



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELC CASE NO 100 OF 2017

CONSOLIDATED WITH ELC 118 OF 2017) (FORMERLY NAKURU NO 405 OF 2013)

ELIJAH SOMBORIOT CHERUIYOT).....1st PLAINTIFF

ASHFORD KABURU RUCHA).....2nd PLAINTIFF

ROSEMARY MUKWAITI KABUR).....3rd PLAINTIFF

JOHN MWANGI MUCHOKI (suing as a Representative of the Estate of

MONICA WANJIKU MUCHOKI also known as

MONICAH WANJIKU).....4th PLAINTIFF

VERSUS

ANTHONY KIARIE WAITHAKA.....1st DEFENDANT

JOSEPH MURURI WAWERU.....2nd DEFENDANT

PETER MURITHI KAROBIA.....3rd DEFENDANT

FRANCIS MANGI GATIMU.....4th DEFENDANT

JUDGEMENT

1. The matter coming up for judgment is a consolidation of two suits being ELC No. 118 of 2017 formally Nakuru ELC 512 of 2013 and ELC 100 formally Nakuru ELC 405 of 2013 matters which were consolidated, by consent of the parties, on the 19th September 2014, with ELC file No 405 of 2013 being the lead file.

2. It can be seen from the Plaint that the prayers sought by the Plaintiffs include;

i. A declaration that the decision/award of the purported Laikipia West District Rumuruti Division Land District Tribunal in Claim No 107 of 2008 is illegal, null and void and of no legal effect.

ii. A declaration that the two decrees dated the 30/8/2011 on adoption of the said decision/award in the judgment of the court in Nyahururu PMCC land dispute No. 15 of 2011 are null and void and of no legal effect.

iii. A declaration that the registration of the 1st Defendant as the absolute proprietor of the said Land Parcel No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo)/6529, 6530 and 6531 pursuant to the said award and decree was and is null and void and of no legal effect.

iv. An order that the 1st Defendant's registration as absolute proprietor of the said parcel No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo)/6529, 6530 and 6531 and the 1st Defendant's titles therefore be cancelled and set aside.

v. A declaration that the transfer of land parcel No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo)/6530 to the 2nd, 3rd and 4th Defendants by the 1st Defendant was and is tainted with illegalities and the same is null and void and of no legal effect.

vi. An order that the 2nd, 3rd and 4th Defendants registration as solute proprietor of the said parcel No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo)/6530 and the 2nd, 3rd and 4th Defendants' titles therefore be cancelled and set aside.

vii. An order reinstating the Plaintiffs, the deceased included, registration and titles as the absolute proprietors of the said parcel No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo)/6529, 6530 and 6531.

viii. A permanent injunction be issued restraining the Defendants by themselves, their proxies, employees' servants relatives, and or agents from entering, going onto, evicting the Plaintiffs from the suit lands, developing, using, cultivating, alienating disposing off transferring or in any manner dealing with or interfering with the Plaintiffs' peaceful occupation, use and enjoyment or quiet possession of the suit lands.

ix. Costs of the suit and interest thereon.

x. Any other or better relief that this honorable court may deem fit and just to grant to the Plaintiffs.

3. Pursuant to the filing of the Plaint herein, the Defendants filed their defence on the 10th October 2013 and 18th July 2013 respectively wherein while the 1st Defendant denied the contents of the plaint save for where the same was descriptive of the parties, the 2nd, 3rd and 4th Defendants on the other hand claimed that they were innocent purchasers for value.

4. The matter was subsequently certified ready for hearing after parties had complied with the provisions of Order 11 of the Civil Procedure Rules wherein the same proceeded for hearing on the 21st June 2017.

Plaintiff's Evidence

5. The first witness, PW1 was the Executive Assistant working with the Judiciary Nyahururu High Court in charge of High Court, Environment and Land Court as well as the Chief Magistrates' Court Registries. That he was in court pursuant to the summons to dated 5th June 2017 requiring him to produce the file in regard to Nyahururu PMCC land Dispute case No 15 of 2011.

6. He testified that the parties in the said matter were Mr. Antony Kiarie Waithaka, the Plaintiff/Applicant vs Esther S. Oruta who was the 1st Defendant/Respondent, Monica Wanjiku the 2nd Defendant/Respondent and Mary Wambui George the 3rd Defendant/Respondent.

7. That the proceedings in this matter had commenced on the 22nd July 2011 pursuant to a Chamber Summons dated the 21st July 2011 filed by Antony Kiarie Waithaka wherein he had sought for adoption of the award of Laikipia West District Rumuruti Division Land Dispute Tribunal, Claim No 107 of 2008 as the judgment of the court.

8. That the said award had subsequently been adopted on the 30th August 2011 by the court., where the claimant had been Antony Kiaire Waithaka, while the objectors had been Esther S. Oruta, Monica Wanjiku and Mary Wambui George.

9. He confirmed that the subject matter of the land tribunal case was in respect to title No Marmanet/North Rumuruti Block 2/312(Ndurumo) and that the award of the Tribunal had been that the land Registrar Laikipia West District do nullify the land title Marmanet/North/Rumuruti/Block 2/312 (Ndurumo) in the names of the objectors and issue another title Marmanet/North/Rumuruti/Block 2/312 (Ndurumo) to Antony Kiarie Waithaka the claimant which award had been adopted pursuant to Chamber summons and a decree issued on the 30th August 2011 dated the same date.

10. That a second decree was also issued to the effect that the resultant numbers of parcel of land No. Marmanet/North/Rumuruti/Block 2/312 (Ndurumo) including 6529, 6530, 6531 and 6532 in the names of the objectors be registered in the names of Antony Kiaire Waithaka. The witness produced the file together with the proceedings and pleadings in Nyahururu PMCC Land Dispute no 15 of 2011 as Pf exh 1.

11. In Cross examination, the witness testified that both the decrees were in order and neither of them were an amendment to the other. Further, there were no proceedings in the said file other than the decision and it was therefore difficult to tell whether the Respondents participated in the Tribunal proceedings.

12. That the proceedings of 30th August 2011, indicated that whereas the Applicant was present, the Respondent was absent despite being served and that the orders of the court had never been set aside and there was no indication of any appeal having been filed.

13. PW2, the 1st Plaintiff herein testified that he lived in Rumuruti (Ndurumo) on plot No 6530, a plot he had purchased in the year 2002 from one madam Mary Wambui John. That subsequent to the purchase, parties had entered into a written agreement on the 11th October 2002 before M/s Gethi Advocate, which agreement was marked as Pf MFI 2.

