



**Arasa (Suing as Legal Representative of the Estate of Sospeter  
Arasa Nyangwasa) v Tailor & 5 others (Environment and Land Case  
82 of 2017) [2026] KEELC 951 (KLR) (17 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 951 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 82 OF 2017**

**M SILA, J**

**FEBRUARY 17, 2026**

**BETWEEN**

**PAULINE MORAA ARASA (SUING AS LEGAL REPRESENTATIVE OF THE  
ESTATE OF SOSPETER ARASA NYANGWASA) ..... PLAINTIFF**

**AND**

**DR ANIL RATILAL TAILOR ..... 1<sup>ST</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT  
COUNTY GOVERNMENT OF KISII ..... 3<sup>RD</sup> DEFENDANT  
EDWARD MAINGA KAGORA ..... 4<sup>TH</sup> DEFENDANT  
THE LAND REGISTRAR, KISII COUNTY ..... 5<sup>TH</sup> DEFENDANT  
HON ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff sues as the widow and legal representative of the estate of the late Sospeter Arasa Nyangwasa who died on 3 March 2016. She commenced this suit vide a plaint filed on 5 April 2017 which plaint was amended on 20 March 2019. She pleaded that her late husband was allocated a plot identified as UNS. Residential Plot No. 43 by the Kisii P.A.C on 18 March 1991 and was issued with an allotment letter dated 16 May 1991. She avers that the deceased accepted the terms therein vide a letter dated 24 May 199, and made the requisite payments to the Commissioner of Lands and the Municipal Council of Kisii. It is pleaded that he paid survey fees in February 1993 and the beacons of the property were confirmed and that what was left pending was issuance of the Certificate of Lease. It is pleaded that the issue of the Certificate of Lease took a long while and the deceased raised several complaints with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants (respectively, the National Land Commission and the County Government



of Kisii). It is averred that in December 2013, the deceased discovered that the 1<sup>st</sup> defendant (Dr. Anil Ratilal Tailor) had taken possession of the suit property and his advocate wrote to him demanding that he vacates the land. In the meantime, he discovered that the suit property had been allocated to another person; however, he did not manage to resolve the ownership dispute by the time of his death. It is the case of the plaintiff that the title of the 1<sup>st</sup> defendant is a product of fraud on the part of the defendants. The particulars of fraud include the contention that the 4<sup>th</sup> defendant (Edward Mainga Kagora) was fraudulently registered as propriety of the suit property when the letter of allotment issued to the deceased had not been revoked.

2. In the amended plaint, she seeks the following orders (summarised) :
  - a. A declaration that the plaintiff is the rightful owner of the land parcel Kisii Municipality/Block III/330 (Plot No.43) situate in Kisii Town.
  - (aa) A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> defendant hold in trust the proprietary interest in LR No. Kisii Municipality/Block III/330 (Plot No.43) for the plaintiff and for an order of transfer of the title in favour of the plaintiff.
  - (aaa) A declaration that the purported sale of land agreement entered between the 1<sup>st</sup> and 4<sup>th</sup> defendant, and transfer, was fraudulent and/or illegal hence null and void and should be set aside.
  - b. A mandatory order compelling the 5<sup>th</sup> defendant to cancel the title to LR No. Kisii Municipality/Block III/330 (Plot No.43) issued in the name of the 1<sup>st</sup> defendant and in place register the plaintiff as proprietor.
  - c. A mandatory order compelling the 1<sup>st</sup> defendant to vacate, demolish, remove and/or bring down the building and any structures erected on LR No. Kisii Municipality/Block III/330 (Plot No.43).
  - d. (cancelled in the amended plaint).
  - e. An order authorizing the Deputy Registrar to sign any documents necessary to effect registration of LR No. Kisii Municipality/Block III/330 (Plot No.43) in favour of the plaintiff.
  - f. A permanent injunction restraining the defendants from entering or dealing with the parcel Kisii Municipality/Block III/330 (Plot No.43).
  - g. General damages for trespass.
  - h. Costs of the suit.
  - i. Interest from the date of filing suit.
3. The 1<sup>st</sup> defendant appointed counsel and filed defence, which he later amended on 22 May 2019. He pleaded that he is a stranger to the claim that the deceased was allotted UNS. Residential Plot No. 43. He pleaded that he acquired title after purchasing the suit land from Edward Mainga Kagora (Mr. Kagora or the 4<sup>th</sup> defendant) vide a sale agreement dated 24 September 2012. He pleaded that he is a bona fide purchaser without notice of any defect in the title of Mr. Kagora. He pleaded that upon purchase, he acquired title on 25 April 2013, and he developed the property with a two storey building. He charged the property (to I & M Bank) to secure a loan of Kshs. 50,000,000/=, just as Mr. Kagora had earlier charged the property to Cooperative Bank Limited. He pleaded that he was not obliged to inquire into the circumstances under which Mr. Kagora became the registered proprietor; that the suit offends the Limitation of Actions Act; that the court has no jurisdiction to supervise the 2<sup>nd</sup> defendant



