IN THE COURT OF APPEAL
AT ELDORET

(CORAM: WARSAME, MATIVO & GACHOKA,

JJ.A.) CIVIL APPEAL NO. 82 OF 2020

BETWEEN

DAVID KIPTARUS RUTO ..... 1ST APPELLANT JOHN BETT ..... 2ND APPELLANT
HARUN KOLLUM.....3RD APPELLANT

AND

EMILY TESOT.....1ST RESPONDENT
RUTH MAIYO.....2ND RESPONDENT
DORCAS KESSIO.....3RD RESPONDENT

(An appeal from the judgment and decree of the Environment and Land Court of Kenya at Kitale (M. Njoroge, J.) delivered on 18th July 2019

in

ELC No. 152 of 2007
****

JUDGMENT OF THE COURT

1. By plaint amended on 2nd March 2016, the respondents contended that they were members of the Umoja Wa Wanawake Kipkeikei Group, a self-help group registered under the Department of Social Services Trans Nzoia District. They claimed ownership over ***L.R. No. 6614/13*** (*formerly part of L.R. No. 6614/2*) in Naigam estate measuring 0.5 acres, the

suit land

herein.

2. They explained that the property was sold to them by Elijah Kenei, now deceased. That sale was ratified by the Cherengani Land Control Board, a culmination from a meeting held on 6th October 1982, and were issued with a consent. Upon issuance of the said consent, the respondents averred that they immediately took possession and erected a permanent commercial building. The same comprised of four shops. They recalled that prior to 2006, the 3rd appellant was their tenant in the said premises and that he was well cognizant of their ownership status over the suit parcel of land.

3. In spite of the above, the respondents lamented that the 3rd appellant illegally constructed a permanent structure on the suit land while the 1st and 2nd appellants erected temporary structures. Further, that the appellants wasted and damaged several of the respondents' building materials. For those reasons, the respondents prayed for a declaration that the suit property was theirs; an order for eviction of the appellants, mesne profits, damages for trespass to the respondents' building materials and fence and costs of the

suit.

4. In his judgment dated 18th July 2019, *Njoroge, J*. found the respondents' claim merited. In arriving at that conclusion, the trial court found that from the evidence of the parties, Kipkeikei Women Group was the same as Umoja Wa Wanawake Kipkeikei Women Group; an entity that remained to be in existence. Though acknowledging that no sale agreement was adduced in evidence as to prove the existence of the relationship between the self-group and the vendor, the trial court formed the opinion that the evidence of the respondents was in consonance with that of **DW3**, **DW4,** and **DW5** as to conclude that the respondents were entitled to 0.5 acres from L.R. No. 6614/13.

5. The trial judge further analyzed the evidence to find that Roseline Kenei, who was a former member, sold the suit land belonging to the respondents but had no mandate to do so. It was therefore illegal. The court held:

> ***"23. It was the evidence of DW5 that Roseline Kenei and others ceased being members of the Kipkeikei Women group. In his opinion, he thinks that they were reimbursed. He is also of the opinion that Mrs. Kenei took part of the land given to the group by Mr. Kenei as her share in the group while leaving and sold it to the defendants leaving part of the***

land that has been developed in the hands of women who

remained in the group. However very pertinent questions were asked of the defendants' and their witnesses in cross-examination as to whether there was evidence of dissolution of the group and whether there was evidence that Mrs. Kenei resigned from the group. DW5 stated as follows:

> ***"I don't know when they pulled out. I cannot tell which members pulled out. I did not state that my mother was a member. I don't have anything like a resignation letter of Mrs. Kenei."***

24. Later on in cross-examination he stated as follows:

> ***"My mother sold. She is the only who entered into an agreement with the three defendants. I don't have any agreement between the members to the effect that she was given the part she sold as her share…I am not aware of any meeting between her and the remaining members resolving that she sells the land. The action were by my mother. We abide by my mother's decision."***

25. I am therefore of the opinion that from the contents of the statements of the witnesses in this case, there is evidence that Mrs. Kenei had no authority to revoke the gift given by Mr. Kenei to the Kipkeikei Women group or to sell it to the defendants."

