

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. E044 OF 2024**

**NYAMOITA  
NYAKUNDI-----  
PLAINTIFF**

**VERSUS**

**PHILIP LAMECH WANGALWA-----1<sup>ST</sup>  
DEFENDANT**

**ZACHARIA O. NYAKUNDI-----2<sup>ND</sup>  
DEFENDANT**

**SETTLEMENT FUND TRUSTEE  
TRANS NZOIA-----  
3<sup>RD</sup> DEFENDANT**

**DIRECTOR, LAND ADJUDICATION &  
SETTLEMENT-----  
4<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL-----5<sup>TH</sup>  
DEFENDANT**

**JUDGMENT**

- 1.** Through a plaint dated **3/12/2024**, the plaintiff seeks:
  - (a) An order cancelling the transfer of Plot No. 26 Kapomboi Settlement Scheme into the name of the 2<sup>nd</sup> defendant on ground that it was done by fraudulent means.**

**(b) An order directing the 3<sup>rd</sup> and 4<sup>th</sup> defendants to receive the loan balance, if any, from the plaintiff and have the land, the subject matter herein, transferred into her name.**

2. The plaintiff contends that on **21/5/1991**, she entered into a sale agreement to purchase **10** acres in Plot No. **286** at **Kshs.130,000/=** from the 1<sup>st</sup> defendant, then allottee of the plot, which she paid in full, with the 2<sup>nd</sup> defendant as a witness.
3. The plaintiff avers that in the meantime, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were authorised to be caretakers of the land after handing over a copy of the sale agreement to the Settlement Fund Trustees' office in Kitale, while awaiting the vendor to obtain Land Control Board consent and approval. While aware of the foregoing, the plaintiff avers that instead of processing the transfers to her name, the 1<sup>st</sup> - 4<sup>th</sup> defendants secretly and fraudulently caused Plot No. **286** to be transferred to the 2<sup>nd</sup> defendant.
4. The 1<sup>st</sup> defendant did not file any pleadings despite service of summons by substituted service. The 2<sup>nd</sup> defendant opposed the suit through a statement of defence dated **9/2/2025**. The 2<sup>nd</sup> defendant admitted that the initial allottee lawfully and procedurally transferred his interest to him and his brother.

5. The 2<sup>nd</sup> defendant averred that monies used to purchase Plot No. **286** Kapomboi Settlement Scheme were proceed of a sale of ancestral land in Kisii, out of which, the **10** acres were purchased by the plaintiff, as a trustee of the family with an understanding that the suit land would be shared between the 2<sup>nd</sup> defendant and his brother, as the rest of their brothers shared other parcels of land bought out of the above proceeds in Twiga Farm, Liyavo Farm and Namanjalala land, who took vacant possession of their shares wherein they reside to date.
6. Again, the 2<sup>nd</sup> defendant avers that the plaintiff, alongside him, was in attendance at the Land Control Board meeting, leading to the subdivision and transfer, and hence denied the alleged fraud in the transfer. Therefore, the 2<sup>nd</sup> defendant avers that the plaintiff has, all along, been aware of the foregoing transaction and occupation of the subject properties.
7. The 2<sup>nd</sup> defendant averred that the rest of his siblings had sold their respective shares of the subject properties, and the plaintiff is misleading the court. The 2<sup>nd</sup> defendant avers that he is the one who cleared the Settlement Fund Trustees' loan, stamp

duty, and registration fees to obtain the title, and not the plaintiff, as alleged or at all.

- 8.** The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants opposed the suit through a statement of defence dated **13/6/2025**. It is averred that the 2<sup>nd</sup> defendant was originally allocated Plot No. **286**, measuring **10** acres, in Kapomboi Settlement Scheme, which was paid for partially by the plaintiff, who later on **3/7/1991** sought and obtained a Land Control Board consent to transfer the same to the 2<sup>nd</sup> defendant.
- 9.** The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants deny being parties to the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants aver that the land was transferred to the 2<sup>nd</sup> defendant, and it still belongs to the Settlement Fund Trustees until it is fully discharged upon payment.
- 10.** The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants deny responsibility for overseeing and or approving land sales or transfers; otherwise, the body mandated to do so is the Land Control Board, which is not part of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
- 11.** Further, the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants deny the alleged fraud; otherwise, the 3<sup>rd</sup> and 4<sup>th</sup> defendants only followed the laid-down procedures after the Land Control Board consent was issued with the

concurrence of the original allottee and the 2<sup>nd</sup> defendant.