in the discharge of his administrative functions including processing of a lease in favour of the plaintiff; that the lease held by the 1<sup>st</sup> defendant takes precedence over the allotment purportedly held by the plaintiff; that I & M bank who hold a charge have not been joined to the suit; and that the suit discloses no cause of action, as Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga (who held the original lease before Mr. Kagora) have not been joined to the suit.

4. The 4<sup>th</sup> defendant, Mr. Kagora, entered appearance and filed defence in person. He pleaded that vide a sale agreement dated 7 May 2010, he purchased the suit land from Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga, after conducting due diligence, and he paid the purchase price in full. He averred that he was subsequently issued with a Certificate of Lease by the Kisii District Land Registrar on 22 September 2010. On 25 April 2013, he sold the property to the 1<sup>st</sup> defendant. He contended that he was an innocent purchaser for value.
5. The plaintiff first testified on 1 March 2021 before Onyango J. Her evidence was that her late husband was allotted the suit plot through an allotment letter and that he made the requisite payments. She stated that her husband was still pursuing issue of title to himself when he died in 2016 and had written several letters to complain. At the time that she testified i.e 1 March 2021, she did not have any Certificate of Lease. Cross-examined, she testified that she did not know Kennedy Ogoka Mongare, Ismael Peter Michieka, and Charles Omari Onchaga, and that is why she has not sued them. The plaintiff was at this point stood down for further cross-examination.
6. Before further cross-examination, the plaintiff filed a supplementary list of documents on 22 September 2021. In that list she included a Lease and Certificate of Lease issued in her name , and respectively dated 29 March 2021 and 4 June 2021. In light of this development, the 1<sup>st</sup> defendant filed an application dated 17 January 2022 ,inter alia seeking to further amend the defence in order to introduce a counterclaim. In the application, he averred that the amendment was necessitated by issue of a lease and certificate of lease to the plaintiff on 2 March 2021 which the 1<sup>st</sup> defendant got to learn after the plaintiff filed the supplementary list of documents. The application was heard by Onyango J, who allowed it vide a ruling delivered on 7 July 2022. Subsequently, the 1<sup>st</sup> defendant filed a further amended defence and counterclaim on 20 July 2022.
7. In his counterclaim, he sued the plaintiff as 1<sup>st</sup> defendant, the National Land Commission as 2<sup>nd</sup> defendant, the County Government of Kisii as 3<sup>rd</sup> defendant, the Cabinet Secretary, Ministry of Lands & Physical Planning as 4<sup>th</sup> defendant, the Land Registrar, Kisii County as 5<sup>th</sup> defendant, and the Hon. Attorney General as 6<sup>th</sup> defendant. He reiterated that he purchased the suit land on 24 September 2012 after confirming that Mr. Kagora was the registered proprietor and he paid a consideration of Kshs. 4,000,000/= . He pleaded that the suit property was originally registered in names of Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga on the strength of a lease issued by the 4<sup>th</sup> defendant to the counterclaim. He pleaded that Mr. Kagora acquired the suit land from the three persons by way of a transfer registered by the 5<sup>th</sup> defendant to the counterclaim and that he then charged the property to Cooperative Bank of Kenya Limited to secure a loan of Kshs. 3,500,000/= . He pleaded that the 3<sup>rd</sup> defendant to the counterclaim, and the relevant public authorities, recognized and gave effect to the title held by Mr. Kagora , as they registered him as the ratepayer, issued a letter of consent and clearance certificate approving the sale to the counterclaimant, and that they registered the counterclaimant as the ratepayer and have been receiving rates from 2013. He referred to Section 24 of the *Land Registration Act*, that his registration as leaseholder vested in him the leasehold interest, and to Section 26 thereof, that the certificate of title issued to him is prima facie evidence that he is the absolute and indefeasible owner. He asserted that he was bound by the entries in the register and was not obliged to inquire into the circumstances under which Mr. Kagora obtained title. He pleaded that this court delivered a ruling in Judicial Review Application No. 9 of 2016, on 5 April 2009 (sic)



prohibiting the 2<sup>nd</sup> defendant to the counterclaim from expunging the counterclaimant's certificate of lease, and they are therefore bound by the terms of that judgment. He pleaded that the plaintiff (1<sup>st</sup> defendant to the counterclaim) could not obtain a lease to the suit property and that her registration as proprietor is void and of no legal effect. In the counterclaim he asked for the following orders :