6. The court then granted the prayers sought by the respondents. The appellants are aggrieved by those findings. They filed their notice of appeal dated 19th July 2019. They also filed

their memorandum of appeal 5th March 2020, that raised a laborious

nineteen grounds disputing the findings of the learned judge which are summarized as follows: that they were innocent purchasers for value without notice; that Kipkeikei Women Group and Umoja Wa Wanawake Kipkeikei Women Group were distinct entities and had split; the respondents did not have the legal capacity to sue; that the suit property had not been surveyed with distinct boundaries but a portion which had not been legally identified from the over 800 acres; and that the respondents failed to obtain consent from the Land Control Board.

7. The appellants lamented that the oral and documentary evidence of the respondents contradicted each other; that the trial court failed to consider that **PW1** testified that the deceased's administrator told them that they would be given another portion elsewhere within the farm; the trial court failed to appreciate that the respondents had converted the designation of the suit land, being a petrol station, to a shop, within the length of the road; the suit was time barred and void for absence of the consent of the Land Control Board; that the learned judge relied on extraneous evidence; that the

learned judge awarded prayers not

sought for in the plaint and also arrived at a wrong conclusion; and the trial court erred in finding that Mrs. Kenei did not have authority to revoke the gift. For those reasons, the appellants prayed that their appeal be allowed, the impugned judgment be set aside by dismissing the respondents' suit and costs.

8. The appeal was virtually heard on 20th January 2026. Present and representing the appellants was learned counsel Mr. Chebii while Mr. Samba informed the court that he was the advocate instructed to represent the respondents. Parties relied on their respective written submissions that were orally highlighted.

9. The appellants relied on their joint written submissions, case digest and a list and bundle of authorities, all dated 1st July 2024. Learned counsel regurgitated the grounds of appeal to argue that from the evidence on record, Umoja Wa Wanawake Kipkeikei Women Group and Kipkeikei Women Group were different entities. For this presupposition, he urged this Court to reconsider the evidence of the 1st respondent against the documentary evidence. The appellants further challenged that being a representative suit, the respondents failed to conform

to

order 1, rule 8 of the Civil Procedure Rules; a fact they contended

was admitted by the respondents during the trial. Further, there was no resolution from the members of the group to institute those proceedings.

10. On whether the suit land was purchased through the officials of the women's group, learned counsel submitted that no evidence was adduced to affirm those assertions. For that reason, they lacked the *locus standi* to bring this action as they were not the proprietors of the suit land. They further denied the existence of a contract between the group representatives and the deceased as to give rise to proprietary interest over the suit land. In any event, while the group was registered in 1997, the property was purchased in 1982, and no explanation was given to justify the disparity. They also submitted that the suit was time-barred, having been instituted 12 years after the cause of action arose.

11. The appellants submitted that the sale by Roseline Kenei, a former member of the group, and wife of the late Elijah Kenei, as well as the administrator of his estate, to them, was proper, legal, and sound based on the documentary evidence that they adduced. The trial court, therefore, arrived at an

incorrect finding

in ordering their eviction. They also challenged ownership on the

strength of the fact that the respondents never conducted a survey over the suit parcel of land. This is because boundaries could not be ascertained. They also raised a distinction between the parcel they bought from Roseline Kenei and that bought by the women group, stating that they were different.

12. The appellants continued that they were innocent purchasers for value without notice. They cast doubts on the contents of the letter of consent and omissions, as produced by the respondents, the failure of any respondents to attend the Land Control Board meeting, and allegations of fraud to argue that the respondents never lawfully purchased the suit land. In any event, there were no minutes produced before the trial court as proof that the application for consent was allowed.