14. That he had been issued with a title deed dated 14th January 2003 land parcel No. Laikipia/Marmanet/North Rumuruti/ block 2/6530(Ndurumo) which copy he produced as Pf exhibit 3

15. His evidence was that after procuring the title, he had cleared the piece of land which had been bushy, and occupied it in the year 2003

where he lived to date. That he had utilized the land through farming and rearing cattle.

16. He produced photographs that depicted how he had utilized the piece of land, which photographs depicted cattle, a permanent house, goats, tractors and motor vehicles. He produced the photographs as Pf exh 4 (a-j).
17. That on the 28th May 2013, there were 4 people who went to his farm seeking to survey it while claiming that they had bought it from Antony Kiarie Waithaka. That on the same day, he had met with Antony Kiarie Waithaka who had claimed proprietorship to parcels number 6529, 6530, 6531 and 6532.
18. That on the 29th May 2013, he had gone to Nanyuki where he had met with the Land Registrar who had informed him that the land belonged to Anthony Kiarie Waithaka pursuant to orders from Nyahururu Court in Case No 15 of 2011. Upon receiving the said information he had sought legal advice from his Advocate.
19. On the 30th May 2013, when he had conducted a search at the lands office, he had discovered that although he had title to his parcel of land, yet it was registered in the names of Joseph Muiruri Waweru, Peter Muriithi Karobia, and Francis Mwangi Gatimu the 2nd, 3rd, and 4th Defendants respectively. He produced the search certificate as Pf exh 5.
20. That subsequently his advocate had perused Nyahururu case file No 15 of 2011 where he had discovered that indeed a decree had been issued, pursuant to the adoption of an award from Rumuruti Tribunal, to the effect that Anthony Kiarie was to take the piece of land together with others.
21. He testified that he had not been notified about the tribunal proceedings or given an opportunity to give evidence at the tribunal but that he was aware that parcel No. 312 had been subdivided to give rise to 6529, 6530, 6531 and 6532 as per the green card for parcel No. 6530 herein produced as Pf exh 6.
22. He also testified that Monica Wanjiku, who had been a Defendant in the tribunal had passed away on 29th December 2001. He marked her death certificate as Pf MFI 7.
23. He further testified that the dispute at the tribunal, was filed in the year 2008 wherein by that time, he was already in occupation of the land, a fact which Anthony Kiarie knew because he had previously filed suit against him over the same case in Nyahururu PMCC 224 of 2003 where the Defendants had been, Esther Aruta, Monica Wanjiku, Mary Wambui , Ashford Kaburu, Rosemary Mukwaiti, and Elijah Somboriot in a case where Anthony Kiarie, had sought orders that the registers of his piece of land and that of his co-defendants be rectified to read his name.
24. That the plaint was dated 3rd November 2003 while their defence was dated 27th November 2003. He produced the plaint to PMCC 224 of 2003 and the defence dated 27th November 2003 as Pf Exhibit 8 and 9 respectively and the certified proceedings as Pf Exhibit 10.
25. That Antony had subsequently filed Nakuru High Court Civil Case No 71 of 2006 where the Defendants had been the same as those in case No. 224 of 2003. He produced his summons and the plaint dated 27th March 2005 as Pf Exhibit 11 (a-b), the Memorandum of appearance and his statement of defence a Pf Exhibit 12 (a-b) before testifying that the suit was dismissed for want of prosecution on 7th October 2010.
26. That it had been after discovering that the 1st Defendant had gone to the tribunal and had obtained orders in court that he had instituted the present proceedings. He prayed for cost of the suit and for orders that title to the suit land No. 6530 be registered in his name.
27. On cross examination, the witness confirmed that after buying his parcel of land from Mary Wambui George, he had established the place as there had been no neighbors nearby at the time. He also confirmed that he had been shown the suit land by a surveyor and one person called Njoroge George.
28. That he did not know where Mary George had gone to. He also established that he had bought his parcel of land measuring 30 acres for Ksh 390,000/= at Ksh 12,000/= per acre wherein they had gone to the land board situate at Nanyuki land offices with the vendor and he had paid Ksh 10,000/= for the title after which he had been issued with the same.
29. He testified that he was aware that there was a case between the vendor and the 1st Defendant at the tribunal where he was not a party because he had not been notified of the same.
30. He also confirmed that initially land No. 6530 had belonged to three people wherein later it had been issued to Mary George and in 2003 he had been issued with the title. That according to the Green card, the 1st Defendant, who has never lived on the suit land, had been registered as proprietor in the year 2012 before selling it after forging the title. He was in agreement that the three teachers, the 2nd, 3rd and 4th Defendants were innocent.
31. The 2nd plaintiff who testified as PW3 gave his testimony to the effect that in the year 2002 he had bought, 5 acres of land which were to be excised from No. Laikipia/Marmanet North Rumuruti block (Ndurumo) 312, at a consideration of Ksh 35,000/=, from Monica and Mary Wambui George
32. That the land had been registered in both him and his wife's name, Rosemary Kaburu, the 3rd Plaintiff herein, where he had received the

title deed dated 27th August 2002 to land parcel No. Laikipia/Marmanet North Rumuruti Block 2/6529 and produced a certified copy of the title deed as Pf Exhibit 14.

33. That after receiving the title, he had taken possession of the land, in the year 2003, build upon it and lived there with his family. Later he had been transferred to Nanyuki where he had left his family on the land. In Nanyuki, he had bought another piece of land wherein his wife had joined him there leaving their son in Rumuruti. He produced photos showing the developments on the land, the maize growing thereon, his family, and a water dam which photos were produced as Pf exhibit 15 (a-d)

34. He also corroborated Pw 2's evidence that the 1st Defendant had filed suit against him in Nyahururu Civil Case No. 224 of 2003 which case was not heard and 1st Defendant then filed another case in Nakuru a matter which he was not aware of until the year 2013 when the 2nd – 4th Defendants started claiming ownership of his land. His evidence further supported the evidence of PW 2 on how he had come to discover that his land was registered in the name of the 1st Defendant. He produced the search certificate dated the 30th May 2013 to his parcel of land No. 6529, as Pf exh 16.