- a. The lease issued to the plaintiff (1<sup>st</sup> defendant to the counterclaim) in respect of Kisii Municipality/Block III/330 is null and void. Consequently her registration and issue of a Certificate of Lease in her favour on 4 June 2021 is a nullity.
  - b. A declaration that the counterclaimant is the bona fide proprietor of the leasehold interest comprised in land parcel Kisii Municipality/Block III/330.
  - c. A permanent injunction restraining the plaintiff (1<sup>st</sup> defendant in counterclaim) from interfering with the possession of the counterclaimant of the suit property.
  - d. Costs of the suit and of the counterclaim to be borne by the plaintiff (1<sup>st</sup> defendant in the counterclaim).
8. The plaintiff filed a reply to defence and defence to counterclaim. She more or less reiterated her case as pleaded in the plaint and asserted that the purported registration of the suit land in the name of Mr. Kagora was false and irregular.
9. It is at this juncture that I took over the case after Onyango J was transferred.
10. On 13 February 2024 at the further hearing of the suit, Mr. Ochwangi, learned counsel for the plaintiff, applied to recall the plaintiff to give further evidence, which I allowed. She testified that the suit land was never registered in name of Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga, and she has never come across any document indicating these persons as ever being proprietors of the suit land. She also asserted that Mr. Kagora never owned the suit land. She testified that she filed a succession cause for the estate of her late husband and she was subsequently issued with title to the suit land. She produced the title documents registered in her name as exhibits. She testified further on 2 May 2024, when she produced the confirmation of grant in respect of the estate of her late husband. She was cross-examined at length on the documentation but I will reserve this for now and will address the same in my analysis. I will only state that she accused the 4<sup>th</sup> defendant of preparing fake documents of title for the suit land and referred to minutes of the Council to assert that it is her husband who was first allotted the land as an unsurveyed Plot No. 43.
11. With the above evidence, the plaintiff closed her case.
12. DW-1 was Mr. Kagora, the 4<sup>th</sup> defendant, who offered that he is engaged in the hardware business. He testified that he was reached by land brokers who informed him that the suit land is for sale. He saw the suit land and he thought that it can serve him well as a godown for his business. He testified that he conducted a search which showed the names Mr. Mongare, Mr. Michieka and Mr. Onchaga as owners. He proceeded to the Land Registry in Nairobi, and also went to Ruaraka where he obtained some maps. One map showed the Plot as No.43 and in another section he was informed that the plot is Kisii Municipality/Block III/330. He came out of these offices with some documents but he stated that he does not have them because he gave them to the person he sold the land to. He testified that he did not have all the money to purchase the plot as he only had Kshs. 1.5 million. He opted to go to Cooperative Bank to obtain a loan and he was informed that title first needs to be registered in his name. He entered into an agreement with the owners of the land on 7 May 2010 and he paid them the Kshs. 1.5 million that he had. He then processed title in his name and was issued with a Certificate of Lease on 22 September 2010. After he got the title, he went back to the bank and they gave him a loan



which he used to complete payment for the purchase price. He also got building plans approved and commenced development. He stated that he built up to the third floor and he used the ground floor for his hardware business. He testified that he eventually opted to sell the plot since he was finding it difficult to pay the loan; he sold it to Dr. Taylor (1<sup>st</sup> defendant) for Kshs. 16 million. It is then that he was served with summons for this case. He produced various documents to support his claim to good title.