13. Learned counsel for the appellants challenged the contention that the suit land was gifted by the deceased to the women group in spite of the acknowledgment that their witnesses confirmed as such in the affirmative. In their view, the deceased ought to have executed the application for consent and other necessary documents for the gift to pass in law. In any case, the

administrator of the deceased confirmed from the confirmed

grant issued on 31st August 1993 that the suit land belonged to the deceased's estate. Additionally, the respondents on the one hand claimed that the property was a gift while on the other hand claimed that it was sold to them. It was therefore doubtful as to whether the property was ever passed to the respondents legally. For those reasons, the appellants prayed that their appeal be allowed.

14. The respondents opposed the appeal. They filed their written submissions and list of authorities, all dated 21st August 2024, to submit that the decision of the superior court was in full compliance with the applicable law and the principles of justice. Firstly, on the allegation that the respondents lacked the capacity to sue, they cited the decisions in the Court of Appeal and the Supreme Court to submit that the onus was on the appellants to prove that the respondents had no standing to sue. In their view, the appellants failed to discharge that burden.

15. Learned counsel for the respondents submitted that his clients properly filed an application for leave to sue on behalf of the women group dated 14th May 2007 in ***Kitale HC Misc. App.***

No. 22 of 2007 but inadvertently failed to extract the court order

granting the same. Further, the court properly analyzed the evidence on record to find that the two women group entities were one and the same.

16. The respondents continued, that whether or not there was a consent, which was not the subject of the dispute before the trial court, evidence was led to demonstrate that the suit land was gifted to them by the deceased Elijah Kenei. It was on this parcel that the respondents erected a commercial building and a petrol station.

17. The respondents contended that the appellants failed to exercise due diligence when purchasing the suit land from the deceased's wife, as it had already been donated to them. She was capable of doing so. They contended that they were not innocent purchasers for value; a fact that was not pleaded in their defence. That, in fact, the 3rd appellant was well aware of their ownership status in 2006 when he was their tenant.

18. On whether the suit was time barred, time started running from the date of invasion of the suit land, that is, 2006, learned counsel argued. That the suit was filed three years after the

appellants unlawfully entered upon the suit land, therefore, the respondents urged this court to find that the appeal was unmerited and dismiss it with costs.

19. We have carefully considered the parties' written submissions, examined the record of appeal, and analyzed the law. This Court in ***David Sironga Ole Tukai vs. Francis Arap Muge & 2 others*** [2014] KECA 155 (KLR) enunciated our duty as a first appellate court in the following terms:

> ***"Conscious of our duty as the first appellate Court in this matter, we have reconsidered the evidence, assessed it and made our own conclusions on the evidence, subject to the cardinal fact that we did not have the advantage singularly enjoyed by the trial judge, of seeing and hearing the witnesses as they testified. (See SEASCAPES LTD LTD [2009] KLR, 384). We also remind ourselves that this Court will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the judge is shown demonstrably to have acted on wrong principle in reaching the findings he did. (See EPHANTUS MWANGI WAMBUGU [1982-88] 1 KAR 278)."***

20. In this appeal, the main issue for determination is whether the learned judge arrived at a correct or incorrect finding in his decision. It is also clear from the appeal that the appellants

greatly challenged findings of fact. We are therefore called upon to establish whether the learned Judge arrived at a finding that was based on no evidence or on a misapprehension of the evidence or that the learned judge arrived at his conclusions on the basis of wrong principles.

21. Condensing the grounds of appeal raised by the appellants, our first issue for determination was whether the respondents had the capacity to sue the appellants. At paragraph 1 of the respondents' plaint, the suit was instituted in the following terms:

> ***"The Plaintiff is an adult individuals of sound on their own behalf and on behalf of members of Umoja Wa Wanawake Kipkeikei Group a self-help group registered under department of Social Services Trans Nzoia District…"***

22. A cursory reading of that excerpt is that the respondents were suing on behalf of Umoja Wa Wanawake Kipkeikei Group, a self- help group. A pertinent question arose as to whether they had the *locus standi*, being a suit filed on behalf of a self-help group, to bring an action against the appellants. It is the appellants contention that the suit was irregular because no prior leave was obtained by the respondent to file suit. This

was opposed by the respondents who stated that they filed an *ex parte* Chamber

Summons dated 14th May 2007 in ***Kitale HC Misc. App. No. 22 of 2007*** and were granted leave to file suit.