35. He also confirmed that it had been via the decree in case No 15 of 2011 that changed the title. He also confirmed that when case No 224 of 2003 was filed by the 1st Defendant, he already had a title and that neither he nor the 3rd Plaintiff were parties to the tribunal and that by the time the proceedings in the tribunal were instituted by the 1st Defendant, he had known that he was in possession and had title to the suit land No 6529 because he is their neighbor. He like Pw 2 felt that the 1st Defendant had used skewed means to change the title into his name.

36. In cross examination, he testified that when he had left for Nanyuki his house had been broken into and the sale agreement together with other goods had been stolen.

37. That upon knowing that title had changed in the year 2013, they had filed the present case which was his appeal.

38. The 4th Plaintiff, who testified a PW 4 and as a legal representative of the deceased Plaintiff, Monica Wanjiku, who was his mother, testified that she had passed away on the 29th December 2001 and produced her death certificate as Pf exhibit 17. He also produced the limited grant as Pf exh 18 and proceeded to testify that his mother's parcel of land was No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo) 6531 as evidenced by the certified copy of the title deed produced as Pf exhibit 19.

39. Just like the previous witnesses, this witness testified on how in the year 2013 he had discovered that the suit land was no longer registered in his mother's name, but in the name of the 1st Defendant. He produced the search certificated dated the 30th May 2013 for parcel No. 6531 as Pf exh 20.

40. He also confirmed that his mother was not party to the land dispute filed at the tribunal case of 107 of 2008, where she had been sued alongside Esther Oruta and Mary Wambui because by that time she was already deceased. That the 1st Defendant had also sued his mother in Nyahururu PMCC No 224 of 2003 which case had subsequently been transferred to Nakuru where he had filed his Chamber summons application dated 16th August 2004 herein produced as Pf Exh 21, to be substituted in place of his mother. He also confirmed that the 1st Defendant had filed yet another case being Nakuru HCCC No. 71 of 2006 wherein he had sued his mother again and which case was dismissed for want of prosecution.

41. In Cross examination, the witness confirmed that he did not know how his mother got the land and that apart from the title deed he did not have any other papers showing the suit land was his mothers'. He also confirmed that after the award of the tribunal, he did not appeal nor apply for an extension of time to challenge the award of the tribunal.

42. The land Registrar's evidence as PW 5 was to the effect that the previous registered proprietors to parcel No, 6529 were Ashford Kaburu Rucha and Rosemary Mukwaili Kaburu who were registered on the 27th August 2002. That the current proprietor however was one Antony Karie Waithaka having been registered as such on the 9th September 2012 as registration entry No. 6, pursuant to a court decree in the PM's Court at Nyahururu case No. 15 of 2011. She produced the certificate copy as Pf exhibit 22.

43. That as regards parcel No. 6530, Elijah Somboriot Cheruiyot had been registered as the proprietor on the 14th January 2003 as entry No. 4 wherein Anthony Kiarie Waithaka was registered as a proprietor on 9th August 2012 at Entry No 8. Later, Joseph Mwiruri Waweru, Peter Muriithi Koarubia and Francis Mwangi Gatimu became proprietors vide a normal transfer from Anthony Kiarie Waithaka, on the 23rd January 2013 and were issued with title. She produced the certified copy of the green card as Pf exhibit No. 23.

44. That in as far as parcel No.6531 was concerned, the same was registered in the name of Monica Wanjiru on the 12th September 2002 as registration entry No. 2 but that the current registered proprietor was Anthony Kiarie Waithaka who was registered on 9th August 2012 as entry No. 6 pursuant to a court decree in the PM's Court at Nyahururu case No. 15 of 2011. She produced the certificate copy as Pf exhibit 24.

45. She testified that in regard to Pf Exh No. 23 for parcel 6530, Anthony Kiarie Waithaka had the legal authority to transfer the land as at 23rd January 2013 and that there was nothing to prevent the transfer. The vested interest to those to whom he transferred the land were valid and there was no encumbrances to prevent the transfer.

46. The Plaintiff thus closed their case.

The Defendants' case

47. The 1st Defendant's evidence was to the effect that he was the proprietor of the original parcel of land No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo) 312 which had been grabbed from him by three women who had then subdivided it giving rise to the parcels of land No. 6529, 6530, and 6531 before selling it to the Plaintiffs herein.
48. He named the women as, Esther A. Anita who was the wife of the then District Officer Rumuruti Mr. Oyagi, Monica Wanjiku whom they have tried to trace in vain, and Mary Wambui George who could not be traced as well.
49. He gave the history of how he had bought the land from a man by the name of Dedan Kimathi wherein they had recorded a sale agreement on the 1st March 1994. He marked the said agreement as DMFI1. That they had then applied for the consent at the Land Control Board at Rumuruti. He marked the application dated the 21st December 1997 as DMFI 2
50. That the consent which he marked as DMFI 3 had been granted on the 30th April 1998 wherein Dedan Kimani had executed a transfer in his favour, a the copy which he marked as DMFI 4, pursuant to which he had presented it for registration and he was registered as the proprietor of that land.
51. That it had been when he had gone to pick the title that he had been told by the Land Registrar, Mr. Wainaina that the District Officer Rumuruti, Mr. Oyandi had picked it. He was then given a letter dated the 6th December 2001 by Mr. Wainaina to take to the District Officer requesting the 3 ladies Esther, Monica and Mary Wambui to return the title so that it could be cancelled and returned to him. That he had taken the letter, which was marked as DMFI 5, to the District Officer after learning that one of the ladies was his wife.
52. The title was never returned and subsequent to the letter dated 6th December 2001, another letter dated 7th December 2001, marked as DMFI 6, was written to the District Officer who had now moved to Gilgil, requesting for the return of the title which letter he had personally delivered.
53. That vide a letter dated the 4th December 2003 herein marked as DMFI 7, the District Officer by the name of Mr. Peter Muturia Mukunga had written to his Advocate M/s Gakuhi Chege G & Co Advocate who were representing him in Nyahuru PMCC No 224 of 2013, in which he had sued the three women, informing the advocate the history of the land and its ownership.
54. He also marked another letter from the office of the District officer Rumuruti dated the 10th December 2004 as DMFI8 which letter was confirmation that land parcel No. 312 had been transferred to him
55. The 1st Defendant testified that after the land had been fraudulently taken from him, he had filed a dispute at the land tribunal Rumuruti against the 3 ladies by which time the land had already been sub divided into three. That the dispute had been heard wherein the tribunal had ordered for the cancellation of the title deed and the piece of land be registered in his name through gazette notice of 19th June 2009 No 6071 herein marked as DMFI 9.
56. That after the tribunal had made its decision, he had filed the award in court wherein it had been adopted. He took the decree to the land registrar who gazetted it vide gazette Notice No 4763 of 13th April 2012. There was no objection to the cancellation of the title or execution of the decree wherein the title was cancelled and new titles issued him being No. 6529, 6530, 6531 and 6528. Parcel No. 6528 was not a subject matter in this suit.
57. He also confirmed that the three ladies did not participate in either of the proceedings and that only Esther Oruto had been notified because the other two could not be traced.
58. He marked the letter forwarding the gazette notice to the government printer dated 8th March 2012, as DMFI 10 (a), a copy of the of Money order for Ksh 5670/= as DMFI 10 (b) and the Gazette Notice was marked as DMFI 10 (c)
59. That after issuance of new titles he did not take possession of the land because he had found the same was already in occupation by Elijah Somborot the 1st Plaintiff and Ashford Kaburu, the 2nd Plaintiff. That although the land measured 100 acres, Elijah Somborot had occupied about 33 acres in parcel No. 6530, while Kabusu Ashford was in possession of 5 acres in parcel No. 6529.
60. That after the titles had been cancelled, he had sold parcel No 6530 to his co-defendants who also did not take possession. That at that time, he had not known that the Plaintiffs had procured titles to the suit lands but he knew of their occupation thereon wherein they had been invited to the tribunal but they did not appear. No appeal had been filed following the award from the tribunal.
61. He sought that the court looks at the genesis of the land and not to cancel his titles as prayed by the Plaintiffs.
62. By consent, the following documents were produced as exhibits;
- i. DMFI 2 was produced as Df Exhibit No 1
 - ii. DMFI 3 was produced as Df Exhibit No 2
 - iii. DMFI 9 was produced as Df Exhibit No 3
 - iv. DMFI 10 (b) and (c) was produced as Df Exhibit 4 (a) and (b)