13. Cross-examined by Mr. Nyamurongi for the 1<sup>st</sup> defendant, he testified that at no time did anyone stop him from developing the plot. He stated that he never saw the lease in name of Mongare, Michieka and Onchaga, but only the Certificate of Lease. He acknowledged that the sale agreement with Dr. Taylor showed a purchase price of Kshs. 4 million, which he stated was put in the sale agreement to reduce the stamp duty payable. He confirmed that he was paid Kshs. 16.5 million for the land. He got title on 22 October 2010 and sold the plot on 24 September 2012. Cross-examined by Mr. Oirere for the County Government of Kisii, he acknowledged that he did not have any document to show that he paid rates to the local authority. He also did not have any stamp duty receipts for the transfer to himself. He stated that he bought the plot for Kshs. 4.5 million but he did not have proof of payment to the sellers. Cross-examined by Mr. Wabwire for the Attorney General, he testified that he did not have a search done before buying the property nor a receipt to show that he applied for a search. He testified that the sellers did not show him an allotment letter but only a Certificate of Lease. He acknowledged that he has not exhibited a copy of this Certificate of Lease in the names of the three original owners. Neither did he have a copy of the transfer form from the three original owners to himself. He also did not have a consent, nor any receipts, to demonstrate payment for registration of the transfer. He acknowledged that he also did not exhibit any approved building plan nor a receipt to show that he ever paid for one. Neither did he have any photograph or exhibit to demonstrate the construction he claimed to have put up.
14. Cross-examined by Mr. Ochwangi, for the plaintiff, he got mixed up on the names of the sellers which he had to check from the documentation. He now stated that the selling price was Kshs. 4.6 million and not Kshs. 4.5 million, his explanation being that he gave the sum of Kshs. 4.5 million as a round figure. The sale agreement (for his alleged purchase of the suit land) was put to him and he could see that it indicated that he gave two cheques of Kshs. 500,000/= on the date of the agreement. He did not have copies of these cheques. He testified that the sale agreement was prepared by Mr. Kaburi Advocate at an office in Golf House (Kisii). He could not recall if he paid him any professional fees. He conceded that he could not identify Mr. Kaburi even if he was in court and only knew the name. He was not aware that Mr. Kaburi never had a law firm at Golf House building. On further cross-examination, he now testified that it was Ishmael Peter Michieka (one of the alleged sellers) who drew the sale agreement and not Mr. Kaburi. He conceded that Mr. Kaburi was not present when Mr. Michieka drew the sale agreement, now explaining that Mr. Michieka was to take the sale agreement to Mr. Kaburi and then bring it back to him. He yielded that he did not see Mr. Kaburi affix his stamp on the sale agreement and he did not meet Mr. Kaburi. He in fact acknowledged that he has never met Mr. Kaburi advocate and only hears of the name. He testified that the two cheques of Kshs. 500,000/= were cleared. He then gave post-dated cheques for the balance on the understanding that they were not to be banked but only act as security. He testified that he paid the balance in cash. He elaborated that the next instalment he paid was Kshs. 1,000,000/= which he withdrew from Cooperative Bank, and so too the last payment of Kshs. 1,600,000/=. He did not have bank statements or evidence of these withdrawals. He could not recall when he paid these balances. He testified that he did not inform the sellers to bank the cheques since they were from Credit Bank and the money in the account was in Cooperative Bank. He acknowledged that the sellers did not give him minutes of the Council nor a letter of allotment, nor a lease instrument (for the first allotment of the land to them). He confirmed that he did not have any search showing their proprietorship. Pressed, he now stated that he was careless and did not know



that a search would be needed. He reiterated that he did not have the transfer form, nor any document indicating that he paid stamp duty, nor any of the documents used to transfer the land to his name. He testified that he used Advocate Momanyi Aunga to conduct the transfer. He claimed that the Land Registrar who transferred title to his name was one David Mogere, but put to him that there was no such Land Registrar in Kisii, he now stated that he cannot remember the name of the Land Registrar. He testified that he never met the Land Registrar but only collected his title over the counter after he was told by his lawyer that the Certificate of Lease is ready. He had no document from Mr. Momanyi Aunga. Questioned by the court, he acknowledged that he had not exhibited the identity cards, PIN Certificate, or photographs of the persons who sold to him the land, though these would be documents needed for purposes of transfer to himself.