23. We have examined the supplementary record of appeal dated 21st August 2024 filed by the respondents. We confirm from the said record that the appellants' Chamber Summons was filed in ***Kitale HC Misc. App. No. 22 of 2007; Emily Tesot, Ruth Maiyo & Dorcas Kessio (officials of Umoja Wa Wanawake Kipkeikei Women Group) vs. Joseph Masai & John Bett***. After considering the said application, the following order was issued by the late *Ochieng, J.* (as he then was):

> ***"THIS MATTER coming up for hearing of an application dated 14th May 2007 before Honourable Justice F.A. Ochieng', Judge on the 18th September 2007 in the presence of Mr. Lel Advocate for the Applicants.***
>
> ***IT IS HEREBY ORDERED;***
>
> 1. ***That as the Applicants are the registered officials of the Umoja Wa Wanawake Kipkeikei Women Group, leave be and is hereby granted to them to sue the Respondents on behalf of that organization.***
> 2. ***THAT the costs of this application shall be in the cause."***

24. The orders issued are a clear demonstration that leave was sought by the respondents and granted to sue the

appellants.

Additionally, there is no record or any evidence before this Court as to demonstrate that those orders were either set aside, varied, or challenged successfully. It is also clear that the appellants were well aware of these orders, as the 1st and 2nd appellants were named parties. The 1st appellant's name was later clarified to that in the amended plaint dated 2nd March 2016 and not Joseph Masai. However, they elected not to impugn those orders.

25. We therefore find the claim that the respondents lacked the *locus standi* made before this Court was made in *mala fides* as they were well aware of those proceedings and subsequent orders issued. Secondly, those orders remain in force to date. We therefore find that the respondents properly instituted the present dispute. The appellants' arguments on this issue must therefore fall on the wayside, and it is hereby dismissed.

26. The appellants also challenged the findings of the learned judge who found that Umoja Wa Wanawake Kipkeikei Women Group and Kipkeikei Women Group were one and the same entity. From the pleadings, the respondents instituted the suit on behalf of Umoja Wa Wanawake Kipkeikei Women Group. To

this effect a

certificate of registration dated 16th May 1997, members list and

registration certificate were adduced in evidence bearing those names. This was similarly the evidence of **PW1**, the 1st respondent and the treasurer of the group.

27. During her cross-examination, when referred to the application for consent from the Land Control Board produced in evidence, **PW1** explained that the name Kipkeikei Women Group, written on the said application, was the short form name of Umoja Wa Wanawake Kipkeikei Women Group. That they were not a breakaway faction of the group, and it had not disintegrated.

28. Though **DW1**, **DW4,** and **DW5** attempted to testify that the group that sued them was different from the one registered, no other evidence was adduced to corroborate that evidence. It was a mere assertion, yet sections 107, 108, and 109 of the Evidence Act demand that he who alleges must prove. The difference in membership numbers is not akin to a change of group as was suggested by the appellants in their submissions.

29. Absent any evidence to the contrary, we agree with the findings of the learned judge to the extent that Umoja Wa

Wanawake

Kipkeikei Women Group and Kipkeikei Women Group were one and the same entity.

30. The appellants also raised that the suit was time barred. According to the appellants, the dispute arose in 2000 when the 3rd appellant purchased the suit land. It was therefore lodged 14 years later, outside the precincts of section 7 of the Limitation of Actions Act. Firstly, it is gathered from the record that the suit was filed in 2007. It is also discernible from the record that the appellants base their argument on the fact that the 3rd appellant was enjoined in the proceedings pursuant to the amended plaint dated 27th February 2014.