63. On Cross examination the 1st Defendant confirmed that he had filed previous proceedings between him the Plaintiffs being Nyahururu PMCC 224 of 2003 where the Defendants in that case had been Esther Monica Mary Wambui, Ashford Kaburu, Rosemary Mukwati and Elijah Somboriot the Plaintiffs in the present case and the suit land had been parcel No 312 which had been subdivided into 4 portions No. 6525 -6532 with the resultant new parcels registered as follows;

- i. parcels No 6529 in the name of 3rd Defendant
- ii. parcel no 6530 was registered in the name of Elijah Somboriot the 1st Plaintiff in this case.
- iii. Parcel No 6531 was registered in the name of Monica Wanjiku the 4th plaintiff in this case.
- iv. Parcel No. 6532 was registered in the name of Esther Oruta, the 1st Defendant in Nyahururu PMCC 224 of 2003.

64. That at the time the case was filed on the 3rd November 2003 he had known that Monica Wanjiku was registered as proprietor of 6531, Ashford and Rosemary were proprietors of parcel No. 6529, while Elijah Somboriot was registered as proprietor of parcel No. 6530 and that was why he had sued them. The case was not heard for lack of jurisdiction.

65. He confirmed that Civil suit No 71 of 2006 was filed against the same parties touching on the same subject matter being land parcel No. 312, the original plot. There was inordinate delay of 4 years and the same was dismissed for want of prosecution.

66. He also confirmed that in the year 2008 when he filed the land dispute at the tribunal, parcel No. 312 had already been subdivided and he knew that plot No. 6529 was in the name of Ashford and Rosemary while plot No. 6530 was registered in the name of Elijah and parcel No. 6531 was registered in the name of Monica Wanjiku. That it had been the decision of the tribunal that these people were enjoined as objectors or defendants. That only Esther had been served with the notice as the rest could not be found. None of them appeared nor participated.

67. He also confirmed that he was neither aware of the fact that Monica Wanjiku had died on 29th December 2001 nor that there had been an application for her substitution in Nyahururu PMCC 224 of 2003.

68. By the time he was filing Nyahururu PMCC No. 224 of 2003, Ashford and Rosemary were not in possession of parcel No. 6529 and neither was Elijah Somboriot in possession of parcel No 6530. That Elijah Somboriot started using parcel No 6530 around the year 2005 while Ashford and Rosemary started using parcel No 6529 much later wherein Elijah had been developing the land during the pendency of the case.

69. Further testimony was that at the time he had entered the agreement for sale, Dedan Kingori did not have the title deed to parcel No 312 although his name was in the register of the land buying company called Ndurumo. He also confirmed that the consent to transfer DMFI 4 was neither dated nor was the stamp duty paid but that it had been signed by Dedan and himself. That further the said transfer was not registered because when they took it to the land's office, they had found that the title had been collected.

70. He confirmed selling parcel No. 2930 to the 2nd, 3rd and 4th Defendants and parcel No. 6530 to the 3rd Defendant, the same parcel of land that had been registered in the name of Elijah Somboriot but which land had been cancelled and given to him.

71. The 1st Defendant confirmed that it was a mistake to have sold parcel No. 6530 to the 2nd, 3rd and, 4th Defendants because he had retrieved the wrong titles and given them to the surveyor for the subdivision, land which was registered in his name at the time of the sale. That he had intended to sell parcel No. 6531 to the 2nd, 3rd, and 4th Defendants but by the time he gave them an alternative parcel No. 6532, they had already been registered as proprietors of parcel No. 6530. That he had not been aware that the sub division of parcel No. 6530 had been done on paper. The mistake was realized during the sub division and that if he had given them the correct title and they had been shown the correct parcel of land, they would not have been in court.

72. That since he had sold to the 2nd, 3rd and 4th Defendants Parcel No. 6530 erroneously, and the same had been registered in their names, they had an obligation to return it back to him since he gave them an alternative land.

73. The 4th Defendant's testimony was that he came to know the 1st Defendant Anthony through one of their friends by the name of Fredrick Njuguna, when he and his colleagues sought to buy a parcel of land. That the three of them being the 2nd, 3rd and 4th Defendants, were leaders in a teachers group called Laikipia West Self Help group comprising 50 members, who had interest in buying land for investment and also personal development. That while he was the secretary, the 2nd Defendant was the chairman and the 3rd Defendant was the group treasurer.

74. That they had met the 1st Defendant who had showed them the area map for Marmanet North and had sent one Joseph to show them the land which was vacant, bushy and with no developments. They had liked it and decided to buy it. Joseph gave them a photocopy of the title where they had proceed to conduct a search and had confirmed that the proprietor of the land was Anthony Waithaka Kiarie.