15. DW-2 was Dr. Anil Ratilal Tailor. He is a retired paediatrician. His evidence was that when he purchased the plot it had a single storey structure that was half finished. He completed it and converted it into a hostel; it is now a school named Ram Training College. He testified that nobody objected when he made the developments. He testified that when he bought the property it had been charged to Cooperative Bank. Cross-examined by the 4<sup>th</sup> defendant, he testified that the land was sold for Kshs. 16.5 million and not Kshs. 4 million. Cross-examined by Mr. Wabwire, he testified that he paid Cooperative Bank the balance of the loan to the 4<sup>th</sup> defendant and they issued a discharge of charge to him which he exhibited. The same was put to him and he could see that it bore no date of registration nor any amount paid for registration.
16. Cross-examined by Mr. Ochwangi, he testified that he was not shown the allotment letter or first lease, and he did not ask for the documents of registration of the first owners who had sold the land to the 4<sup>th</sup> defendant. He was not privy to the purchase of the land by the 4<sup>th</sup> defendant. He testified that he saw the documents displayed by the plaintiff in the course of the case and it worried him. He confirmed seeking the minutes of allocation, the allotment letter in name of Sospeter Arasa for the unsurveyed Plot No.43 and the PDP. He nevertheless asserted being the rightful owner of the suit property.
17. With the above evidence the defence closed their case.
18. I invited counsel to file submissions and I have taken note of the submissions filed. Only Mr. Ochwangi, learned counsel for the plaintiff and Mr. Nyamurongi, learned counsel for the 1<sup>st</sup> defendant filed submissions. The other parties indicated that they would rely on the evidence on record. I have taken these submissions into account before arriving at my final disposition.
19. This is another case where two persons claim title to the same land, which is the land parcel Kisii Municipality/Block III/330. These two persons who claim ownership of the suit land are the plaintiff and the 1<sup>st</sup> defendant. In such a scenario, it is necessary to uncover the root of title, for the good title is that which can trace its root from allocation and the subsequent transactions, up to the present registered owner. The two titles displayed by the plaintiff and the 1<sup>st</sup> defendant have different roots. Whereas the plaintiff asserts that the first original owner was her husband, Sospeter Arasa, who was the first allottee of the suit property, the 1<sup>st</sup> defendant contends that the first registered proprietor of the suit property were three persons by name of Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga, who transferred title to Edward Mainga Kagora, who in turn transferred title to him. I will need to interrogate the two titles displayed and trace their origin in order to uncover which of the two is the genuine title.
20. I opt to start with the title of the 1<sup>st</sup> defendant. Of course, as I have mentioned, its supposed root is the alleged title of Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga (Mr. Mongare, Mr. Michieka and Mr. Onchaga) . Now, I have absolutely nothing that demonstrates that these three persons were allotted the suit land. I have no minutes of allotment of this land to these



purported three allottees. I have no evidence of any allotment letter issued to them. I have nothing to acknowledge that they have received the allotment letter and accept its terms. I do not have any evidence that they paid the stand premium or other monies that an allottee would ordinarily pay. There is also no evidence of any lease in the names of these three people.

21. The practice at that time, was that upon allocation, the Commissioner of Lands would issue the allotment letter and lease, then forward the lease to the District Land Registrar for registration. The District Land Registrar would then open a register and issue a Certificate of Lease. I have no letter from the Commissioner of Lands forwarding any lease in name of Mr. Mongare, Mr. Michieka, and Mr. Onchaga, to the District Land Registrar for purposes of registration of their lease. There is also nothing to demonstrate any payment for registration of a lease in the names of these three purported persons. The above aside, I have not even seen a copy of any Certificate of Lease in the names of Mr. Mongare, Mr. Michieka, and Mr. Onchaga. Neither is there any search certificate indicating that these three persons got registered as proprietors of the suit land at any one time.
22. The 4<sup>th</sup> defendant of course claims to have been an innocent purchaser for value but I am not convinced. If indeed he purchased the suit property from these three persons, there are some documents that you would expect him to have, but which he doesn't possess. One is a copy of the Certificate of Lease of the purported original proprietors, for this would need to be surrendered in order for a fresh Certificate of Lease to be issued to the 4<sup>th</sup> defendant. The 4<sup>th</sup> defendant did not exhibit this copy of Certificate of Lease. Secondly, you would expect that there would be a transfer instrument from the three purported original proprietors to the 4<sup>th</sup> defendant. None was exhibited. If at all there was a transfer instrument, the 4<sup>th</sup> defendant would have been expected to have a copy of it; he did not have it. Thirdly, there would be needed a valuation of the property for stamp duty purposes but this document is also not there. Fourthly, there would be payment of stamp duty and transfer fees but no such receipts were produced by the 4<sup>th</sup> defendant. In absence of these documents, it is difficult to say that there was any transfer from Mr. Mongare, Mr. Michieka, and Mr. Onchaga, to the 4<sup>th</sup> defendant.
23. The only document that the 4<sup>th</sup> defendant displayed to support his allegation that he bought the suit land from the three persons is a sale agreement dated 7 May 2010. But even this sale agreement is dubious. It will be recalled that when he testified, the 4<sup>th</sup> defendant alleged that the sale agreement was prepared by Mr. Kaburi advocate. When he was cornered, he now stated that it was prepared by Mr. Michieka (one of the three purported original owners). The document actually does not show who prepared it. What it has are the names and purported ID numbers of the sellers and the name and ID number of the 4<sup>th</sup> defendant, and two witnesses, then these signatures are purported to be attested by Henry Kaburi Advocate. The 4<sup>th</sup> defendant confessed that he never saw Mr. Kaburi affix his signature and stamp on this document. In as much as he claimed to have paid the deposit of Kshs. 1,000,000/= through cheques, copies of these cheques were never availed. Even assuming that he never kept copies of the cheques, a bank statement, which could be made available, would have demonstrated the cashing of these cheques, but the same was not produced. The 4<sup>th</sup> defendant testified that he paid the balance in cash, after withdrawing the money from his bank account. Yet again, a bank statement would easily have demonstrated these withdrawals but the 4<sup>th</sup> defendant opted to bring none.
24. Adding to the foregoing, we do not even know who these three purported original owners of the suit property are. Save for the mere names, we have no copies of their ID numbers, no copies of their Kenya Revenue Authority PIN Certificates, and no photographs. Now, if indeed the 4<sup>th</sup> defendant purchased land from these persons, yet again, you would expect him to have these documents, for they are needed at the time of transfer, but he does not have them.