- 12.** At the trial, **Nyamoita Nyakundi** testified as **PW1**. She adopted a witness statement dated **3/12/2024** as her evidence-in-chief. PW1 told the court that on **21/5/1991**, she entered into a sale agreement with the 1<sup>st</sup> defendant, the original allottee of Plot No. **286** Kapomboi Settlement Scheme, to purchase **10** acres of the land at **Kshs.130,000/=**, which she paid in full and in the presence of her son, the 2<sup>nd</sup> defendant.
- 13.** PW1 said that out of **Kshs.130,000/=**, **Kshs.30,000/=** was paid directly to the Settlement Fund Trustees, as the outstanding loan balance, while **Kshs.87,000/=** was paid to the vendor's advocates to be released as soon as the Land Control Board consent was granted and the transfer effected.
- 14.** PW1 said that, unknown to her, the defendants conspired and fraudulently transferred the land to the 2<sup>nd</sup> defendant, who had never purchased the land. PW1 said that the Land Control Board consent dated **21/5/1991** was supposed to be under her name and not the 2<sup>nd</sup> defendant; otherwise, such entries of his name are fraudulent.
- 15.** Further, PW1 said that the transfer of land between the 1<sup>st</sup> and 2<sup>nd</sup> defendants is fraudulent, it lacks a

signed certificate of consent from the manager of the Settlement Fund Trustees, and further is irregular due to the outstanding loan balance of **Kshs. 216,735.86.**

- 16.** PW1 said that she has been giving her son the 2<sup>nd</sup> defendant's money to pay to the Settlement Fund Trustees to have the land transferred to her, only for him to conspire with the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendant to transfer the land to him. PW1 asked the court to nullify the said transfer as fraudulent and allow her to offset the outstanding loan, if any, with the Settlement Fund Trustees, to have the land transferred to her name as per the sale agreement dated **21/5/1991.**
- 17.** PW1 relied on a copy of the sale agreement dated **21/5/1991**, receipt for **Kshs.13,000/=**, letters of consent dated **4/7/1991** and **21/2/1994**, transfer dated **21/10/2008**, demand letters dated **26/9/2007**, **4/3/2024**, **11/9/2024**, and **5/12/2004**, Settlement Fund Trustees letter dated **12/9/2024** and a loan statement printed on **22/9/2024** as **P. Exhibits No. (1) - (11)** respectively.
- 18.** PW1 told the court that the 2<sup>nd</sup> defendant was her third born son among her **6** sons, who other than being a witness to the sale agreement was to assist

her in the transaction being elderly and illiterate, only for as a custodian of her documents to turn around and defraud her of her land.

- 19.** Equally, PW1 confirmed owning other parcels of land in Goseta, Riambu, and Namanjalala, where some of her sons are in occupation. PW1 admitted to attending the Land Control Board meeting. PW1 denied giving the 2<sup>nd</sup> defendant six acres out of the land. PW1 said that she was challenging the Land Control Board consent, which is not reflective of the truth, more so when the 2<sup>nd</sup> defendant was the custodian of all her transaction documents.
- 20.** PW1 said that the 2<sup>nd</sup> defendant has failed to produce the said documents before the court, or any other documents to indicate how he acquired the land from the 1<sup>st</sup> defendant. PW1 insisted that the alleged transfer of the land between the 1<sup>st</sup> and 2<sup>nd</sup> defendants was done behind her back.
- 21. Zacharia Obiri Nyakundi** testified as **DW1**. He relied on a witness statement dated **19/1/2025** as his evidence-in-chief. DW1 told the court that he was the firstborn son of the plaintiff.
- 22.** DW1 told the court that after his father died in **1986**, the plaintiff disposed of their ancestral land in Kisii and used the proceeds to purchase a **12**-acre piece

of land, which she later on disposed of to buy the suit land, Plot No. **309** Twiga Farm, **2** acres of land at Namanjalala, and **2** acres in Liyavo Settlement Scheme.