75. They had then prepared a sale agreement dated the 17th September 2012 for Laikipia/Marmanet North Rumuruti block 2/6530 (Ndurumo) which he produced as Df Exhibit 11 and testified that they had purchased the said suit land measuring 12.3 hectares for ksh 3,000,000/=. Wherein they had paid the amount in full.

76. That the land had been subsequently registered into their names immediately they had paid the purchase price on the 23rd January 2013 He produced the green card to parcel No 6530 as Df Exhibit 12.

77. That it had been after the surveyor had visited the land, having done the paper work, with the purpose of sub dividing it, that he had found that it was not vacant. He had informed them of the same and they in turn had informed the 1st Defendant and asked him to solve the issue by either refunding their money, or giving them an alternative land although they had preferred the latter.

78. That the 1st Defendant had agreed to give them an alternative land and had later transferred parcel No 6532 to them.

79. He confirmed that they had no claim on parcel No 6530, because they were content with the alternative parcel of land.

80. On Cross examination, the witness testified that land parcel No.6530 was one of the subject matters in this suit and that it was registered in the names of Joseph, Peter and Francis the 2nd,3rd and 4th defendants.

81. He confirmed that in the year 2012, they had visited the land they had intended to buy in the company of Joseph but in the absence of the vendor where they had found a vacant land that was not developed and neighboring land was occupied by the 1st Plaintiff. He also confirmed that after being compensated, they had not transferred parcel No 6530 back to Anthony but had given the title back to the surveyor. That further, they had not recorded an agreement on the fact that they had been compensated but that they were no longer interested in parcel No. 6530 and were ready to transfer it back to Anthony if the court so ordered.

82. The Defence hence closed its case and parties filed their submissions thereafter.

Plaintiff's submissions.

83. The Plaintiffs' contention after giving a history of the origin of the dispute herein was that the Laikipia west District Rumuruti Division Land Dispute Tribunal had no jurisdiction to hear and determine the 1st Defendant's claim for title and ownership of the suit lands.

84. The secondly, that the Plaintiffs herein were not notified and or enjoined to the proceedings before the land disputes tribunal therefor they were not accorded a hearing.

85. That further, the 3rd Plaintiff herein had died on the 29th December 2001 way back before the institution of the proceedings at the land tribunal which had not been properly constituted and therefore any award and decree arising therefrom was illegal, null and void ab initio and of no legal effect including the subsequent registration of the Defendants as proprietors of the suit lands.

86. The Plaintiffs framed their issues for determination as follows;

- i. Whether the Plaintiffs were the registered absolute proprietors of the suit lands before transfer of the same to the defendants.
- ii. Whether Laikipia West District Rumuruti Division Land District Tribunal had jurisdiction to entertain the Plaintiff's claim for title to land/ownership of land in respect to the suit parcels of land.
- iii. Whether the award passed by the Laikipia West District Rumuruti Division Land District Tribunal in Claim No.107/2008 was against the rules of natural justice.
- iv. Whether the Laikipia West District Rumuruti Division Land District Tribunal was properly and legally established and constituted under the relevant law.
- v. Whether the award passed by the Laikipia West District Rumuruti Division Land District Tribunal in Claim No.107/2008 was illegal, null and void and of no legal effect.
- vi. Whether the consequential decree in Nyahururu PMC Land Dispute Case No.15 of 2011 and the impugned transfers of the suit lands in favour of the defendants are tainted with illegality and are null and void and of no legal effect.
- vii. Whether it is proper and legally acceptable for the plaintiffs to challenge the impugned award and the consequential decree by way of a declaratory suit.
- viii. Whether there is a fatal misjoinder or non-joinder of necessary parties in the plaintiff's suit.
- ix. Whether the plaintiffs are entitled to the reliefs sought in their respective plaints.
- x. Which party or parties should bear the costs of this suit.

87. On the first issue for determination it was their submission that the Plaintiffs had adduced evidence sufficient to show that the 1st Plaintiff was the registered proprietor of land parcel No. Laikipia/Marmanet/North Rumuruti/ Block 2 (Ndurumo) /6530, while the 2nd and 3rd Plaintiffs were the registered proprietors of land parcel No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 6529 and the

deceased Monicah Muchoki the 4th Plaintiff was the registered proprietor of land parcel No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 6531 by producing certified copies of the titles as Pf exh 22, 23, and 24 respectively.

88. That further, their registration as proprietors had been executed way before an award of the Land Disputes Tribunal proceedings of the 9th August 2012, which had nullified the said titles, and subsequently adopted as a judgment of the court in Nyahururu PMCC land dispute No. 15 of 2011 and a decree issued on the 30th August 2011 resulting into the transfer of the land parcels to the 1st Defendant.

89. That based on numerous decisions, it was trite law that Land Disputes Tribunals had no jurisdiction to adjudicate over matters that touched on title or ownership of land. The Plaintiff relied on the following decided cases to buttress their submissions:

- i. **Kiplangat Arap Biator v Esther Tala Chepyegon (Nakuru HCCC No.70 of 2004).**
- ii. **Wangila Situma Wakali v Andrew Makhanu Mutoro & another (2006) eKLR.**
- iii. **Republic v Kajiando Lands Disputes Tribunal & others, ex-parte Ann Nguhi Mwai (Nairobi HC Misc.Appl.No.689 of 2001).**
- iv. **Republic v Nyandarua District Land Disputes Tribunal & others, ex-parte Naftali Mwathi Mwangi (Nakuru HC Misc.Appl.No.314 of 2004).**
- v. **Mutahi Kamau v Riccanda Wanjiru Mutahi (Nyeri HC CA No.65 of 2002).**
- vi. **Beatrice M'Marete v Republic & another (Court of Appeal (Nyeri), Civil Appeal No.259 of 2000).**

90. That further, since the Plaintiff's respective titles had been issued under the Registered Land Act (now repealed), Section 143 of the said Act, was to the effect that the Land Disputes Tribunal had no jurisdiction to order rectification of the register and therefore the Laikipia West District Rumuruti Division Land Dispute Tribunal had no jurisdiction to order either rectification of the Plaintiffs register or the cancellation of titles in respect to their respective parcels of land.