25. You do not need to have studied rocket science to come to the conclusion that these ‘three musketeers’ do not exist. At best they are masked men with masked identities, but I would conclude that these are phantoms with names. They do not exist. Their only existence is on paper in the purported white card and cited as the purported first allottees in the Certificate of Lease in the name of the 4<sup>th</sup> defendant and the 1<sup>st</sup> defendant. How those names got there is a total mystery as there is absolutely no paper trail.
26. The only logical conclusion that I can reach is that there was never any allotment letter to these three individuals. There was never a lease issued to these three individuals. They never had title to the suit land. They never transacted with Edward Mainga Kagora and never transferred any title to him. My position is that these three names are a fraudulent creation of Mr. Kagora. He conjured up a corrupt and fraudulent scheme to purport that they held the original title to the suit land. He purported that they transferred title to him when no such transaction took place. He caused, through a fraudulent and corrupt scheme, which could only be in cahoots of some rogues in the Land Registry, a creation of a leasehold register (white card) bearing their names and purporting that they transferred title to him, when nothing of the sort happened. Out of this crafty architecture, Mr. Kagora managed to obtain a fake title to the suit land, and armed with it, he purported to sell the land to the 1<sup>st</sup> defendant. Of course, Mr. Kagora had no title to sell, and that being the case, the 1<sup>st</sup> defendant cannot claim to have obtained good title to the suit land. I truly sympathise with the 1<sup>st</sup> defendant, but I am afraid that I have to break to him the sad news that Mr. Kagora sold to him hot air for Kshs. 16,500,000/=. The long and short of it is that the title of the 1<sup>st</sup> defendant is a nullity ab initio and it has to be nullified and cancelled.
27. That really should be the end of the matter, but since the 1<sup>st</sup> defendant has a counterclaim for nullification of the title of the plaintiff, let me now turn to it. The plaintiff’s position is that the suit land was allotted to her husband, the late Sospeter Arasa, and she availed various documents in support. It will be recalled that I had mentioned that I will analyse her documents while disposing of the suit and I now proceed to analyse them. Among the documents that the plaintiff produced were minutes of Kisii Municipal Plot Allocation Committee meeting held on 18 March 1991. The items discussed in that meeting included allocation of various plots, and the minutes state that various plots were allocated through balloting. Among them is the Plot No.43 allocated to Sospeter N. Arasa.
28. In his submissions, Mr. Nyamurongi, learned counsel for the 1<sup>st</sup> defendant, submitted that the minutes produced are unsigned and uncertified. That may be so, but if it was thought that the minutes could not be produced as they are, then an objection to their production ought to have been raised at the hearing of the case; none was. Whatever the case, I have really nothing before me to doubt the contents of the minutes and the 1<sup>st</sup> defendant did not call any witness to assert that these are not the genuine minutes of allocation of the plot in issue.
29. The plaintiff then produced an allotment letter Ref No. 31002/XXII/285 dated 16 May 1991, from the Commissioner of Lands. The allotment letter shows that authority to issue it was from ‘PAC of 18-3-91 – Kisii...’ which refers to the same minutes earlier mentioned. This allotment letter allots an unsurveyed Plot No. 43-Kisii, to Sospeter Arasa, and there is a PDP annexed to demonstrate the position of the plot. Again, I see nothing untoward with this allotment letter and no evidence was called by the defendants to cast any doubt on it. In his submissions, Mr. Nyamurongi submitted that the deceased could not have been allotted an unsurveyed plot and at the same time it be a registered one. With respect, I do not see his point, because the case of the plaintiff is that what was allotted was an unsurveyed plot No. 43. Mr. Nyamurongi further submitted that the plaintiff showed no nexus between this unsurveyed Plot No. 43 and the land parcel Kisii Municipality/Block III/330. Well, once a plot is allotted as an unsurveyed plot, then it will need to be surveyed in order to have a registered title number issued. I have seen that this was done, for the plaintiff produced a letter dated 24 June