- 23.** DW1 said that the plaintiff bought the suit land as a trustee for the family, and that the monies which were used to do so came out of his personal account No. **3911508** held at Barclays Bank Ltd, Kitale Branch. DW1 said that the family had mutually agreed that the suit land be shared between himself and his brother Joseph Oyori Nyakundi, while his other siblings would acquire Liyavo Farm and Namanjalala parcels of land, which to date they are in possession.
- 24.** DW1 said that following the purchase of the suit land, he accompanied the plaintiff to the Land Control Board meeting where the 1<sup>st</sup> defendant transferred the land to him. DW1 said that the plaintiff has all along been aware of his occupation of the land and the state of affairs of all the named parcels of land being party to the disposal of some portion of the parcel to third parties by his brother. DW1 denied receiving any monies from the plaintiff to offset the Settlement Fund Trustees' loan.

- 25.** Further, DW1 relied on a sale agreement dated **21/5/1991**, bank statement for the period **16/2/1991** to **9/5/1991**, Land Control Board consent, minutes from Saboti Kwanza Land Control Board, receipts from Settlement Fund Trustees dated **20/1/2007**, **12/11/2020**, **25/3/1982**, and **215/1991**, Kenya Revenue Authority stamp duty payment slip dated **27/2/2009**, and a sale agreement dated **1/10/2013** as **D. Exhibits No. (1) - (10)**.
- 26.** DW1 said that the suit land was given to him and his brother Joseph by their parents, who had sold the Goseta Farm, which had been acquired through proceeds obtained after the ancestral land was sold. DW1 said that the plaintiff lives on land belonging to the late Jackson Muranga. DW1 denied that he chased the plaintiff from the suit land; otherwise, her intention is to claim the land, to compensate his brother, who has already disposed of their parcels of land.
- 27.** DW1 admitted that he had no sale agreement to show that he obtained the land from the 1<sup>st</sup> defendant, save for the one bearing the plaintiff's name as the purchaser (**P. Exhibit No. (1)**). DW1 admitted that he was the one who filled out the

application for Land Control Board consent, **(D. Exhibit No. (3))**. Again, DW1 admitted that the Settlement Fund Trustees' statement of account did not reflect any payments for the loan that he may have made to offset the loan.

**28.** DW1 told the court that he was the one keeping custody of the original sale agreement. DW1 said that **D. Exhibit No. (5)** was accurately filled and signed by the relevant parties. DW1 said that the land was yet to be registered under his name.

**29. Joseph Nyakundi** testified as **DW2**. He relied on a witness statement dated **9/2/2025** as his evidence-in-chief. DW2 confirmed that both he and the 2<sup>nd</sup> defendant were in occupation of **4** acres and **6** acres of the suit land. DW2 confirmed that the suit land was jointly acquired by the plaintiff and the 2<sup>nd</sup> defendant before their mother, PW1, shared it out among them.

**30.** DW2 said that he had no evidence that the suit land was acquired out of proceeds generated by the sale of the family's ancestral land. DW2 denied that the two were mere licensees on the land courtesy of PW1. Equally, DW2 denied that there were outstanding loan arrears over the suit land owed to the Settlement Fund Trustees.

- 31.** The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants did not attend court to offer any evidence in support of the statement of defence dated **13/6/2025**.
- 32.** At the close of the defence, parties were directed to put in written submissions by **15/12/2025**. The plaintiff relies on written submissions dated **8/12/2025**. It is submitted that from **P. Exhibit No. (1)**, the plaintiff had no outstanding balance of the purchase price and was only awaiting the 1<sup>st</sup> defendant to transfer the **10** acres to her.
- 33.** The plaintiff submits that no evidence was tendered by the 2<sup>nd</sup> defendant, that the suit land was acquired through proceeds derived from the sale of paternal ancestral land in Kisii, including a sale agreement for the alleged land in the Goseta area. The plaintiff submits that the 2<sup>nd</sup> defendant was merely out to defraud her of her land; otherwise, he has not produced any sale agreement. It is not clear how he transferred the land; the purported consent to transfer originating from the 3<sup>rd</sup> defendant is incomplete, undated, and not signed by the estate manager, making it null and void.
- 34.** The plaintiff submits that the 2<sup>nd</sup> defendant failed to produce any receipt showing payment of the outstanding Settlement Fund Trustees loan of **Kshs.**