91. That it was also clear that prior to the filing of the complaint before the Land Disputes Tribunal, the 1st Defendant had filed Nyahururu PMCC No. 224 of 2003 and Nakuru HCCC No. 71 of 2006 claiming title to parcels of land No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 6529, 6530, 6531 and 6532 wherein the Defendants had been Esther S. Oruta, Monica Wanjiku, Mary Wambui George, Ashford Kaburu Ruchya, Rosemary Mukwaiti Kaburu and Elijah Somboriot. The said suits had not proceeded for hearing and determination became whereas he had withdrawn the 1st suit, the 2nd suit had been dismissed for want of prosecution. That at the time he had filed a complaint before the Land Disputes Tribunal in the year 2008, he had been aware that the original parcel of land No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 312 had been subdivided and the resultant parcels of land No. 6529, 6530 and 6531 were already registered to the Plaintiffs herein who were already in occupation, yet he did not deem it fit to enjoin them in proceedings before the tribunal.

92. It is also clear that during the proceedings in Nyahururu PMCC No. 224 of 2003, there had been an application for substitution of the deceased Monicah Wanjiku who had passed away on the 29th December 2001 which information the 1st Defendant ought to have known, yet in the proceedings before the Tribunal, he failed to enjoin her legal representative to the said proceedings. The submission was that the Plaintiffs were therefore condemned unheard and therefore it was right to impugn the award as it was ultra vires, null and void. The Plaintiff relied the following decided cases:

- i. **Republic v Ndaragwa Land Disputes Tribunal and others, Ex-parte Miriam Wambui Mwangi (Nakuru HC Judicial Review Appl.No.83 of 2009).**
- ii. **Republic v Ndaragwa Division Land Disputes Tribunal & others Ex-parte Muricho Ranching Co. Ltd (Nakuru ELC Judicial Review No.18 of 2013).**

93. The Plaintiff further submitted that pursuant to legal notice No. 181 of 2003, no Disputes Land Tribunal had been established for Laikipia West District Rumuruti Division and therefore, the Laikipia West District Rumuruti Division Land Dispute Tribunal was an illegal body at the time it passed the award herein affecting title to the Plaintiffs parcels of land which award was null and void as was held in the decided cases of:

- i. **Republic v Ndaragwa Land Disputes Tribunal & others Ex-parte Miriam Wambui Mwangi (Supra).**
- ii. **Republic v Ol Joro Orok Division Land Dispute Tribunal & others (Nakuru HC Judicial Review No.52 of 2012).**
- iii. **Republic v Ndaragwa Division Land Disputes Tribunal & others Ex-parte Muricho Ranching Co. Ltd (Nakuru ELC Judicial Review No.18 of 2013).**

94. That through the present declaratory suit, which was an alternative to a judicial review proceedings, as was held in the case of **Ngige vs Chomba & 3 others [2004] 1KLR 597**, the Plaintiffs sought for declaratory orders to challenge the impugned award, the consequential decree, the transfer of the suit parcel to the 1st Defendant in execution of the said decree and the subsequent transfer of one of the suit parcels to the 2nd, 3rd and 4th Defendants.

95. That the jurisdiction of the court to hear and determine declaratory suits challenging the legality of awards passed by defunct Tribunals, as well as the subsequent decrees is now settled in the determined cases of :

- i. **Ngige v Chomba & 3 others (Supra)**
- ii. **Kiplangat Arap Biator v Esther Tala Chepyegon (Supra).**
- iii. **Joseph Njugu Muriuki v James Ngari Ibrahim Gichohi (Nakuru HCCC No.285 of 2009).**

96. It was the Plaintiffs submission that as per the evidence adduced through Pf exh 5, 16 and 20, it was clear that by the time they had realized that their respective parcels of land had been transferred and registered to the 1st defendant, it had been too late to either appeal on the Tribunal's award or to file Judicial Review proceedings to quash the award.

97. The Plaintiff's submission was also to the effect that since the Defendant's titles were registered after the enactment and coming into effect of the Land Registration Act, the same were governed under the provisions of Section 26(1) (b) of the said Act wherein since they had been acquired illegally, they were tainted with illegality, were null and void a therefore were candidates for impeachment and the same ought to be cancelled and set aside.

98. That from the evidence adduced in court, the 2nd, 3rd and 4th Defendants cannot be said to have been innocent purchasers for value because they had failed to conduct due diligence before entering into the agreement for sale of the land with the 1st Defendant and therefore it followed that they had purchased the suit lands with full knowledge of the 1st Plaintiff's actual possession.

99. That by didn't of the provisions of Order 1 Rule 9 of the Civil Procedure Rules and Article 195(2)(d) of the Constitution, the Plaintiffs' suit could not be defeated by reason of mis-joinder or non-joinder of parties and particularly non-joinder to the Laikipia West District Rumuruti Division Land Dispute Tribunal which passed the impugned award.

100. The Plaintiffs sought that their consolidated suits be allowed with costs wherein the costs in ELC 100 of 2017 be paid by all the Defendants while costs in ELC 118 of 2007 be met by the 1st Defendant.

Defendants' submission

101. The 1st Defendant's submission was to the effect that he was challenging the procedure used by the Plaintiffs to challenge the Land Disputes Tribunal Award and the consequential decree of the subordinate court which led to the issuance of titles in his name.

102. It was his submission that Section 8(1) of the Land Disputes Tribunals Act 1990 provided an appeal process against such an award against the Appeals Committee constituted for the province. That alternatively the Plaintiff ought to have commenced Judicial Review proceedings in the nature of certiorari to quash the award under Order 53 of the Civil Procedure Rules.

103. The 1st Defendant submitted that where the statute had provided for a remedy to a party, the court must exercise restraint and first give an opportunity to the relevant bodies as provided. The Plaintiffs herein ought to have followed the right procedure in challenging the award of the Tribunal. That the plaint therefore ought to be dismissed. The 1st Defendant relied on the decided cases of

- i. **Speaker of the National Assembly vs Hon James Njenga Karume (1992) eKLR**
- ii. **Eddah Wanjiru Gathumba vs Jeremiah Gitau Nelson and 6 others (2018) eKLR**
- iii. **Peter Ochara Anam & 3 Others vs Constituencies Development Fund Board & 4 Others (2011) eKLR**
- iv. **Boniface Mwangi vs Resident Magistrates Court at Milimani & 2 Others (2015) eKLR**

104. The 2nd 3rd and 4th Defendants' submissions was on the same wave line as the 1st Defendants' submission to the effect that since the Plaintiffs did not file an application for judicial Review or an Appeal to challenge the Tribunal's' award, they could not employ to seek redress through a non-existence forum to challenge the same.