31. Section 7 of the Limitation of Actions Act provides as follows:

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

32. From the above section, it is apparent that time starts running when the cause of action accrues to the person alleging a breach. This Court in the case of ***DT Dobie & Company (Kenya) Limited vs. Muchina & another*** [1980] KECA 3 (KLR) held as follows on

the definition of a cause of action while citing Lord Pearson in Drummond-Jackson V.B.M.A. (1970) 1 W.L.R. 688 at p. 696:

> ***"A cause of action is an act on the part of the defendant which gives the plaintiff his cause of complaint."***

33. Thus, a cause of action arises when the plaintiff becomes aware of the act complained of. It is then that time starts running. From the record before us, the respondents joined the 3rd appellant in the proceedings on 27th February 2014. The crux of their joinder in the proceedings was that prior to 2006, the 3rd appellant was their tenant in one of the shops and was fully aware that the whole property belonged to the appellants when he purported to buy it from a third party.

34. It is therefore abundantly clear that the 3rd appellant was known to the appellants, not as a person claiming ownership rights, but as a tenant before 2006. It was only after 2006 that they noticed that the said party had purported to yield ownership rights over their claimed suit property; a fact they vehemently opposed. Going by that analysis, the only conclusion that can be drawn from those facts is that the suit was properly filed within the

timelines set out in section 7 of the Limitation of Actions Act. That argument thus fails.

35. In our view, the kernel of the dispute revolved around the question of ownership of the parcel of land. Here, the Court was invited by both parties to determine, who from the evidence adduced on either side, was the lawful proprietor. Explaining the circumstances leading up to ownership of the suit land, the evidence of **PW1** was that Elijah Kenei, now deceased, sold the suit property to the group, that is, ½ acres excised from L.R. No. 6614/13. However, no sale agreement was produced. She stated that the intention was to set up a petrol station, but instead erected a commercial building.

36. **PW1** recalled that the said vendor applied for a consent from the Land Control Board, and a consent was issued to that effect. That she also executed the consent on behalf of the group as the group's treasurer. Those documents were adduced in evidence. She also admitted that she did not attend the meeting of the Land Control Board. She justified that the suit was lodged against the appellants on account of trespass. That the 3rd appellant was

originally their tenant but later turned on them. She also testified

that Roseline Kenei was a former member of the group and the wife of the deceased vendor. She was the one, now deceased, who clandestinely and illegally sold the property to the appellants, as she did not have the authority to do so from the group. Finally, the deceased's family had never kicked them out of the parcel of land.

37. On the other hand, the appellants called 5 witnesses to the stand.

DW1, the 3rd appellant, testified that he knew the respondents, who were his landlord for four years between 1996 and 2000. His evidence was that he purchased a plot on 13th September 2000 from Roseline Kenei. He relied on a sale agreement signed by both himself and Roseline Kenei and witnessed by Tarus. His evidence was that his plot was close to that of the respondents who saw him building.

38. **DW2**, the 2nd appellant, testified that he purchased a 50 by 100 plot from L.R. No. 6614/13 from Roseline Kenei pursuant to an agreement dated 20th July 2004. It was witnessed by Stanley Tarus, a son of the home, and purchased it for a sum of Kshs. 390,000.00. He stated that he had been on the

property for three

years when the group claimed ownership. Stating that he was

shown the land by Stanley, he stated that he did not know if the property had been demarcated. He however stated that he did not know why the purchaser did not sign the agreement but stated that she put her thumbprint.

39. **DW3**, the 1st appellant testified that his co-appellants were his neighbours. That he purchased ¾ of a 50 by 100 plot on L.R. No. 6614/13 from Roseline Kenei pursuant to an agreement dated 22nd September 2004 as the administrator of the estate. He paid Kshs. 300,000.00. The agreement was witnessed by Stanley Tarus, Roseline Kenei's son. He added that he was neigbouring the plot belonging to the group who never raised an issue with his presence when he built a temporary structure. That the property had beacons as a temporary survey had been conducted. He recalled that the vendor informed him that the women in the group were crooks and questioned why they did not sue her. Finally, he was never taken to the Land Control Board.

40. **DW4** David Kipkorir Tarus testified that the appellants purchased plots from his father's property through his mother, Roseline Kenei. That Kipkeikei Women Group bought the land

from Rosaline measuring 0.5 acres, a former member of the

group. He would then testify that his father, prior to his death, gave the women group land while he was campaigning for a councilor's seat. That he never took them to the board and gave them the land for free in the 1990s. That the group had stayed on the land for 20 years before being gifted. He testified that none of the parties had been taken to the Land Control Board, as survey had not been done on the parcel. He therefore questioned the authenticity of the application for consent by the respondents. That the property was still registered in the name of his father, as it had no administrators.

41. **DW5** Stanley Tarus testified that though he recognized one of the respondents, he did not know the self-help group. He recalled that his father gave Kipkeikei Women Group land as token to do business on in the 1980s where after his mother became the administrator pursuant to a confirmed grant issued on 31st August 1993 upon the death of his father in 1990. He confirmed that the title was intact and subdivision has never taken place. That a survey process has begun but was yet to be concluded.

42. **DW5** further testified that his mother sold her share to the appellants after leaving the group. He could not substantiate that

contention however. That part of the land that had been developed remained in the hands of the other women who remained in the group. He also confirmed that from the consent issued by the Land Control Board, the property was given to the respondents as a gift. **DW5** further testified that group was shown the land. They put up a building and took possession. Later, his mother sold and entered into an agreement with the 3 appellants.

43. While it is true that no sale agreement was adduced by the respondents, what can be gathered from the foregoing, and particularly from the appellants' witnesses, was that the respondents were gifted a portion of L.R. No. 6614/13 measuring

    0.5 acres. This is particularly exposited by **DW4** and **DW5**, the deceased's sons.

44. The appellants cannot therefore come and renege that the gift did not meet the legal threshold of a gift *inter vivos* when they unequivocally admitted that their father gifted them during his political era. This is after, as **DW5** testified, the respondents had occupied the parcel for about 20 years. It

was therefore immaterial that the group was formally registered years later after

they had obtained the group. After all, **DW4** and **DW5** were

emphatic that the respondents were in existence at that time they were in occupation of that land.

45. The appellants challenged the authenticity or otherwise of the respondents' application for consent and the consent letter itself, stating that they were fraudulently obtained or forged. We wish to remind the appellants on the allegations of fraud and standard

of proof as was set out by this Court in the case of ***Kinyanjui Kamau vs George Kamau*** **[2015] eKLR,** which this Court fully adopts:

> ***"…It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: "...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases..."...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."***

46. Without pleading and proving fraud, we find that the appellants failed to demonstrate that those documents were

obtained by means of fraud. We therefore see no reason to question the

authenticity of the application for consent dated 28th September 1982 and letter of consent dated 7th October 1982 from the Land Control Board, which confirmed that it was the vendor who made the application and that the purpose was to transfer a portion of his suit land from himself to the respondents as a gift.

47. We further agree with the trial court that Roseline Kenei did not have the requisite right or authority to sell the property belonging to the respondents to the appellants separately. This is because the respondents acquired the property first in time. Though they attempted to raise a distinction between their parcels of land and that of the respondents, no evidence supported that assertion. After all, the appellants never raised a counterclaim to ascertain their ownership rights over their purported parcels that were different from those of the respondents. What is also unfathomable is how they were able to distinguish the parcels when a survey on the suit land was yet to be conducted.

48. Ultimately, we come to the inescapable conclusion that the learned Judge applied the correct principles and considered

the facts and the evidence adduced before him and arrived at a just

conclusion. Certainly, the appellants were not innocent

purchasers for value without notice, particularly taking into consideration that they were aware of the respondents' occupation and ownership over the suit land. We see no reason to fault the learned judge and uphold his findings. Accordingly, we find that the present appeal lacks merit. Each party to bear own costs.

Dated and delivered at Nakuru this 27th day of February, 2026.

M. WARSAME

.....
JUDGE OF APPEAL

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.
Signed

DEPUTY REGISTRAR