**216,000/=** as of **30/6/2024**; otherwise, the alleged **Kshs.13,000/=** is not captured in the loan statement.

- 35.** The court is urged to nullify the transaction between the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants and to proceed to direct the 3<sup>rd</sup> defendant to allow the plaintiff to clear any lawful loan arrears and have the suit land transferred to her.
- 36.** The 2<sup>nd</sup> defendant relies on written submissions dated **9/12/2025** and submits that he repaid the loan from the Settlement Fund Trustees with his own money and also paid for the stamp duty, and is therefore entitled to discharge. The 2<sup>nd</sup> defendant submits that the suit is bad in law for violating the Limitation of Actions Act, since the cause of action arose in **1991** and is thus statute-barred under **Section 4** of the Limitation of Actions Act.
- 37.** Reliance is placed on **Arthi Highway Developers Limited -vs- West End Butchery Limited & 6 others (2015) eKLR**, that the plaintiff failed to adduce evidence to prove her allegations of fraud against the 2<sup>nd</sup> defendant.
- 38.** The issues calling for my determination are:  
**(1) If the plaintiff has proved fraud against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.**

**(2) If the 3<sup>rd</sup> and 4<sup>th</sup> defendants were party to the alleged fraud.**

**(3) If the 2<sup>nd</sup> defendant has proved any trust against the plaintiff.**

**(4) Whether the plaintiff is entitled to the reliefs sought.**

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

**39.** It is trite law that parties are bound by their pleadings and issues for the court's determination arise out of the pleadings, with no room for the court to determine unpleaded issues, or where evidence has not been led on them. See **Stephen Mutinda Mule -vs- Independent Electoral and Boundaries Commission (2013) eKLR** and **Raila Odinga -vs- Independent Electoral and Boundaries Commission & Others [2013] eKLR.**

**40.** The primary issue raised in the plaint dated **3/12/2024** is that the plaintiff entered into a sale agreement dated **21/5/1991**, to purchase **10** acres in Plot No. **286**, Kapomboi Settlement Scheme, for **Kshs. 130,000/=**, from the allottee, which sale agreement was witnessed by the son, the 1<sup>st</sup> defendant.

**41.** The plaintiff pleaded that she solely paid the consideration, including monies to the Settlement Fund Trustees and entrusted to her son, the 2<sup>nd</sup>

defendant, to handle the transaction on her behalf, only to later on establish that the 1<sup>st</sup> and 2<sup>nd</sup> defendant colluded with the 3<sup>rd</sup> and 4<sup>th</sup> defendants to put the owner as the 2<sup>nd</sup> defendant.

- 42.** The plaintiff pleaded and testified that the alleged transfer into the names of the 2<sup>nd</sup> defendant was fraudulent and should be declared null and void, based on the exhibits before the court.
- 43.** The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants in the statement of defence dated **13/6/2025**, admit knowledge of the plaintiff's request for consent from the Land Control Board to transfer the land to the 2<sup>nd</sup> defendant, which was issued on **3/7/1991**; they were never parties to the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- 44.** The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants averred that despite the issuance of the consent, the land still belongs to the Settlement Fund Trustees until the outstanding loan is cleared. On the other hand, the 2<sup>nd</sup> defendant averred that monies used to purchase the plot were proceeds from the disposal of ancestral land in Kisii District, following the death of his father, making the suit land a family land, where the plaintiff acted as a trustee, with the understanding that the 2<sup>nd</sup> defendant would be entitled to a share of **6** acres and

his brother 4 acres, since the rest of the siblings had obtained their shares in other parcels of land bought out of the same proceeds.

45. In **Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC 30 [KLR]**, the court affirmed **Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR**, that where a proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership; otherwise, a party must go beyond the instrument and prove that the acquisition was legal formal, and free of any encumbrances, including interests which would not be noted in the register.
46. In **Kemboi -vs- Macharia & Others, Civil Appeal No. 17 of 2020 KECA 1665 [KLR] (21<sup>st</sup> October 2025) (Judgment)**, the court said one cannot give what one does not have, and that the fact that the appellant may have paid consideration and received a certificate of title did not cure the fundamental invalidity at the root of his claim.
47. The court held that since both the appellant and his predecessor in title had no right or interest over the suit property, what happened was an attempt to defraud the 1<sup>st</sup> respondent. The court affirmed the principle that a certificate of title cannot cure an

unlawful allocation process, as it is an end product, and where the process is tainted, whether through procedural irregularity, fraud, or irregularity, then the resultant title is void. The court said that no right can flow from nothing; a nullity at inception remains a nullity, no matter how many hands it passes through.