105. That the 2nd, 3rd and 4th Defendants had applied all the requisite legal requirements before agreeing to purchase land parcel No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 6530 wherein the same was legally registered into their names.

106. That the Plaintiff did not particularize or prove the fraud and or misrepresentation committed by the 2nd 3rd and 4th Defendants herein in the acquisition of the suit land and therefore did not prove that the Defendant's title was acquired illegally, un-procedurally or through a corrupt scheme.

107. That the 2nd, 3rd and 4th Defendants had done their due diligence and were therefore innocent purchasers for value without notice, of the suit land.

108. The 2nd, 3rd and 4th Defendants had acknowledged that if indeed their title to land suit No. 6530 was to be impeached, then the blame

would lay squarely on the 1st Defendant herein for having showed them a vacant parcel of land at the time they had gone to view the same and thereafter handing over to them title to a different suit land either by honest mistake or design. That indeed the 1st Defendant had owned up to his mistake and had given them an alternative piece of land wherein they had confirmed that they had been ready to transfer the said piece of land back to the 1st Defendant or to whom so ever the court would direct.

109. That another way in which the court would want to impeach their registration to title No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 6530 is if the court found that the manner in which the 1st Defendant had acquired its registration it was illegal, invalid, illegitimate, fraudulent or mistaken or vitiated by misrepresentation or un-procedural technicalities and thus he could not have good title to pass to them.

110. The Defendants relied on the Land Registration Act, the Land Act and Article 40 of the Constitution as well as the decided cases and the principle of stare decisis, to submit that a title registered to a proprietor is absolute and can only be impeached pursuant to the provisions of Section 26(1) of the Land Registered Act. They urged the court to condemn the 1st Defendant to meet all the costs in the event that the Plaintiffs suit succeed.

Analyses and determination.

111. The present matter revolves around the decision of Laikipia West District Rumuruti Division Land Dispute Tribunal No 107 of 2008 of 9th August 2012, the award of the said Disputes Tribunal as well as the decree issued in Nyahururu Land disputes Case No Nyahururu PMCC land dispute No. 15 of 2011 adopted by the court on the 30th August 2011.

112. It was the Plaintiffs case that pursuant to the adoption of the said decree as the judgment of the court, their titles to land parcel No. Laikipia/Marmanet North Rumuruti Block 2 (Ndurumo)/6529, 6530 and 6531 were illegally cancelled and registered to the 1st Defendant who subsequently sold parcel No 6530 to the 2nd 3rd and 4th Defendants who then got registered as the proprietors to the said parcel of land.

113. The Plaintiffs' quarrel was that despite the 1st Defendant's knowledge that the original parcel No. Laikipia/Marmanet/North Rumuruti/ Block 2/ (Ndurumo) 312 had been subdivided and the resultant parcels of land No. 6529, 6530 and 6531 were already registered to the Plaintiffs herein who were already in occupation, yet he did not deem it fit to enjoin them in the proceedings before the Land disputes Tribunal which then issued an award that affected their proprietorship to their detriment, without according them a hearing.

114. The Petitioners contended that since they were not made party to the proceedings before the Tribunal, they were unaware of its decision and the subsequent award, and by the time they had become aware of the same, their respective parcels of land had been transferred and registered to the 1st Defendant, and it had been too late to either appeal on the Tribunal's award or to file Judicial Review proceedings to quash the award.

115. It was their contention that Laikipia West District Rumuruti Division Land Dispute Tribunal had no jurisdiction to hear and determine the 1st Defendant's claim for title and ownership of the suit lands and secondly, that they were not notified and/or enjoined to the proceedings before the land disputes tribunal therefor they were not accorded a hearing.

116. The 1st Defendant on the other hand opined that pursuant to the decision of the Land Disputes Tribunal, and the adoption of the Award thereafter as a decree and judgment of the court, the Plaintiffs neither filed an Appeal or proceedings on Judicial Review to challenge both the award and decree as provided by the law, wherein the decree was executed.

117. That further and in the alternative, the Plaintiffs ought to have commenced Judicial Review proceedings in the nature of certiorari to quash the award under Order 53 of the Civil Procedure Rules because where the statute had provided for a remedy to a party, the court was bound to exercise restraint and first give an opportunity to the relevant bodies as provided. The Plaintiffs herein ought to have followed the right procedure in challenging the award of the Tribunal.

118. I have considered both the Plaintiffs and the Defendants case as pleaded and the evidence that was adduced in proof thereof as well as the able submissions by Counsel for the parties, the law and the authorities cited. From my analysis of the pleadings and the evidence on record, I find that the issues that arise for determination in this suit are as follows;

- i. Whether the Laikipia West District Rumuruti Division Land Dispute Tribunal erred in its decision of 9th August 2012
- ii. Whether **the Land Disputes Tribunal's decision can be challenged in this court by way of suit**

119. The tribunal was established under the Land Disputes Tribunals Act No. 18 of 1990 (now repealed) (herein referred to as the 'Act')wherein Section 3(1) of the Act sets out the cases over which the tribunal had jurisdiction as follows:-

3. (1) *Subject to this Act, all cases of a civil nature involving a dispute as to—*

(a) the division of, or the determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land, shall be heard and determined by a Tribunal established under section 4.(2).

120. Section 7(1) of the Act required the chairman of the tribunal to cause the decision to be filed in the Magistrate's court together with any dispositions and documents provided before the tribunal. Wherein Section 7 (2) of the same act was explicit as to what had to be done by the Magistrate, it did not leave any room for a Magistrate to review, alter, amend or set aside the tribunal's award.

121. Looking at the provisions of Section 3(1) of the Act above, the said provision of the law that the jurisdiction of the Tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land. The Land Disputes Tribunal therefor did not have jurisdiction to issue declaratory orders on the ownership of land and neither did it have jurisdiction to determine disputes revolving around ownership of land, more so matters under the *Registered Land Act, Cap 300* (now repealed) and specifically registered land. It could not issue orders compelling the cancellation of title as it did in this case. From the history of the issue herein above stated and the finding of the Land Dispute Tribunal thereafter, I find that the Laikipia West District Rumuruti Division Land Dispute Tribunal determined a matter which dealt with titles that had been registered under the Registered Land Act, Cap 300 (now repealed).