- 2009, from the Director of Surveys. That letter is addressed to the Commissioner of Lands, and makes reference to the allotment letter No. 31002/XXII/285 dated 16 May 1991. That letter mentions Plan F/R 221/45 representing the survey of parcel No. 330. It confirms that the new grant is approved and the parcel No. is now '330.' That is the nexus between the Plot No. 430 and the title Kisii Municipality/Block III/330.
30. But let me go back again to the allotment letter. It required payment of some moneys, in total Kshs. 29,170/= , including stand premium of Kshs. 22,800/= , payable to the Kisii Municipal Council. I have seen an acceptance letter dated 24 May 1991 written by S.N. Arasa to the Commissioner of Lands and dispatching banker's cheques to the Commissioner of Lands and the Kisii Municipal Council. The plaintiff produced two copies of banker's cheques dated 27 May 1991, of Kshs. 25,840/=, to the Kisii Municipal Council, and Kshs. 3,330/=, to the Commissioner of Lands, which monies are in line with what was noted in the allotment letter. The plaintiff also exhibited receipts dated 29 May 1991 for the monies payable to the Commissioner of Lands, and two receipts dated 4 June 1991 for the monies to the Municipal Council of Kisii. There was an attempt to make heavy weather of the fact that the letter accepting the allotment is dated 24 May 1991 and purports to enclose cheques that were dated 27 May 1991. I see no issue. The letter must have been written then the cheques sourced later. I would probably have been suspicious if the receipts came before the acceptance letter, but the receipts, as I have mentioned, are issued on 29 May 1991 and 4 June 1991. There is no issue here.
31. At this juncture, a lease ought to have issued but the same was not, probably due to delays in survey. I have seen that on 26 June 2009, the Commissioner of Lands wrote to the Director of Surveys asking for an amended and sealed R.I.M (Registry Index Map) for lease preparation and that letter makes reference to the Director's letter of 24 June 2009 that I earlier mentioned. Despite the survey, no lease was issued to Mr. Arasa, which must have worried him, because from the year 2010, you now start seeing correspondences from Mr. Arasa asking for his title. I think it is out of this delay in issuance of title that Mr. Kagora and his ilk, zeroed in on the suit plot as one with potential for grabbing, and Mr. Kagora proceeded to do exactly that. Despite his letters, Mr. Arasa did not receive a positive feedback, and by the time he died in 2016, he was yet to get title, which is what prompted the plaintiff to file suit. I have seen that there is a confirmed grant dated 16 May 2018 in respect of the estate of Sospeter Arasa Nyangwansa in the suit Nairobi High Court, Succession Cause No. 1039 of 2016. This plot is distributed to the plaintiff, Pauline Moraa Arasa, to hold in trust. I therefore see nothing erroneous with the issuance of title to the plaintiff pursuant to this grant and I see no issue with the title that she holds. Its root is traceable and there is no issue regarding the path taken to have title in the name of the plaintiff.
32. In the evidence of the 1<sup>st</sup> defendant, and in the submissions of Mr. Nyamurongi, there was mention of a judicial review suit, that is Kisii ELC Judicial Review Case No. 9 of 2016, Republic vs National Land Commission, ex parte Dr. Anil Ratilal Tailor and Pacifica Mwangi (1<sup>st</sup> interested party) and Pauline Moraa Arasa as legal representative of the estate of Sospeter N. Arasa (2<sup>nd</sup> interested party). I have gone through that decision. What I see is that the National Land Commission received complaints from the two cited interested parties regarding the title of the 1<sup>st</sup> defendant. The 1<sup>st</sup> interested party was asserting that the suit property belonged to her late father, one Simion Kegesa, and the 2<sup>nd</sup> interested party (plaintiff herein) presented that the land was owned by her late husband, Sospeter Arasa. The National Land Commission wrote a letter dated 13 October 2016, to the effect that the land belonged to the late Simon Kegesa and called upon the 1<sup>st</sup> defendant to surrender his title. This is what led the 1<sup>st</sup> defendant to institute the judicial review motion to quash this decision. The motion was allowed through a judgment of Mutungi J, dated 5 April 2019. I do not see how reference to this case helps the 1<sup>st</sup> defendant. What he has here is a case between himself and the plaintiff, not the 1<sup>st</sup> interested party



in that judicial review case. If the 1<sup>st</sup> interested party in the judicial review motion still feels that she is entitled to the suit land, it is upon her to lodge a claim for it, and I cannot speak any further about her alleged rights to the land. This judgment is between the plaintiff and the defendants to this suit.

33. From the foregoing, it is my finding and holding that the title of the 1<sup>st</sup> defendant, Dr. Anil Ratalil Tailor, is one for nullification and cancellation. I order the Land Registrar, Kisii, to expunge the register purporting that title was ever issued to, Kennedy Ogora Mongare, Ishmael Peter Michieka, and Charles Omari Onchaga, then to Edward Mainga Kagora and subsequently to Dr. Anil Ratalil Tailor. That register is declared null and void ab initio. I further direct that a copy of this judgment be served upon I & M Bank Limited, by the Deputy Registrar of this court, so that the bank may be aware that the charge is on a fake title that does not actually exist. In essence, I find no merit in the counterclaim of the 1<sup>st</sup> defendant and it is hereby dismissed.
34. Let me now turn to the prayers in the amended plaint. Prayer (a), (aa) and (aaa) seek various declaratory orders. I think it suffices for me to declare that as between the plaintiff and the 1<sup>st</sup> defendant, it is the plaintiff who holds valid title to the land parcel Kisii Municipality/Block III/330 as indicated in the confirmed grant in respect of the estate of the late Sospeter Arasa. Prayer (b) seeks an order of cancellation of title of the 1<sup>st</sup> defendant. I have already made that order in the preceding paragraph. I need not make any order for the registration of the plaintiff as proprietor for reason that the plaintiff is already registered as proprietor and has title. Prayer (c) seeks orders to compel the 1<sup>st</sup> defendant to vacate, demolish and remove the building or structures erected on the suit land. The prayer is granted. The 1<sup>st</sup> defendant has 30 days to demolish the structures on the suit property. If he does not, the plaintiff is at liberty to proceed and demolish the same and pass the cost thereof to the 1<sup>st</sup> defendant, or in the alternative, she has the option of taking the property as it is. Prayer (d) was cancelled on amendment of the plaint. Prayer (e) is to have the Deputy Registrar sign any requisite documents. I do not see any that he/she has to sign, but if there is any, the Deputy Registrar or a person authorized by him/her to sign such documents. Prayer (f) is for a permanent injunction against the defendants to restrain them from the suit property or dealing with it. On expiry of the 30 days given to the 1<sup>st</sup> defendant to pull down the buildings on the suit land, the 1<sup>st</sup> defendant and 4<sup>th</sup> defendant, are restrained permanently from trespassing into the suit land or entering into any dealings over the same. Prayer (g) is for general damages for trespass. In the circumstances of this case, I will make a token award of Kshs. 100,000/= as against the 1<sup>st</sup> and 4<sup>th</sup> defendants in respect of this prayer. Prayer (h) seeks costs. I award the plaintiff the costs of the suit jointly and/or severally against the defendants. The plaintiff will also have the costs of the counterclaim filed by the 1<sup>st</sup> defendant.

35. Judgment accordingly.

**DATED AND DELIVERED THIS 17 DAY OF FEBRUARY 2026**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Ochwangi for the plaintiff

Ms. Kebungo for the 1<sup>st</sup> defendant

N/A on the part of the other defendants

Court Assistant – Michael Oyuko