**48.** In this suit, the plaintiff bases her rights on the sale agreement dated **21/5/1991**. The vendor and purchaser are indicated as the plaintiff and the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant appears as a witness to the sale agreement. The 2<sup>nd</sup> defendant also relies on the sale agreement, which he has produced as **D. Exhibit No. (1)**.

**49. D. Exhibit No. (4)** is what the plaintiff says she gave the 2<sup>nd</sup> defendant to pay on account of the loan arrears as per the sale agreement. The 2<sup>nd</sup> defendant wants the court to rely on **D. Exhibit No. (2)** as the source of the monies to pay for the land. The exhibit is not certified or authenticated. The holders of the account were not called to confirm that the monies came from the proceeds of the sale of the alleged ancestral or family land.

**50.** The alleged particulars of the customary or constructive trust were not pleaded as required in law. Trust is a matter of fact. Evidence must be led to

establish a trust. A court of law cannot infer trust. The ingredients of customary trust as set in **Isaack M'inanga Kiebia -vs- Isaaya Theuri M'Lintari & another [2018] KESC 22 (KLR)**, must be met. The burden was on the 2<sup>nd</sup> defendant to specifically plead and prove all elements of trust.

51. In the **County Government of Meru -vs- Mukuchia & Others Civil Appeal No. 218 of 2019 [2025] KECA 2289 [KLR] (10<sup>th</sup> December 2025) (Judgment)**, the court in **D.T. Moi -vs- Stephen Muriithi [2014] KECA 642 [KLR]**, affirmed the principle that submissions are not evidence and that substantial or material deviation from the pleadings in the closing submissions cannot give rise to a remedy. The court cited **Bates & Others -vs- Post Office Ltd [2019] EWHC 3408 [QB]** on the difficulty and impropriety of making factual assertions in closing submissions.

52. In this suit, the plaintiff has denied any intention to create a trust in favour of either the 2<sup>nd</sup> defendant or DW2. In **Kinuthia Wainaina -vs- Kiarie Wangugi & another [2022] KEELC 13336 (KLR)**, the court held that the essential is the nature of the holding of the land and the intention of the parties. The 2<sup>nd</sup> defendant has not produced a separate agreement,

family minutes, or resolution where the issue of the trusteeship was discussed, agreed upon, and action taken to implement it.

**53.** The next issue is whether the plaintiff has proved fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Privity of contract was not pleaded by the 2<sup>nd</sup> defendant, with respect to how he acquired the rights from the 1<sup>st</sup> defendant, in light of his having been a witness to **P. Exhibit No. (1)** and **D. Exhibit No. (1)**. How the 2<sup>nd</sup> defendant changed roles to become the owner is what the plaintiff wants the court to determine

**54.** Fraud is defined under *Black's Law Dictionary, 14<sup>th</sup> Edition*, as misrepresentation or concealment of facts to mislead one to act to his detriment. The plaintiff has testified and produced documents to show that she bought the **10** acres from the 1<sup>st</sup> defendant, and entrusted the 2<sup>nd</sup> defendant to deal with the 1<sup>st</sup> defendant, as well as the Settlement Fund Trustees, to register the suit land under her name. The plaintiff terms the exhibits used by the 2<sup>nd</sup> defendant to replace her name as the purchaser, fraudulent or misleading.

**55.** In **Jovet (K) Ltd -vs- Bavaria N.V., Supreme Court Petition No. E039 of 2024**, the court held that the privity of contract limits contractual rights

and obligations to the parties directly involved in the agreement. The court held that demonstrating a direct working relationship did not necessarily imply an agency relationship by analogy. The court said that an agency relationship often requires a principal to authorise an agent to act on its behalf, creating a legal authority or delegation of power. The 1<sup>st</sup> defendant has not termed the sale agreement between the plaintiff and the 2<sup>nd</sup> defendant as ambiguous, illegal, unconscionable, or against public policy.

- 56.** The 2<sup>nd</sup> defendant and DW2 were not described in the sale agreement as the beneficial owners of the suit land. Evidence that the plaintiff, soon after the sale agreement, relinquished her interest in the land and authorised both the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants to deal with the 1<sup>st</sup> defendant as the resultant owner of the land is lacking.
- 57.** Nothing could have been easier on the part of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants to summon the plaintiff to confirm that she had authorised the 2<sup>nd</sup> defendant to become the sole owner of the land. Again, a letter of allotment in a settlement scheme does not confer ownership or transferable interest in land, unless it is perfected by fulfilling the specific conditions in the

offer letter. See **Kimechwa -vs- County Land Adjudication & Settlement Officer Trans Nzoia [2025] KEELC 1042 [KLR] (5<sup>th</sup> March 2025) (Judgment)**.

58. The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants in the statement of defence have admitted that the land remains owned by the Settlement Fund Trustees until the outstanding loan is cleared. In **Koringura & Another -vs- Simatwa [2025] KEELC 1055 [KLR] (15<sup>th</sup> October 2025) (Judgment)**, the court cited **Torino Enterprises Ltd -vs- Hon. Attorney General Petition No. 5 (E006) of 2022**, that an act of registration is what confers a transferable title to the registered proprietor and not a possessor of an allotment letter. Further, the court cited **Botwa Farm Co. Ltd -vs- Settlement Fund Trustees & Another [2019] eKLR**, that a land sale agreement between the seller and the purchaser, where the former had not completed paying a mortgage with the Settlement Fund Trustees, had no contractual impact.

59. In this suit, the plaintiff had brought to the attention of the Settlement Fund Trustees that she was purchasing the land from the original allottee. Her exhibits and the statement of defence by the 3<sup>rd</sup>, 4<sup>th</sup>,

and 5<sup>th</sup> defendants admit those facts. The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants are yet to repossess or re-allocate the land or withdraw the offer on account of the outstanding loan arrears.

- 60.** In ***Mwinyihaji -vs- Mwebeyu & Another [2025] KECA 868 [KL]R (23<sup>rd</sup> May 2025) (Judgment)***, the court held that parties are bound by their pleadings and any evidence produced by the parties which is not supportive of or is at variance with what is stated in the pleadings must be disregarded.
- 61.** The 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants have not tendered evidence to sustain their statement of defence or dislodge the evidence by the plaintiff that she lawfully bought the land and paid the outstanding loan arrears, hence the reason she sought a Land Control Board consent, which was issued on **4/7/1991**, though in the wrong name. **P. Exhibit No. (3)** was not perfected by the Settlement Fund Trustees.
- 62.** Lapse of time for the allotment letter has not been pleaded by the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants. The 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants have not termed the plaintiff a trespasser to the land.
- 63.** As to the reliefs sought, the jurisdiction of the remedy of specific performance is discretionary. It is

based on the existence of a valid and enforceable contract. It will not be ordered if the contract suffers from some defects or illegality, or mistake, making it incapable of enforceability.

- 64.** The sale agreement before the court has all components of a valid contract. See **Nelson Kivuvani -vs- Yuda Komora & Another, Nairobi HCC No 956 of 1991**. In **RTS Flexible Systems Limited -vs- Molkerei Alois Müller GmbH [2010] UKSC 14**, the court said that whether there is a binding contract between the parties depends on an objective appraisal of their words and conduct. In **Wandemi Developers Ltd -vs- Ndegwa Civil Appeal 217 of 2019 [2025] KECA 431 [KLR] (7<sup>th</sup> March 2025) (Judgment)**, the court emphasized that when a contract is clear and unambiguous, it must be interpreted as written.
- 65.** I think the plaintiff is entitled to the reliefs sought. The purported transfer of the land to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant based on **P. Exhibits No. (2), (3), (4), and (5)**, as conceded by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants, are not valid or have not been effected.

**66.** Therefore, the court directs that the plaintiff engage the 3<sup>rd</sup> and 4<sup>th</sup> defendants to perfect the charge within **45 days from the date hereof.**

**67.** There will be no order as to costs

**68.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **4<sup>th</sup>** day of **February 2026.**

**In the presence of:**

Court Assistant - Dennis

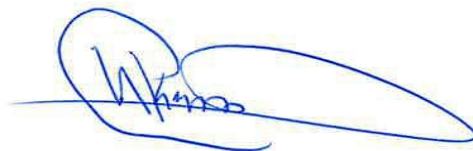
Plaintiff - present

1<sup>st</sup> defendant - present

Lichuma for the 2<sup>nd</sup> defendant

Miss Ruto for Kaosa for plaintiff- present

No appearance for the 3<sup>rd</sup> -5<sup>th</sup> defendant



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