122. The said tribunal therefore acted *ultra vires*, null and void and in excess of its jurisdiction as it was prohibited, by operation of the law, from undertaking a determination with respect to title to land. It therefor goes without saying that any orders and or proceedings arising from the said award would also have been a nullity since a decision made by a tribunal which had no jurisdiction to entertain the dispute before it, must of necessity be null and void and therefore subject to challenge.

123. In the case of **Republic v Kajiado North District Ngong Land Disputes Tribunal & another Ex-Parte Caroline Wambui Ngunjiri & 2 others [2014] eKLR**

In my view if the said Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since a decision made by a tribunal which has no jurisdiction to entertain the dispute before it must of necessity be null and void. This is in line with the celebrated decision in Macfoy vs. United Africa Co. Ltd [1961] 2 ALL ER 1169 at 1172 to the effect that that where an act is a nullity it is trite that it is void and if an act is void, then it is in law a nullity as it is not only bad but incurably bad and there is no need for an order of the Court to set it aside, though sometimes it is convenient to have the Court declare it to be so. Where the Court finds this to be so the actions taken in pursuance of actions taken in breach of a Court order must therefore break-down once the superstructure upon which it is based is removed since you cannot put something on nothing and expect it to stay there as it will collapse.

124. After finding that the Laikipia West District Rumuruti Division Land Dispute Tribunal acted *ultra vires*, null and void and in excess of its jurisdiction what then was expected of the Plaintiffs who were the aggrieved parties, herein.

125. **Section 8(1) of the Act** provided an **avenue for challenging the decisions by the tribunal to wit by** an appeal process against such an award against the Appeals Committee constituted for the province and in the alternative by way of commencement of Judicial Review proceedings in the nature of certiorari to quash the award under Order 53 of the Civil Procedure Rules.

126. *Indeed this court in the case of Eddah Wanjiru Gathumba v Jeremiah Gitau Nelson & 6 others [2018] eKLR* and while relying on the decided Court of Appeal case of **Florence Nyaboke Machani v Mogere Amosi Ombui & 2 others [2014] eKLR** held that because the decree had become a Judgment of a Court of competent jurisdiction, since the same was not varied, vacated, set aside or reviewed by the same Court, or by an appellate Court, in an appropriate proceedings, the 1st, 2nd and 3rd Respondents herein had been installed as the proprietors of the suit land, the said case was distinguishable and was of special circumstance to the present case where the 1st Defendant knowing very well that the Plaintiffs herein were the registered proprietors of the suit land where they had settled thereupon and had developed the same, sought to institute a dispute before the Land Tribunal seeking title to land without informing the Plaintiff in order to bring them on board.

127. *The Court of Appeal in the case of Nicholas Njeru v Attorney General & 8 others [2013] eKLR held that:-*

“It is well settled principles of law that the High Court is given supervisory powers to check the excess of jurisdiction and compliance with the rule of Law by inferior tribunals and other public bodies or persons discharging such public acts”.....

We agree these prayers could have perfectly fitted the bill under judicial review as they seek to supervise the powers of persons exercising public authority. However we do not entirely agree with the learned Judge's observation that the court had no jurisdiction to grant a declaratory order. We know of no limit to the powers of the court to grant a declaratory order except such limit as it may in its discretion impose upon itself.

128. The court held that in that case the Statute made provision for a determination by the Minister which was expressly made 'final'. The Pyx Company did not go to the Minister; instead they sought a declaration in the High Court. The Minister argued the Court had no jurisdiction to entertain a claim for declaration. Lord Denning said

‘I take it to be settled law that the jurisdiction of the High Court to grant a declaration is not to be taken away except by clear words’.

129. In the case of **Daudi Ngetich Kimibei Vs AG Eldoret HCCC No. 58 of 1998**; where the Court held that:-

“ My own opinion of the matter is that there is no bar to filing a suit to declare the decision of Land Dispute Tribunal null and void.true the avenues of appeal and judicial review are available, but I am of the view that these are not sole relief “.

130. Further in the case of **Emily Chepkemoi Ngeyoni & Another vs. Nicholas Kipchumba Kogo & Another, Eldoret HCCC NO. 270 of**

2005 the court weighed the issues as to whether the Plaintiff could file a declaratory suit instead of an appeal and/or Judicial review where Justice Dulu held as follows:-

“My own opinion of the matter is that there is no bar to filing a suit to declare the decision of a Land Disputes Tribunal null and void. True, the avenues of appeal and judicial review are available but I am of the view that these are not the sole avenues for relief... I am of the stand that the plaintiff is perfectly entitled to file the suit seeking inter alia a declaration that the decision of the Tribunal was made without jurisdiction.....”.

131. In the case of **Lekinyot Ole Lanke v Attorney General & 2 others [2015] eKLR**, the court faced with a similar situation held as follows:

It was also argued that the petitioner had other avenues to seek redress and that there is nothing constitutional about this petition. What was the petitioner supposed to do? He was not a party to the tribunal proceedings and could not avail himself of the avenue of appeal. True, he could have filed a judicial review action, but one had already been filed and abandoned by Ole Sipiiai. Again I pose, what was he supposed to do? Was he supposed to be left without remedy owing to technicalities of the law? My conscience cannot allow the petitioner to be left stranded. The law must be given purpose and justice must be done. The tribunal and the Narok Magistrate's court meted out an abhorable injustice upon the plaintiff. This court cannot stand by helpless and let the 3rd respondent benefit from such an injustice. The petitioner has properly approached this court and this court is obliged to remedy the injustice.

132. I am in agreement with the sentiments of my brother judge herein above, and having carefully considered the available evidence and the rival submissions, the Court has come to the conclusion that since it is well settled principle of law that the court is given supervisory powers to check the excess of jurisdiction and compliance with the rule of law by inferior tribunals and other public bodies or persons discharging such public acts, I find that it therefore has jurisdiction to grant a declaratory orders.

133. Section 26(1) of the Land Registration Act provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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.”

134. It will be seen from the above provisions that title is protected, but the protection can be removed and the title impeached, if it is found to have been procured through fraud or misrepresentation, by the person who is not necessarily proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme.

135. I find that the titles of the Defendants herein were procured un-procedurally and through misrepresentation and the same ought to be impeached. To this effect, I find that the Plaintiffs have proved their case on a balance of probability. Consequently, the Court allows the Plaintiffs claim entirely as prayed in the plaint with costs to be borne with interest thereon by the 1st Defendant herein, the author of it all.

Dated and delivered at Nyahururu this 25th Day of June 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE