Secretary had questioned the Land Registrar, the deceased had mentioned the 3<sup>rd</sup> Defendant, and that is when he heard that name. The deceased had also talked about the CID during the clinic. However, the deceased did not tell him in person that his land had been stolen. That he would not know about the investigations into the fraud. That he did not know the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants, and neither would he know whether the deceased had sold his land on the 21<sup>st</sup> November 2012, 22<sup>nd</sup> March 2013 and 26<sup>th</sup> July 2004.
70. In re-examination, he confirmed that they had gone with the deceased to the clinic where all members had been summoned in pursuit of their title deeds. That if indeed the deceased had sold his land, he would not have pursued the title deed. He confirmed that whereas the deceased had sold plot No. 1555, he had not sold plot No. 1480. That he had asked for mutation, consent and signatures, which were different from his and that they got the information after the land clinic. He confirmed that the deceased had gone to pick up his title at the land clinic.
71. In the office, the Cabinet Secretary had asked for the register to see where the deceased had been registered. However, when the register was found, it was discovered that the title had been issued to somebody else. The land registrar had confirmed that the same was fraudulent, wherein he had been directed to take the deceased to the DCI, where he recorded his statement. It had been discovered that the land had been sold to many people, including the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants. That the deceased did not sell his land, and that he did not know when the people said to have bought the land actually bought it.
- The Plaintiff closed its case.
72. The Defence case opened with the testimony of David Gachau Nganga, the 2<sup>nd</sup> Defendant herein, who testified as DW1, adopted his witness statement dated 15<sup>th</sup> May 2025 as his evidence in chief and stated that land parcel No. Kijabe/Kijabe Block 1/1480 was his land, having bought the same from one Mr James Ndungu Mungai in a process that began in the year 2004. That he had paid a deposit of Kshs.80,000/= as a purchase price for 2 acres of land that was being sold for Kshs.200,000/=. That after making a down payment of Kshs.80,000/=, around the first week of May 2005, he had paid the balance.



73. That since the land was far from where he lived, it had been while he had gone to pay the balance, that James had told him that he was now selling to him 2 acres on a different parcel of land which was nearer and which land would now cost Kshs.240,000/=.
74. That subsequently, he had paid a sum of Kshs.160,000/= after which the land had been transferred to him. That they had entered into a hand-written sale agreement dated 26<sup>th</sup> June 2004 wherein he, his wife, James and his wife had signed the same. He produced the said sale agreement as Df Exh 1.
75. He testified that it had been after the sale agreement that he got his title deed to land parcel No. Kijabe/Kijabe Block 1/7644 dated 11<sup>th</sup> July 2005, which title he produced as Df Exh 2.
76. That thereafter, in the year 2023, he had been summoned to the DCI Naivasha to produce his document, but subsequently, he was neither charged in court nor charged after 3 months of investigations, and he was called to collect his documents. He confirmed that the land was still in his name and that he had lived therein since the year 2007 to date.
77. On cross-examination, he reiterated that he had bought land from James Ndungu Mungai, who was now deceased. That he had gone to the ground when he was buying the land, and that since James was like a father to him, he did not conduct a search. That whereas James had many parcels of land, he did not ask him how he got them, nor did he go to the Land Registry to get the history of the land. However, he knew that the said parcel of land was 2 acres because it was on the papers.
78. He confirmed that he had first paid an amount of KShs.80,000/= deposit on 26<sup>th</sup> June 2004. In the year 2005, he paid the balance, which was Kshs.160,000/= and was issued with a title deed in July 2005. That there was a special Land Control board sitting in which the agent, who was also a surveyor, had attended. That he did not know if James had also attended LCB, but that a consent had been issued and although he did not have a copy, the person who attended had the receipt.
79. That he was happy to get the title, although he did not have all the documents. That "Caleb Africa" who was a surveyor, was the one who had followed up on the documents and not the agent. That he had paid all the money that he had been asked to pay. He admitted that he did not have the clearance of rates.
80. When he was referred to Df Exh 1, he confirmed that he had bought a piece of land measuring 2 acres and that, according to Df Exh 2, it was 2 acres of land being parcel No. Kijabe/Kijabe Block 1/7644. That they had originally agreed that James would excise 2 acres from his land, but as time went by, James told him that he had another piece of land.
81. That there had been no subsequent sale agreement, he had believed the seller, who was like his father and who had informed him that he would excise a piece of land, but had failed to write the title number of the original title.
82. He maintained that it was "Caleb Africa" that had procured for him the said land that was in Mahi Mahiu, although he did not know if it was situated in Nakuru or Naivasha, because at the time, he was living in Kiambu, where the seller promised that he would complete the process.
83. He confirmed that he was summoned by DCIO Naivasha. That, whereas the title had been processed in Nakuru District Registry, he did not know if Nakuru Registry had jurisdiction to process the title. He agreed that before a title is processed, there is a transfer to be done. Although he had heard about a Green Card, he was not aware of it.
84. On being referred to Pf Exh 10, he confirmed that he had bought land parcel No.1480 and that the first entry had indicated that the owner was Wallace Ngugi, wherein the title had been issued. That on



- 17<sup>th</sup> February 2005, the title had been closed on subdivision. He confirmed that he owns plot No.7644, which was a subdivision from the mother title No.1480. That he had transacted with James through his wife, Elizabeth, who was a witness in the sale agreement.
85. That during the sale agreement, he did not see Wallace but had only seen a transfer form between James and Wallace. On 15<sup>th</sup> June 2005, an entry of James and between 17<sup>th</sup> February 2005 and 15<sup>th</sup> June 2005, a title had been produced, although he could not comment about the timing, nor could he tell how much time it had taken to book the land consent. He confirmed that the normal time took about 3 months and that it was possible to make a transaction between the land control board and the issuance of title within 3 months, although he did not know how. That he was aware that it had been after Wallace had complained, that he had been summoned by the DCIO, wherein investigations had been conducted, although he had not seen the results of the forensic examiner. He maintained that his documents had been returned when he had been assured that they were okay. He contended that the deceased's complaint may not have been genuine and that what was expected to be done should be done.
86. In re-examination, he confirmed that nobody had complained that he did not follow all the procedures with the Land Control Board since there had been no evidence and neither had he been arrested by the CID. That he had also not received any complaint to the effect that he did not pay stamp duty or that there was no clearance. He confirmed that James, who had sold him the land, was his co-defendant.
87. That the land registrar had also not complained that he got the land fraudulently. That he had only been questioned by the DCIO. That apart from the land, they did not enter into any other sale agreement, and he had not been shown anything to show that James fraudulently got the land. He thus maintained that he had bought the land legally and that he was not involved with the issuance of title deeds.
88. Elizabeth Kabura Gacau, the 4<sup>th</sup> Defendant herein, testified as DW2 wherein she adopted her witness statement dated 12<sup>th</sup> May 2023 before proceeding to testify that she was the registered proprietor of land parcel known as Kijabe/Kijabe Block 1/7645, having bought the same from Wallace Ngugi Muniu on 21<sup>st</sup> November 2012 at a purchase price of Kshs. 500,000/= . After receiving the title deed, the land was subsequently subdivided into plots. She produced the Sale Agreement dated 21<sup>st</sup> November 2012 as Df Exh 3 and the title deed for Kijabe/Kijabe Block 1/7645 as Df Exh 4.
89. She testified that she did not do any due diligence because she believed that Wallace Ngugi had sold the land to her lawfully. That it had been when Wallace found her digging on her husband's land that he had informed her that he wanted to sell the land. She then chose to reiterate the contents of their joint defence dated 12<sup>th</sup> May 2023.
90. On cross-examination, she testified that she did not remember the number of the mother title to plot No. 7645. That she also could not remember the plot number of her husband's land. She confirmed that she lives in Mahi Mahiu, where she cultivates and looks after animals, and that she had never worked in an office. That her husband was David Gacau. She maintained that she had bought the land measuring 1.005 hectares from Wallace.
91. When she was referred to Pf Exh 10, she confirmed that the same was a green card to land No. Kijabe/ Kijabe Block/1480, which had been opened on 26<sup>th</sup> April 1985. That the name after the Government was Wallace Muniu, and that the said land had been subdivided into plot Nos. 7644 – 7646. She confirmed that her parcel of land was No. 7645, but did not understand how the said land was a subdivision of parcel No.1480. She confirmed that her husband had bought land from James Ndungu Mungai.



92. In reference to Df Exh. 2, she confirmed that the same was plot No. 7644, whose mother title was No.1480, which had been subdivided into 5 portions. She admitted that she now understood that her parcel of land was a subdivision of plot No. 1480. She confirmed that Wallace was the proprietor of the mother title, and although she could not remember if Wallace had disputed that he did not get his title, she had been summoned by the Deputy County Commissioner.
93. Upon being referred to Pf Exh13, she read out the names of persons who had been summoned and confirmed that she had recorded a statement at the police station. She maintained that she had met Wallace on her husband's land parcel No.7644, which is in Mahi Mahiu. That they had drafted a sale agreement at Caleb's office which was the second time that she was meeting Wallace.
94. That it was at the point of drafting the agreement and making the payment, in the surveyor's office, (Caleb), that she had seen Wallace's identity card. That she had paid the money in cash, although she did not bring the receipt to court. She maintained that she did not conduct a search because she trusted the old man. That she believed that the said old man was Wallace because he had gone to the land and produced his Identity Card during the drafting of the agreement.
95. That whereas her husband had bought land from James, she believed that the person who had sold her land was Wallace. That, nonetheless, she did not know about transfer forms, and neither did they go to the land control board, nor could she remember if she paid the stamp duty. That they had left their passport photographs with Caleb at "Caleb Africa".
96. That she heard that Wallace lived in Uplands and at the time, although he had indicated the purchase price, it had not been Kshs.2,000,000/= because being a resident of Mahi Mahiu, she knew the rates of the land in that area. That subsequently, she had bought the land according to how Wallace had sold it to her but did not have the title (to parcel No.7645) because she had since subdivided the land. That she however had title for parcel No.14922.
97. When she was referred to Pf exh 11(a – n), she confirmed that the same was the green card to plot No. 14922 and that her name had been registered on 1<sup>st</sup> August 2013. In reference to Pf exh 11 (c), she confirmed that entry No.3 was dated 28<sup>th</sup> March 2013 although she did not know Njoki. That whereas entry No.5 indicated that her title was registered on 1<sup>st</sup> August 2012, she did not know that a restriction had been placed on the land.
98. On being referred to Df Exh.4, she confirmed that the same had been issued on 1<sup>st</sup> August 2013 from the Naivasha District Land Registry. That Pf Exh.15 was a sale agreement in relation to plot No.7645. When she was referred to title No. Kijabe/Kijabe Block 1/7645, she confirmed that the same had emanated from Nakuru Registry and was dated 15<sup>th</sup> June 2005. She however stated that she had not bought land in the year 2005 and that her title was from Naivasha hence she did not understand how there were two different registries.
99. She was referred to Df Exh.2, upon which she confirmed that it was her husband's title, in relation to parcel No. 7644 and issued by the Nakuru Registry. She also confirmed that the address indicated in Df Exh.4 was P.O. Box 67345, Nairobi, which address belonged to her husband and which she used to use; she, however, confirmed that the address on the 2<sup>nd</sup> Defendant's witness statement was P.O. Box 39, Matathia, which address she was not aware of.
100. Her response on being referred to Pf Exh 14 was that the same was her husband's title deed, and the address therein was P.O. Box 6, Kagwe, which had been their original home before they moved to Mahi Mahiu. She also confirmed that there had been no postal address on Df Exh.3, while the address on



- Pf Exh. 5(a) was P.O. Box 79, Mahi Mahiu. She admitted that the addresses on the exhibits were all different.
101. Her evidence was that plot No. 14922 was a lawful subdivision of the mother title 9645. That she had left the receipt of the payment of Kshs.500,000/= at home. That plot No.14922 had also been subdivided into plot Nos. 15664 – 15671 and that she had sold some portions of land to Alice and Samson, the 14<sup>th</sup> and 15<sup>th</sup> Defendants, at Ksh. 280,000/= the sale agreements, which she left home.
  102. She stated that Samson was a surveyor, and since she could not pay him for his services, she had given him a plot for free. That she did not know the surveyor's fee, as they had just agreed that he would subdivide the land and take one parcel of land. That she could not remember when the subdivision had been done. That whereas she was a farmer, her husband was employed, hence the source of the Kshs.500,000/= with which she had bought the land. She confirmed that she could not remember going to the Land Control Board to seek consent for the subdivisions, nor did she pay rates.
  103. She maintained that Samson the surveyor did all the work so that he could take one plot. She reiterated that she had bought the land lawfully and had drafted the transfer form for Alice, although she could not remember signing a transfer form for Samson. She confirmed that she had just sold one portion of the subdivisions to Alice and Samson, but did not go to the LCB. The initial title in her name was dated 1<sup>st</sup> August 2013, while the other titles were dated 14<sup>th</sup> April 2014 for plot Nos. 15664 – 15671, that is Pf Exh. 11(a – n) had been processed by Simeon, and therefore, she did not know how they had been procured in a short span of time.
  104. In re-examination, she confirmed that she had sold land to Samson and Alice, who had not complained to her and neither had she received any complaint from the Land Registrar. That in relation to the speedy issuance of the titles Nos. 15664-15671, she did not know the Charter of the Land's Office or how they had been processed quickly, nor did she know when the land Registry was opened in Naivasha, although she was aware that currently, every County has a Registry.
  105. That she had no control over offices issuing titles, and it was not unlawful for one to have numerous e-mail addresses or postal addresses. That she had not been charged for obtaining land fraudulently, neither had she been shown any verdict by the District Officer, nor had it been stated who the complainant had been. She distanced herself from having processed the titles, stating that it had been Caleb and Samson who had processed the same.
  106. She confirmed that since she had been a buyer of the land No.7645, it had been the responsibility of the seller to go to the Land Control Board. That she did not know where her husband got his money from, since she used to get her own money as a farmer, from which she had bought the land. She confirmed that she did not know the Plaintiff herein and that Wallace had passed away without any complaint on her title, which was lawful.
  107. DW3, Catherine Wanjiru Njuguna, testified that she dealt with cosmetics, among other items and had a shop in Juja. That had been the proprietor of land parcel No. 7644(B) having bought the same from Wallace Muniu vide a sale agreement at a purchase price of Kshs.570,000/=. That she had since sold the land.
  108. She testified that she had met Wallace in the year 2013 through her neighbor who was a mutual friend. That the sale agreement dated 22<sup>nd</sup> March 2013 had been executed in a surveyor's office by the name "Caleb Africa Ltd" which was situated in Mahi Mahiu. That Wallace Muniu and the mutual friend known as William Mwangi had been present. William had identified Wallace, and he also had his identity card, whose number had been captured in the sale agreement. That she did not interact with Wallace after the purchase and therefore did not know when he died.



109. She stated that she had processed the title deed since Wallace had transferred the land to her and that she had seen him execute the relevant transfer documents in Caleb's office. That, whereas it was "Caleb Africa" who had processed the titles for them, she wouldn't know if they had attended the Land Control Board. She confirmed that she had subdivided the land in the year 2013, resulting in plot Nos.15404 – 15412, that is, 9 plots, which she had sold and transferred to their owners who had titles in their names.
110. She confirmed that she had sold the resultant subdivisions to Defendant Nos. 5, 8, 9, 10, 11, 12 and others who were not listed as Defendants in the instant suit. She produced the Sale Agreement dated 22<sup>nd</sup> March 2013 as Df Exh.5.
111. She testified that whilst she did not know the composition of the company, the surveyor was called Elijah. That she made the payment of Kshs. 500,000/= through a banker's cheque in the name of Wallace, as well as through cash of Kshs.70,000/= wherein receipt of the said amount had been acknowledged.
112. By the time Wallace passed on, he had not made any complaint against her. That, nonetheless, she had been summoned in relation to the land around the period of Covid-19, that is, between the years 2020 – 2021, by the DCI in Naivasha Station, by officers Deborah and Ian Karimi, who wanted to know whether she had legally bought the land. That she had recorded her statement to the effect that she had bought the land from its owner, Wallace. That she had given them a copy of the banker's cheque, a copy of a search and a copy of Df Exh.5, after which she was given a verbal conclusion that she had no case to answer, having legally bought the land. That, in any case, she had not been charged with any offence to-date.
113. That apart from the DCI – Naivasha, she had not been summoned to any other office. That she was issued a title deed to land parcel No. Kijabe/Kijabe Block 1/14923, but was not given title to No. 7645 (B) because the land had been subdivided. That the said title deed dated 1<sup>st</sup> August 2013 had been issued by the Naivasha District Registry and which title she produced as Df Exh 6. That she had not received any complaint from the land Registry regarding payments, consents and so on and that the entry was properly in the land registry. Furthermore, she had not heard that the staff at the land registry had been charged in relation to the title.
114. On cross-Examination, she confirmed that the original mother title was No.1480, which had been subdivided into 3 being portions, being plot Nos. 7644, 7645 and 7646. She confirmed that Df Exh 6 was for land parcel No.14923, which was registered in her name, and that it was a subdivision of plot No. 7645, which had come from plot No. 1480. That from the agreement, she had bought plot No.7645(B), which had resulted from plot No. 7645, which had been subdivided into 2 plots. That DW2 had bought plot No. 7645 (A), which at the time of purchase, they did not have the number, so they had called the land No. 7645(a) and (b).
115. She confirmed that Pf Exh.15 was with regard to plot No.7645 and that the (A) and (B) were their own making. The land was two acres, so she and DW2 bought one acre each and named them (A) and (B) to differentiate them. She maintained that she had bought land parcel No. 7645(B) from Wallace, whom she had met in Mahi Mahiu through his neighbour William Mwangi, who was a mutual friend.
116. That she had been shown the land in the presence of Wallace, William and a surveyor. That DW2 had bought a 1-acre portion of the land before her, so the surveyor had to subdivide the land since they had bought it at different times. She confirmed that the process was still ongoing when she bought the land. That she and William had identified Wallace, and that she had also seen his ID.



117. That she had conducted a search and confirmed that the land was agricultural, hence the seller was to visit the LCB, although she had not attached the LCB consent. That since she had a title deed, she was sure that they had used the right procedure. That they had paid for stamp duty through Caleb's office, although she could not remember how much it was, and neither was she issued with a receipt. That she thought that once she had paid, if there was anything, they could get the documents from the land's office. That she had used the surveyor because the land was undergoing subdivision, hence all the documents would be in his office.
118. In reference to Df Exh.6, she confirmed that the same had been issued in the Naivasha Lands Registry, whereas Pf Exh.15 had been issued in Nakuru, since there had been no Land Registry in Naivasha as at the time. That she did not have receipts because the transaction had been done on her behalf. By then, she had thought that only the title deed was important, but now she knew that that was not the case. She confirmed that she had paid the purchase price through a Banker's Cheque and cash, but did not have a transaction slip. The deceased had received the money, which was captured in the agreement. That person was not aware that the signatures and agreements were in dispute.
119. The deceased had given her a copy of his picture and ID, after which she had subdivided the land and sold it, but she did not bring copies of the mutation form to court because she did not know that they would be needed. That the original copies were in the land's registry. She confirmed that the subdivisions were plots Nos. 15404 – 15412 and that she had sold the plots at a purchase price of between Kshs.200,000/= and 250,000/=.
120. She confirmed that she lives in Ruiru and did not know the current going rate of a parcel of land. That she used to deal in real estate in Mahi Mahiu, wherein she would buy land, subdivide and sell, before she moved to Juja. That whereas she did not keep copies of the subdivision, the same could be found in the Registry. Whilst the purchasers had paid stamp duty, she did not carry the documents with her.
121. Her evidence was that she was not aware that if the court found that plot No. 1480 had been fraudulently sold, all subsequent parcels of land would be cancelled. She insisted that she had acquired a good title from the previous owner, wherein she had sold the land during the same year, since that was her business. She explained that the speed at which the title was processed depended on the registry. That, whereas for a normal LCB, it would take one month, there was also a special board, and she had dealt with the special board since hers was a business transaction.
122. That she had not evaluated the land before selling it because in the process of selling, somebody had told her the value of the land. She denied having defrauded Wallace, stating that she had bought the land in March and received a title deed in August, which was within a span of 5 months. That she had not known how long Wallace had waited for the mother title. She maintained that different registries work differently. The registry to plot No. 7645 had been opened in February, wherein she received her title deed in June. That whereas she could see her name on Pf exh 13, she confirmed that the DCI had called her about a certain complaint that had been lodged with them, but they did not disclose that the same had been lodged by Wallace. She confirmed that she had recorded her statement with the police. She was adamant that she had met Wallace.
123. In re-examination, her evidence was that at the police station, she did not have control of the statement the police were recording, which she had not signed, and which she was seeing for the first time. She maintained that she was not charged with any offence in reference to the land and that there had been nothing wrong in being summoned to a public office. That Wallace did not complain to her that the banker's cheque did not go through, and that no member of his family had approached her. Furthermore, the land office had not complained that she had overstepped a process of the land that she had sold. That whereas she was currently a beautician, there was nothing wrong with her previously



having been involved in land estate. She confirmed that her asking price had been Kshs.200,000/= and that it was not a must for her to do a valuation since it was a free market.

124. Josephine Mburu, the Land Registrar, Naivasha, testified as DW4 to the effect that she was in court to give evidence about Land Registration No. Kijabe/Kijabe Block 1/1480. That she had brought with her the member register from Kijabe land buying company as well as the Green Card that had been issued to Wallace Ngugi Muhihu, who also appeared on the Register as member No.1480. That Wallace had been registered to the land on 7<sup>th</sup> May 1985 and thereafter issued with the title on 22<sup>nd</sup> September 1985. That on 17<sup>th</sup> February 2005, the title had been closed on subdivision, and new numbers issued, being Nos. 7644 – 7646.
125. That after the subdivision, on 2<sup>nd</sup> March 2005, he had transferred parcel No.7646 to Christopher Mwika Nyongi. That the other sub-division No.7645 was in his name, but there had been a restriction which was removed, and thereafter the same had been subdivided into plot Nos.14922 – 14923 on 1<sup>st</sup> August 2013, wherein after, he had transferred plot No. 14923 to Catherine Wanjiru Njuguna, and a title was issued on the same day. That subsequently, on 20<sup>th</sup> September 2013, the title No.14923 had been closed on sub-division into parcel Nos. 15404 – 15412, where parcel No. 15412 had been transferred to Thomas Kimonyi Mbithi on the 3<sup>rd</sup> December 2013 and a title deed issued.
126. Thomas subsequently sold his land to Mafundi Self Help Group on 23<sup>rd</sup> November 2016, and a title deed was issued. That plot No.15412, on the other hand, was transferred to Vincent Cherago Kifwe on the 31<sup>st</sup> March 2014, and a title deed was issued on 1<sup>st</sup> April 2014.
127. On 15<sup>th</sup> June 2005, parcel No. 7644 was transferred to James Ngundu Mungai, and a title deed was issued on the same day. On 6<sup>th</sup> July 2005, James had sold the land to David Gachau Ngángá, and a title deed was issued on 11<sup>th</sup> July 2005.
128. That parcel No.7646 was transferred to Christopher Mwiki Nyongi, wherein a title deed was issued on 2<sup>nd</sup> March 2005.
129. She confirmed that she had the parcel file for Kijabe/Kijabe Block 1/1480, wherein the land had been registered and transferred to Wallace Ngingi Muniu. She produced the Register of Members, the Green Card and Parcel File as Df Exh.7 (a-c).
130. Mr Kimani, Counsel for the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants, then sought clarification as to when the Naivasha Land Registry had been established and proceeded to argue that in the year 2005, there was no Land Registry in Naivasha wherein titles were issued at Nakuru Land Registry. Therefore, there was nothing sinister if a title deed had been issued in Nakuru Land Registry, for which the transfers that had been itemised herein were proper. He opined that the transfer could not have been done if there was no Land Control Board, and the same ought to have complied. From his documentation, there had been no complaint.
131. Counsel for the Plaintiff, on cross-examination, referred DW4 to Df Exh. 7(a), wherein she confirmed that Wallace was the owner of plot No.1480. She stated that, whereas the Register was not dated, it was the one that was in use in their office. That it was a copy that had been produced from the original register, which she could not carry to court, as it was being used in the office. The other documents that the parcel file was supposed to contain included the ballot, transfer form and receipts of payment. The land was duly transferred to Wallace on 7<sup>th</sup> May 1985, wherein he had signed the form. The registration was after the Government of Kenya to Wallace Ngugi. She confirmed that Wallace had paid for the transfer.



132. That she was aware that there needs to be the ID, PIN and P.O. Box of Wallace. That they had found the said documents in their office, the files having been opened in Nakuru. She believed that there could have been a mix-up during the transportation of the documents from Nakuru to Naivasha. That, as per the Green Card, she believed that the proper procedure had been followed.
133. The transfer document had indicated the ID No. She confirmed that the first transfer had been done in Nakuru. The parcel file had a transfer form, which ought to have contained an ID because for there to be an entry, the Register must confirm the identity of the transferor and that the ID should have been present, but she did not know if the ID card was present because at the time, she was not in Nakuru.
134. She confirmed that although plot No. 7645 had been subdivided by Wallace, the application form and Mutation were not in the parcel file, as the same had been closed on subdivision. That she had not managed to trace the mutation, which could be in the surveyor's office, either in Nakuru or Naivasha. At the moment, she did not have the application or the mutation for the subdivisions, as per the Green Cards, she was certain that Wallace did cause the subdivisions.
135. It had been after the subdivision that the land had been transferred to other people. She confirmed that parcel No. 7646 had been transferred to Christopher. On the other hand, parcel No.7645 had first been subdivided into 14922 – 14923, which had been transferred. That land parcel No. 14923 was transferred to Catherine. Since the land is an Agricultural Land, there needed to be a Land Control Board consent, which would be contained in another file, and she did not have any copies. She explained that for an entry to be made, there had to be an LCB, and from the Green Card, there were no receipts.
136. That generally speaking, as per their service charter, a title deed ought to be out within 5 days because it involved a process, where documents are received, there is booking, franking, and later the same are distributed to the clerks to work on before they are forwarded to the Registrar to sign, after which the clerk would dispatch them on the counter. She confirmed that it was a must for the person receiving the title to sign. The green card had only shown that the title had been issued, but not who had collected the same.
137. She explained that once the documents are received and the cards are to be opened, they are taken to the Secretary. That they did not have timelines, as long as the document was ready within 5 days. That whereas plot No.1493 had been transferred to Wallace, the date of sub-division was when the card had been closed, which was on 17<sup>th</sup> February 2005. On 1<sup>st</sup> August 2013, the land was transferred to Catherine, and a title deed was issued. The date that the documents were booked would be the date that reflects as the date of registration. According to the entry in the title, the documents were booked on the same day, and a title was issued. That there was no anomaly.
138. When she was referred to Parcel No.1480, she confirmed that Wallace had been registered as proprietor on the 7<sup>th</sup> May 1985 and a title deed issued on 22<sup>nd</sup> May 1985, which time was within a reasonable time as the title had been issued after 15 days. In reference to plot No.7644, she confirmed that the same had been transferred to James on 15<sup>th</sup> June 2005, wherein the title had been issued on the same day. She maintained that she had no receipts, LCB consent and transfer forms. However, they had issued the title which was held at the dispatch.
139. That the different dates on Wallace's titles could have been when he had paid for the same. She confirmed that where one of the processes was found not to have been followed, one could not be said to have obtained a good title.



140. That concerning plot No.7645, there had been a restriction placed by Hannah Njoki Ngugi on 28<sup>th</sup> March 2013 as a spouse, but then it had been removed on 14<sup>th</sup> June 2013 under the provisions of Section 133(b)(sic). She also confirmed that she did not know how the restriction had been removed because the process of removal of a caution was through summoning all the parties to the land registrar's office, for which she had no evidence of invitation to such a hearing, despite the removal having been signed.
141. She admitted that the procedure herein could have been flawed, where there had been no evidence of invitation, where the titles had been issued after the sub-division, without evidence of a proper removal of the caution. That, nonetheless, she could not say with certainty that the invitation was not there since she had not managed to trace the other documents due to improper keeping of records, due to a lack of space in the registry. However, she believed that as Civil Servants, they had done the best that they could with the space that they had been provided with. She contended that the records that she had produced were conclusive, stating that she was not in the Naivasha Lands Registry in the year 2019.
142. When she was referred to Df Exh.4, she confirmed that although it emanated from their office, it was not signed. She confirmed that some documents were to be carried by the people who were attending the clinic, although she could not tell whether the deceased Wallace had attended it. Furthermore, she did not know if he had lodged a complaint to the effect that his title had been issued to somebody else, nor was she aware that he had accompanied the Cabinet Secretary to the registry.
143. That she did not know if a criminal case had been lodged, or whether there was a police case touching on the instant matter. She confirmed that they were now operating in Naivasha Registry and that the land was in Kijabe, which was closer to Naivasha. That during the transfer of Registry, the documents were brought to the new registry and that there was no shortage of human resources at the Naivasha Land Registry.
144. In reference to Pf Exh. 15, she confirmed that the same was a title deed in relation to Kijabe/Kijabe Block 1/7645, which had been issued to Wallace Ngugi at the Nakuru Land Registry on the 15<sup>th</sup> June 2005. That the mutation, Pf exh 15, had been done by the District Surveyor Nakuru, who is based in Nakuru and normally forwards the documents to them, the documents wherein the land registrar then issues the title deeds. The mutation form had been presented by Wallace and had a signature. That the persons who had received the sub-division were also Defendants. She explained that if the first subdivision were fraudulent, the subsequent subdivisions would also be fraudulent.
145. In re-examination, she confirmed that whereas she had been informed of a land clinic, she had not been shown any report arising therein and neither had she been told whether or not it had been an inquiry.
146. In regard to the process of removing a restriction, she explained that parties were normally invited where the proceedings would be captured. The Green Card was a reflection of what takes place in the Land's Office. However, where documents got lost, it did not mean that the entire process was fraudulent.
147. Concerning the irregularity of registration of titles, she clarified that she did not know when the Charter in Naivasha came into place and therefore did not know whether the same was in place in the year 2005. That there was nothing wrong if one title was issued faster than another, since the issuance of a title was determined by the workload, and some documents required thorough scrutiny. That she had not been shown any evidence that the Defendants had been convicted.
148. At the close of the Defence case, parties were directed to file written submissions, which I shall proceed to summarise as herein under.



## Plaintiff's Submissions.

149. The Plaintiff's submissions, dated 18<sup>th</sup> December 2025, argue that the entire subdivision and sale of the land were orchestrated through fraud and professional negligence. The Plaintiff contends that the late Wallace Ngugi Muniu never sanctioned any transfers and that his estate remains the only bona fide owner. The plaintiff framed his key arguments on the following issues for determination:
- i. Whether the late Wallace Ngugi Muniu (now his estate) was/is the bona fide owner of the suit property Kijabe/Kijabe Block 1/1480.
  - ii. Whether the deceased ever sold the suit property Kijabe/Kijabe Block 1/1480 and or subdivided the same into Kijabe/Kijabe Block 1/7644-7646 and 14922-4923, if not,
  - iii. Whether the transfer and/or subdivision of the suit property Kijabe/Kijabe Block 1/1480 was done and or sanctioned by the deceased and/or whether the transfer and/or the subdivision was fraudulent and therefore null and void ab initio.
  - iv. Whether the 1<sup>st</sup> to 5<sup>th</sup> Defendants acquired good titles to the suit properties Kijabe/Kijabe Block 1/7644-7646 and 14922-4923 and consequently, whether all the defendants herein and all other subsequent purchasers of subplots excised from Kijabe/Kijabe Block 1/1480 are bona fide purchasers for value.
  - v. What are the appropriate orders/reliefs to issue in the circumstances?
  - vi. Who is to bear the costs of the suit?
150. The Plaintiff began his submissions by arguing that the suit was not time-barred because, under the law, the time for fraud began when the fraud was discovered. The deceased had only discovered the illegal titles in 2019 during a public land clinic. Therefore, the suit was filed within the 12-year statutory period for land recovery. He relied on the decision of the court of appeal in *Mtana Lewa v Kahindi Ngala Mwangadi* [Civil Appeal No. 56 of 2014]
151. The plaintiff then maintained that the history of Parcel No. 1480 was clearly traceable to Wallace where the defense had not provided any evidence to prove that Wallace ever intended to sell his land or initiated the subdivision. He placed reliance on the decision in *Munyu Maina v Hiram Gathiha Maina* [Civil Appeal No. 239 of 2009] to show that the Plaintiff had successfully traced the ownership back to 1985, whereas the Defendants failed to prove a legal "root" for their subdivisions.
152. The Plaintiff relied on the provisions of Section 9(2) of the *Land Registration Act* regarding their duty to maintain accurate records and blamed the Land Registrar, the 17<sup>th</sup> Defendant, for failing to maintain a proper parcel file as the same was missing the identity cards, PINs, and addresses of the parties. That this negligence had allowed fraudsters to collect titles and subdivide land without the owner's knowledge. He pointed out that that Parcel No. 7645(B) bought by DW3 did not exist in the official titling system. Such naming was a creation of a private surveyor known as Caleb Africa, which then made the title null and void. That indeed the Defendants had admitted to having no Land Control Board (LCB) consents, no rates clearance certificates, and no stamp duty receipts.
153. He submitted that indeed a forensic document examiner had testified that the signatures on the sale agreements, mutations, and transfer forms were forgeries. That indeed the expert had concluded that the signatures did not match Wallace's handwriting habits or the specimen provided to the police before his death. He argued that the issuance of titles within a single day or a few weeks was a red flag of fraud, as legitimate land processes (LCB, valuation, and registration) typically took months.



154. The Plaintiff then argued the Defendants were not innocent purchasers of the land because they had a responsibility to investigate the "root of the title." Reliance was placed on the Nakuru Court of Appeal No. 41 of 2020 to demonstrate that because Catherine Njuguna (DW3) bought a "non-existent" parcel number (7645B) created by a private surveyor, she failed in her duty to verify the title's validity. That their failure to verify the owner's identity or demand legal documents like the Land Control Board consent defeated their claim to the land. That since the initial transfers to the 1<sup>st</sup> –5<sup>th</sup> Defendants were fraudulent, it went without saying that all subsequent purchasers acquired nothing, as "one cannot give what they do not have." He placed his reliance on the decisions by the court of Appeal in *Said v Shume & 2 others* [Civil Appeal E050 of 2023]
155. The Plaintiff then sought the cancellation of all subdivision titles and the restoration of the original title to Wallace's estate. He also asked the court to award costs, specifically highlighting the high expenses incurred due to the Defendants' lack of co-operation, which included Ksh. 50,000/= for the Forensic Report and court attendance, Ksh 50,000/= for the survey Report and court attendance, Ksh 24,360/= for the Newspaper Advertisements and Ksh. 6,000/= for the service of summons on the two dates.
156. In conclusion, he relied on the provisions of Section 27 of the *Civil Procedure Act* to argue that "costs follow the event" and submitted that the Plaintiff had proved his case against the Defendants to the required standard of proof, hence judgment should be entered in his favour as prayed in the plaint.

#### **2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendant's Submissions.**

157. The Submissions for the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants dated 8<sup>th</sup> December 2025 were to the effect that they were innocent purchasers who acquired the land through legal processes. They contend that the Plaintiff had failed to meet the high evidentiary burden required to prove fraud and that the suit is legally "dead" due to time limitations.
158. The Defendants claim that they had performed all necessary searches at the land office, which confirmed that the sellers, Wallace Ngugi Muniu and James Ndungu Mungai, were the lawful, registered owners. That they had purchased their subject parcels of land from bona fide owners who were legally registered at the lands office, and that due diligence had been executed before sale, and that the searches at the lands office support the lawful nature of the ownership. Furthermore, they had purchased the subject lands with proper sale agreements, which had been stated in the pleadings and evidence. That, in essence, therefore, they were purchasers for value and had obtained lawful, valid title deeds.
159. They maintained that they were purchasers for value who held valid title deeds to their respective parcels of land, obtained through proper sale agreements executed via "Caleb Africa Ltd".
160. They heavily placed their reliance on the land Registrar, who testified as DW4, arguing that she had confirmed that the transfers were "above board" and that the Green Cards, which were the official records, reflected a regular and lawful process
161. The Defendants argued that the Plaintiff provided no tangible evidence, such as criminal convictions or forensic reports, to prove that Wallace's signature was forged or that impersonation occurred. That the provisions of Section 26 (1) of the *Land Registration Act* defines the circumstances under which a title deed may be cancelled specifically where owner's signature for transfer had been forged, impersonation had been done, transfer had been done without owners' consent, where a fake or irregular Land Control Board Consent had been used or where the owner had no capacity. Further reliance was placed in *Kerugoya ELC No. 737 of 2013, Marclus Kiranga Nimrod & another v Nesity Kuthii Justus &*



- another (sic), where the court had stated the circumstances under which a title deed should be cancelled for fraud-related allegations to urge the court to decline the prayers of the Plaintiff.
162. They pointed out that the Plaintiff could not account for Wallace's specific locations on the dates the agreements were signed in the years 2004, 2012, and 2013, and therefore, he could not say with certainty that he did not sign them. Furthermore, he could not prove that the executed signatures were not for Wallace Ngugi Muniu. They placed reliance on the decided case of *Funzi Island Development Ltd & 2 others v County Council of Kwale*, Civil Appeal No. 252 of 2005, Mombasa, where it had been held that the person who alleges fraudulent activities on title transfer should produce tangible evidence and a forensic investigation report to demonstrate that the signature had been forged. They thus urged the court to find that the Plaintiff was unable to produce any tangible evidence thereto.
163. They argued that the absence or loss of certain documents in the land office did not render a transaction illegal, as the Green Card remained the primary evidence of ownership.
164. Lastly, the Defendants placed reliance on the provisions of Sections 4 (1) 9 (sic) and 27 of the *Limitation of Actions Act*, arguing that since the sale agreements dated back to 2004, 2012, and 2013, the 6-year limitation period for contract-based actions had long expired. The Plaintiff failed to seek the court's permission (leave) to file the suit outside the statutory timelines, meaning the suit was time-barred the moment it was filed in April 2023. They prayed that the Plaintiff's suit be struck out in its entirety with costs.

#### **Determination.**

165. I have considered the Plaintiff's claim on behalf of the estate of Wallace Ngugi Muniu, the 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants' defence, the fact that the rest of the Defendants did not participate in the proceedings despite service, the evidence adduced in court, the exhibits tendered therein, the submissions, authorities cited and the applicable law.
166. Briefly, the Plaintiff filed suit against the Defendants as a legal representative of his father's estate on the premise that the suit property, Kijabe/Kijabe Block 1/1480, was systematically stolen from his father, the late Wallace Ngugi Muniu, through a series of forged documents and fraudulent land registry entries. He contended that the deceased never sold, subdivided, or authorised any dealings with the land, and that the titles held by the Defendants were fruits of a poisonous tree.
167. He asserted that Wallace was the absolute, lawful owner of the original 10-acre parcel from 1985 until his death. He produced several key exhibits tracing the acquisition of the suit property, Kijabe/Kijabe Block 1/1480, to show Wallace Ngugi Muniu as the original bona fide owner as well as documents to substantiate the claims of fraud, forgery, and illegal subdivision as well as formal complaint lodged by Wallace Ngugi Muniu at Naivasha Police Station stating he had never sold his land or collected his title. The Plaintiff further exhibited a survey report establishing the history of the land and confirming that the numbering system, like Block 1/7645 B, used by the Defendants was non-existent in the official registry. Finally, he produced a forensic document examiner's Report to show the lack of shared handwriting habits between Wallace and the forger(s).
168. The Plaintiff highlighted that the Defendants' titles were issued at record speed which was sometimes within 24 hours, which is impossible for legitimate agricultural land transactions requiring Land Control Board (LCB) consent.
169. He also blamed the Land Registry for being either complicit or grossly negligent for reasons that the parcel file was empty and/or missing mandatory documents like the identity Cards, the PINs, and



- Land Control Board consents. That a caution (restriction) had also been removed from the register without any evidence of the required legal hearing.
170. The Plaintiff's suit was that the Defendants could not claim to be innocent purchasers because there had been a lack of due diligence, and since there had been no legal interest to pass, the first transfer being fraudulent, all subsequent buyers, no matter how innocent, held invalid titles.
171. The 2<sup>nd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Defendants' case, on the other hand, had been that they were innocent victims of a legal battle over land they bought legitimately. They contend that they followed all legal procedures and that the Plaintiff's claim was factually unproven and legally dead due to the passage of time.
172. They claimed that they had conducted official searches at the Naivasha Land Registry, which confirmed the sellers as Wallace Ngugi Muniu and James Ndungu Mungai, who were the registered owners. They relied on the testimony of the Land Registrar DW4, who stated that the registry records (Green Cards) reflected a lawful process.
173. They argued that they had paid the purchase price in good faith through "Caleb Africa Ltd". They challenged the Plaintiff's fraud allegations, stating that he had failed to meet the "beyond a reasonable doubt" standard required to prove fraud in civil cases. They argued that their titles were absolute and could not be challenged unless the Plaintiff proved that they had personally participated in the fraud. Since the Land Registrar confirmed that their titles were "regularly and lawfully" issued, the court must respect the integrity of the government's land records.
174. The Plaintiff could not account for where Wallace was on the specific dates the contracts were signed, hence there was no proof that Wallace did not sign the documents.
175. Lastly, the Defendants attacked the jurisdiction of the Court on a claim that the Plaintiff's suit was time-barred, arguing that since the sale agreements were signed in 2004, 2012, and 2013, the Plaintiff had only six years to sue for breach of contract. They contended that the Plaintiff's suit was filed in April 2023 without leave, thus rendering the entire case legally incompetent.
176. Having given a summary of the suit before the court, I find the issues arising for the court's determination as follows;
- i. Is the suit time-barred by the *Limitation of Actions Act*? If not,
  - ii. Was the late Wallace Ngugi Muniu the bona fide owner of the original suit property (Kijabe/ Kijabe Block 1/1480)?
  - iii. Were the signatures of Wallace Ngugi Muniu on the Sale Agreements, Mutations, and Transfer Forms forged?
  - iv. Whether the Defendants and subsequent purchasers of the subplots excised from Kijabe/ Kijabe Block 1/1480 were Bona Fide Purchasers for Value without Notice, if not
  - v. Whether the titles held by the Defendants and subsequent purchasers should be cancelled?
177. On the first issue for determination, it is trite that jurisdiction is the bloodline of any action; without which, the court is essentially a ship without a compass. If this foundation is missing, any superstructure built upon it will eventually come crashing down. The principle that jurisdiction must be decided first—because any proceedings conducted without it are a nullity—is a cornerstone of common law. Indeed the "Golden Rule" regarding jurisdiction is that it is a threshold issue such that when a court's authority is challenged, it must "down its tools" and resolve that question immediately



before taking any further steps as was held by the Court of Appeal in the classical case of Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd [1989] KLR 1 where Nyarangi, JA had this to say;

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

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

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

179. This court's jurisdiction having been question to the effect that the suit herein was time barred by virtue of the provisions of Section 4(1) of the *Limitation of Actions Act* as read with Section 27 of the *Limitation of Actions Act* to the effect that since the sale agreements dated back to 2004, 2012, and 2013, the 6-year limitation period for contract-based actions had long expired.

180. The provisions of section 4(1) of the *Limitation of Actions Act* provide as follows:

"The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

- (a) actions founded on contract;
- (b) actions to enforce a recognizance;
- (c) actions to enforce an award;
- (d) actions to recover a sum recoverable.....

181. The provisions of Section 27 of the *Limitation of Actions Act*, on the other hand provide as follows:

"Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.

- (1) Section 4(2) does not afford a defence to an action founded on tort where—
  - (a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and
  - (b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and
  - (c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and



- (d) the requirements of subsection (2) are fulfilled in relation to the cause of action.
- (2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—
  - (a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and
  - (b) in either case, was a date not earlier than one year before the date on which the action was brought.
- (3) This section does not exclude or otherwise affect—
  - (a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or
  - (b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.”

182. Lastly, Section 26 of the *Limitation of Actions Act* provides as follows;

- “Where, in the case of an action for which a period of limitation is prescribed, either—
- (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
  - (b) the right of action is concealed by the fraud of any such person as aforesaid; or
  - (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:”

183. The Plaintiff’s claim herein is to recover his father’s land No. Kijabe/Kijabe Block 1/1480, which had been fraudulently registered to the Defendants. Section 26 of the *Limitation of Actions Act* is a provision of the law that extends the normal limitation period in three specific circumstances: fraud, concealment, or mistake, wherein the period of limitation does not begin to run until the Plaintiff has discovered the said fraud or could with reasonable diligence have discovered it. The Plaintiff claims that it had been in May 2019, during a land Clinic that his father, the deceased, had discovered that his land had been fraudulently grabbed, wherein he had raised a complaint with the then Cabinet Secretary madam Karonei, who had asked for the file, wherein it had been confirmed as such.

184. Under the provisions of Section 7 of the *Limitation of Actions Act*, the period for seeking to recover land is 12 years, and not 6 years as alluded by the Defendants. Further, the “fraud stop-clock,” according to Section 26 of the *Limitation of Actions Act*, states that where an action is based on fraud, the limitation period does not begin to run until the Plaintiff has discovered the fraud or could have discovered it with reasonable diligence. The discovery date in this instant, it is not denied, was in the year 2019, and



therefore, the 12-year window for land recovery would expire in 2031. I therefore find that this suit filed in 2023 is well within time. Indeed, as was held in the case of *Lewa v Mwangandi* [2015] KECA 532 (KLR), the Court of Appeal had held that:

“Further safeguards are provided in Sections 22 and 26 of the *Limitation of Actions Act*. The former prevents time from running on account of disability in which case the action can be brought before the end of 6 years from the date when the person ceases to be under a disability. Under Section 26 in the case of fraud or mistake, the period of Limitation will not begin to run until fraud or mistake has been discovered.”

185. In essence therefore the court held that a person cannot be expected to sue for the theft of their land if they are unaware that the theft has occurred. Time only begins to run once the “cloud” over the title is revealed to the owner. To this end, I find that the court is vested with jurisdiction to determine the suit.
186. The next issue for determination was whether the late Wallace Ngugi Muniu was the bona fide owner of the original suit property (Kijabe/Kijabe Block 1/1480). Indeed, evidence had been adduced to the effect that he was a member of Maai Mahiu Kijabe Longonot Company vide membership Card No. 2539 and a Certificate No. 2216, which were issued when the land was allocated to him in 1985. There was also the production of a letter from the land company dated 13<sup>th</sup> July 2020 (Pf exh 3), addressed to the Land Registrar, confirming that Wallace was the legitimate allottee of Plot No. 1480. The Land Registrar’s official record (the Green Card) produced as Pf exh 10 further confirmed that the land was originally registered to Wallace Ngugi Muniu on 7<sup>th</sup> May 1985. The receipts issued by the Maai Mahiu Kijabe Longonot Company, as produced, were part of the proof to show that the deceased had paid the necessary fees for the land. Lastly, the surveyor (PW4) and the Document Examiner (PW3) both used the original title records to trace the history of the land back to the deceased, finding no legal break in his original ownership before the disputed fraudulent entries. To this end, the answer to this issue for determination, I find, was in the affirmative.
187. That having been said, I would now determine whether the signatures of Wallace Ngugi Muniu on the Sale Agreements, Mutations, and Transfer Forms were forged. In the present suit, the Plaintiff relied on the evidence of the expert forensic testimony (PW3) who had conducted a scientific comparison between the signatures on the sale agreements and land forms and the specimen signatures of the late Wallace wherein there had been a finding that the signatures on the sale agreements did not display the unique handwriting characteristics, formatting, and pen-movement habits that individualized Wallace’s genuine signature and therefore did not match the specimen Wallace had personally provided to the police when he lodged his initial complaint. PW3 gave a formal expert opinion and produced a Forensic Report confirming that the signatures on the Sale Agreements dated the 21<sup>st</sup> November 2012, and 22<sup>nd</sup> March 2013 (purportedly with Elizabeth Kabura and Catherine Njuguna), the Mutation Forms and the Transfer Forms that had transferred the title from Wallace to the first set of buyers were not authored by Wallace Ngugi Muniu.
188. Evidence further adduced was that the deceased had a very close relationship with his children, and it was highly unlikely that he would travel far to sell the property without informing a single family member. Lastly, before his death, the deceased himself had informed the police that he had never signed any documents, subdivided the land, or even collected the original title deed from the registry.
189. On the other hand, the Defence counter-argument had been that the Sale Agreements were executed by a surveyor called Caleb (whom they did not call as a witness) of “Caleb Africa Ltd” which was a land-selling company, that gave the documents a veneer of legitimacy. They had argued that the Plaintiff failed to produce tangible evidence, despite PW3’s report being on the record on the alleged fraud.



They pointed out that the Plaintiff could not prove exactly where Wallace was on those specific dates to prove that he did not sign the documents.

190. Section 48 of the *Evidence Act* allows expert opinions on handwriting because it is a specialised skill.

191. The said provision of the law provides that;

“When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or fingerprint or other impressions.

(2) Such persons are called experts.”

192. The Court of Appeal in *Shah and Another -vs- Shah and Others* [2003] 1 EA 290, had held as follows:

“One of the special circumstances when witnesses may be called to give evidence of opinion is where the situation involves evidence of expert witness and this is an exception to the general rule that oral evidence must be direct...The expert opinion is however limited to foreign law science or art; including all subjects on which a course of study or experience is necessary to the formation of an opinion and handwriting is one such field...However as a rule of practice, a witness should always be qualified in court before giving his evidence and this is done by asking questions to determine and failure to properly qualify an expert may result in exclusion of his testimony... The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is not bound to accept the evidence of an expert if it finds good reasons for not doing so...Properly grounded expert evidence of scientific conclusion will be extremely persuasive in assisting the court to reach its own opinion”

193. This was a case where the Court of Appeal made a significant decision while addressing the importance of forensic evidence, to the effect that it needed to be properly grounded with other relevant facts for it to be persuasive in assisting the Court. In the instant case, the evidence of PW3, a forensic expert, was to the effect that the deceased did not sign the impugned documents and was supported with a report produced as Pf Exh. 20 that clearly mapped out the disparities between Wallace's specimen and the sale agreements. This evidence was also supported and/or corroborated with other evidence that included; the "record speed" of registration in relation to the 7000-series ( being Parcel Nos. 7643, 7644, 7645, 7646, and 7647,) subdivision titles created from the mother parcel, Kijabe/Kijabe Block 1/1480 where some of the titles were transferred from the first "buyer" to the current Defendants within 24 to 48 hours, removal of a spousal caution on parcel No. 7645 despite there having been no hearing, the non-existent parcel numbers like 7645B, failure to perform the most basic due diligence, such as verifying the seller's identity or ensuring the presence of Land Control Board (LCB) consent, no stamp duty paid and the missing Land Control Board consents.

194. Now having pleaded fraud and illegality in the manner in which the original mother title being Kijabe/ Kijabe Block 1/1480 was subdivided and the Defendants obtained their respective portions of land from the said subdivisions, I find that based on the evidence as herein above adduced, the Plaintiff had proved the allegations of fraud to the required standard, as it is settled law that fraudulent conduct



must be distinctly alleged and distinctly proved as per the holding in *R.G Patel vs Lalji Makanji* 1957 E.A 314, where the Court of Appeal had held as follows;

“Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.

195. I find that the particulars of fraud were both implied through the surrounding circumstances, expertise of the forensic expert and the accompanying independent evidence. Indeed, since the expert’s evidence had been that the hand that signed the transfer and mutation form was not Wallace’s, then legally, the subdivision of Kijabe/Kijabe Block 1/1480 never happened. I therefore find the answer to this issue for determination would be in the affirmative.

196. On the next issue for determination as to whether the 1<sup>st</sup> to 5<sup>th</sup> Defendants and subsequent purchasers were bona fide Purchasers for value without Notice, the Court of Appeal in the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, held as follows:

‘We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.’

197. The same court in the case of *Jacob Wekesa Bokoko Balongo vs. Kincho Olokio Adeya & another* [2020] eKLR held as follows on the importance of deciphering the historical acquisition of title:

“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of *Fahiye & 2 others – v- Omar & 4 others* [2014] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In *Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General* (Nairobi HCC Suit No. 1024 of 2005 (OS), it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of *Champaklal Ramji Shah & 3 Anors –v- AG & Anor*, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”

198. The registration of land is governed by the provisions of Section 26 (1) of the *Land Registration Act* of 2012 which provides as follows: -

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible



owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;-

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.”

199. From the above provision of the law, indefeasibility of a title is not absolute, and a title can be challenged, even in the hands of a registered proprietor if the current proprietor was a party to the fraud or misrepresentation that led to the issuance of the title, or where the certificate of title was acquired through an illegal, un-procedural, or corrupt scheme.

200. Now, having found that the subdivision and transfer of the mother title, being Kijabe/Kijabe Block 1/1480, was fraudulent, it then goes without saying that all subsequent transactions, including the transfer of the property, were all null and void, and the subsequent titles were liable for cancellation pursuant to the provisions of Section 80 of the *Land Registration Act*.

201. Indeed, in the case of *Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No.252 of 2005 [2014] eKLR* the Court of Appeal, held as follows;

“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”

202. Now having established that the subdivision and transfer of parcel No. Kijabe/Kijabe Block 1/1480 was riddled with irregularity and fraud. Can it be said that the Defendants and subsequent buyers were protected as bona fide purchasers for value?

203. In Kenya, the question of whether a Defendant or Defendants in this case can become bona fide purchasers for value of land with a riddled title is complex and highly dependent on the specific circumstances of the case and the interpretation of the law by the courts.

204. The Supreme Court’s position in the case of *Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)* adopted the Black’s Law Dictionary 9<sup>th</sup> Edition’s definition of a bona fide purchaser as;

‘one who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims’

205. In this case, the court opined that to establish whether the Appellant was a bona fide purchaser for value, it was essential that an inquiry be conducted on the root of the title, right from the first allotment, to satisfy themselves of its validity. That a simple search of the register was not sufficient. The court had thus held as follows:

‘Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st



registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of *the Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.’

206. It is thus clear from the Supreme Court’s finding, which is binding to this court, that it is highly unlikely that the Defendants and subsequent purchasers of the subdivisions derived from parcel No. Kijabe/Kijabe Block 1/1480 can successfully claim to be bona fide purchasers for value of the land if their titles are demonstrably "riddled" with issues. This is based on the principle of Nemo dat quod non habet—you cannot give what you do not have
207. The Court of Appeal in *Said v Shume & 2 others* [2024] KECA held as follows:
- “In the instant case, had the appellant interrogated the root of the 2<sup>nd</sup> respondent’s title, he would have found that it emanated from a subdivision of land parcel No. 727 that belonged to the 1<sup>st</sup> respondent, which parcel was allotted to him by the Settlement Fund Trustees. Further enquiry would have led him to ascertain whether or not a legitimate process of subdivision was undertaken, whether or not the owner of the original portion had consented to its subdivision by signing the relevant mutation forms, and recording such consent with the Land Control Board. He would have come to the realization that no proper documentation existed that was supportive of a lawful process of subdivision having been undertaken, or that a proper transfer to the 2<sup>nd</sup> respondent was effected, and that ultimately, he could not have obtained a valid title to the subdivided portion that he sought to purchase.”
208. In essence, therefore the court found that when a title is processed at "lightning speed," a purchaser loses their status as a "Bona Fide Purchaser" because such speed should have alerted a reasonable buyer to investigate the legality of the transaction. I thus find that there had been no bonafide purchasers in any of the resultant sub divisions to parcel of land No. Kijabe/Kijabe Block 1/1480.
209. Section 80 (1) of the *Land Registration Act* provides that:-
- “Subject to sub Section (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
210. From the above provisions, it is clear that the court has powers to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake. There having been sufficient evidence adduced as earlier stated in support of the Plaintiffs’ claim to impugn the Defendants’ titles, I find that the original title must be restored to the estate of the deceased in line with the maxim *fraus omnia corrumpit* (Fraud unravels everything).
211. The Plaintiff has also sought orders of Mesne profits which claim is usually anchored under Section 2 of the *Civil Procedure Act*, which defines mesne profits, and the principle of restitution. The goal is to put the Estate of Wallace Ngugi Muniu in the position it would have been in had the land not been stolen.
212. It is trite that mesne profits therefore, being special damages must not only be pleaded but also proved. The Court of Appeal in the case of *Peter Mwangi Mbuthia & another vs Samow Edin Osman* [2014]



eKLR held that it was upon a party to place evidence before the Court upon which an order of mesne profits could be made in the following passage: -

“We agree with Counsel for the appellants that it was incumbent upon the respondent to place material before the Court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”

213. There has been no proof by the Plaintiff through evidence of the loss incurred for example, rental value, Agricultural income, commercial use etc, when the deceased family was put out of possession of the suit property. This prayer is therefore rejected.
214. In the end, I find in favour of the Plaintiff's case having proved the same on a balance of probabilities and proceed to issue the following orders:
- i. It is hereby declared that the subdivision and transfer of Kijabe/Kijabe Block 1/1480 were fraudulent, unprocedural, and unlawful.
  - ii. It is further declared that the bona fide owner of Kijabe/Kijabe Block 1/1480 is the late Wallace Ngugi Muniu.
  - iii. The land Registrar shall, within 30 days, cancel all the subsequent titles arising from the subdivision of Kijabe/Kijabe Block 1/1480 and rectify the land register therein to reflect Wallace Ngugi Muniu as the registered proprietor.
  - iv. The 1<sup>st</sup> to 16<sup>th</sup> Defendants, their agents, servants, employees and/or transferees shall within 60 days from the date of judgement, vacate from the initial suit property Kijabe/Kijabe Block 1/1480.
  - v. The Plaintiff shall have the costs of the suit

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA, THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT– JUDGE

