

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. 106 OF 2020

NJIWA HOUSING CO-OPERATIVE SOCIETY
LIMITED..PLAINTIFF

-VERSUS-

JOSEPH GATHAIYA MWANGI 1ST
DEFENDANT

ANTHONY NYAGA MWANGI 2ND
DEFENDANT

JUDGMENT:

1. The Plaintiff instituted the present suit vide a Plaint dated 16th November, 2020, against the Defendants, seeking the following orders;

a) **An order do issue removing the cautions or any other restrictions placed on L.R. No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2062 or its subdivisions L.R. No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2118 - 2156.**

b) **An order of permanent injunction do issue against the defendants, their agents, servants, assigns, employees, family members, or anybody else acting at their behest, restraining them from entering, trespassing, grazing, remaining, cultivating, cutting crops, dealing with or in any other manner interfering with the plaintiff, plaintiff's members and/or agents in enjoyment**

of KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2118 - 2156.

c) General damages.

d) Costs of the suit.

Plaintiff's Case;

2. The plaintiff stated that the WANJA MUCHIGA, who is since deceased (hereinafter referred to as the 'deceased'), was the registered and beneficial proprietor of all that parcel of land known as L.R. No. **KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)1751** measuring approx. 4.21Ha. That the defendants herein are the sons of the deceased.
3. It is the plaintiff's claim that vide a sale agreement dated 17.07.2018, the deceased as the registered owner and the defendants as the beneficial owners, agreed to sell to it a portion of land parcel measuring 5 Acres, to be excised from **KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)1751** at a consideration price of Kshs. 32,500,000/=
4. That upon execution of the sale agreement, the deceased and the defendants granted the plaintiff vacant possession of the purchased portion and subsequently subdivided the land parcel to give rise to L.R. No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2062 measuring 5 Acres which was transferred to the plaintiff (hereinafter referred to as the 'suit land')

5. The plaintiff avers that the entire agreed consideration price was paid in full to the deceased and the defendants as agreed in the sale agreement.
6. That upon the transfer of the suit land in its favor, the plaintiff went on to subdivide the suit land to KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)/2118 - 2156 with a view to transferring the resultant 39 parcels to its members.
7. It is the plaintiff's claim that on or about 07.08.2020, after the death of Wanja Muchiga, the defendants illegally and fraudulently registered a caution on the suit land as subdivided to **KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2118 - 2156**, thus hindering the plaintiff's plan of transferring the suit parcels to its members. The plaintiff outlined the particulars of illegality and fraud on the part of the defendants.
8. The plaintiff however contends that it has been in actual possession and occupation of the suit land and urged the court to allow its claim and grant the orders sought.

Defendants' Case;

9. The plaintiff's case was opposed. The Defendants filed a Statement of Defence and Counter-claim dated 22.12.2020 in response to the averments made in the plaint.

10. They admitted having entered into an agreement for sale of the suit land with the plaintiff, over a portion measuring 5 Acres at a consideration price of Kshs. 32,000,000/=.
11. They also admitted having granted the plaintiff vacant possession of the portion sold upon execution of the sale agreement save for transferring the suit land in its favor. They averred that the plaintiff illegally effected the transfer of the suit land after the death of the registered proprietor.
12. They denied receiving the payment of the entire/full agreed purchase price as alleged by the plaintiff and stated that the plaintiff only paid a total of Kshs. 22,500,000/= paid as deposit leaving an outstanding balance of Kshs. 10,000,000/= which remains unpaid to date.
13. They further denied the allegations that the registration of the caution over the suit land was done fraudulently and put the plaintiff to strict proof thereof and denied the particulars of illegalities and fraud outlined thereon.
14. They maintained that that the registration of caution on the suit land was done legally due to non-compliance with the terms of the sale agreement on the part of the plaintiff.
15. In conclusion, the urged the court to dismiss the plaintiff's suit with costs.
16. They also filed a Counter-claim dated 22.12.2020 against the plaintiff, wherein they sought the following orders: -
 - a) An order of specific performance of the sale agreement dated 17.07.2018.

- b) Payment of the balance of the purchase price of Kshs. 10,000,000/=
 - c) In the alternative to (a) and (b) above, a declaration that the transfer of title No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2062 from Wanja Muchiga (deceased) to Njiwa Housing Co-operative Society Limited is null and void.
 - d) An order cancelling entry No. 4 in the land's register of Title No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2062.
 - e) Costs of this suit.
 - f) Interest on (b) and (e) above at commercial rates until payment in full.
 - g) Any such further or other relief as this Honourable Court may deem fit and just to grant.
17. In their counter-claim, the defendants/counter-claimers stated that at all material times relevant to the suit, they were/are the beneficiaries of the estate of the late Wanja Muchiga, who was the previous registered owner of the land parcel known as **KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)1751**.
18. That vide the sale agreement dated 17.07.2018, they agreed to sell and the plaintiff (defendant in the counter-claim) agreed to purchase the suit property at a consideration price of Kshs. 32,500,000/=
19. It is their contention that in compliance with the sale agreement, the plaintiff paid a deposit of Kshs. 22,500,000/=

- leaving a balance of Kshs. 10,000,000/=, which amount was to be paid on or before a period of 90 days, which was the completion date, from the date of the sale agreement, after survey and transfer of the suit property to the purchaser.
20. They added that the purchase price was to be paid into the defendant's joint bank account No. 01109686128700 held at Co-operative Bank of Kenya.
 21. It is their claim that the plaintiff proceeded to illegally effect the transfer of the suit land to itself sometimes on 27.09.2019 upon the death of the registered owner.
 22. That after the discovery of the said transfer entry, they issued the plaintiff with a 21 days' notice as per the provisions of clause 9 of the sale agreement. That the completion notice dated 14.09.2020 was subsequently served upon the plaintiff but the same is yet to be honored despite the 21 days period lapsing.
 23. They thus maintained that the transfer effected in favor of the plaintiff is void and the said entry ought to be nullified and cancelled.
 24. That as a result of the plaintiff's failure to pay the balance of the purchase price amounting to Kshs. 10,000,000/=, they registered a caution on the suit land and to stop the illegal transfer process.
 25. It is therefore their claim that the failure by the plaintiff to honor its obligations under the sale agreement dated

- 17.07.2018 amounts to breach of contract. They outlined the particulars of breach thereof.
26. In conclusion, they urged the court to dismiss the plaintiff's suit with costs and to enter judgment in their favor as per the counter-claim.
 27. In response to the Defence and Counter-claim, the plaintiff filed a Reply to Defence and Defence to Counter-claim dated 14.01.2021.
 28. In the reply to defence, the plaintiff reiterated the contents of paragraphs 6 and 7 of the plaint on the full and final payment of the agreed purchase price and subsequent transfer of the suit land in its favor.
 29. The plaintiff further maintained that the caution was fraudulently registered against the title of the suit land and added that the said registration was unwarranted since both sides had completed their obligation under the sale agreement dated 07.07.2018 and thus put the defendants to strict proof to the contrary.
 30. In its defence to counter-claim, the plaintiff (defendant in the counter-claim) reiterated paragraphs 1-5 of its reply to defence. It also admitted the contents of paragraphs 14, 15 and 16 of the counter-claim.
 31. In response to paragraph 17 of the counter-claim on the payment of the purchase price, the plaintiff maintained that the total amount that was paid is Kshs. 32,500,000/= as

- mutually agreed in the sale agreement and put the defendants to strict proof to the contrary.
32. In response to paragraph 18 of the counter-claim, the plaintiff stated that on 17.17.2018, the defendants alongside their mother Wanja Muchiga (since deceased) initially provided a joint Co-operative Bank Account 1109686128700, to which part of the consideration price was paid and receipt duly acknowledged.
 33. That vide their authority letter dated 10.09.2019, the defendants acknowledged that the balance owing was Kshs. 3,500,000/= and which they gave fresh authority in writing that the same be paid to their other Co-operative Bank Account Number 01192880805600. It is its claim that they complied and paid the said amount of Kshs. 3,500,000/= vide RTGS dated 17.09.2019 to the said account as directed and in effect completing the transaction.
 34. The plaintiff denied the allegations that it fraudulently transferred the suit land in its favor and put the defendants to strict proof thereof.
 35. With regards to the 21 days' completion notice, the plaintiff averred that the said notice was superfluous, dishonest and unnecessary since it had already paid the purchase price in full. The plaintiff also denied the contents of paragraph 22,23,24 and 26 of the counter-claim and put the counter-claimers to strict proof thereof.

36. In conclusion, the plaintiff dismissed the counter-claim as being vexatious, scandalous and urged the court to dismiss the same with costs and enter judgment as sought in the plaint.

Trial

37. The Plaintiff's case proceeded for hearing on 26.02.2024, Mr. Elijah Monturi Muriungi, the Chief Executive Officer of the plaintiff company, testified as PW1 on behalf of the plaintiff and thereafter closed their case.

38. PW1 adopted his witness statement dated 16.11.2020 as his evidence in chief.

39. He also produced the documents in their list of documents as plaintiff's exhibits marked as **Pexhibits 1 - 10** respectively in support of their case as follows: -

- i. Title deed of the suit land - **Pexh. 1***
- ii. Certificate of Official Search for the suit land - **Pexh. 2***
- iii. Agreement for Sale dated 17.07.2018 - **Pexh. 3***
- iv. Authorization to pay money dated 17.07.2018 - **Pexh. 4***
- v. 1st Installment Acknowledgment receipt dated 20.07.2018 for Kshs. 20,000,000/= - **Pexh. 5***
- vi. 2nd Installment RTGS payment dated 04.04.2019 for Kshs. 4,000,000/= - **Pexh. 6***

- vii. *3rd Installment RTGS payment dated 07.05.2019 for Kshs. 5,000,000/= - Pexh. 7*
 - viii. *Defendants' letter dated 10.09.2019 authorizing payment of the balance of Kshs. 3,500,000/= - Pexh. 8*
 - ix. *4th and final Installment RTGS payment dated 17.09.2019 for Kshs. 3,500,000/= - Pexh. 9*
 - x. *Certificates of official searches for L.R. Nos KAPTAGAT/ KAPTAGAT BLOCK1 (UASIN GISHU)/2118 - 2156. - Pexh. 10.*
40. It was further his testimony that they paid the entire consideration price. That they paid Kshs. 10,000,000/= in cash and an additional Kshs. 10,000,000/= was paid through RTGS. That the defendants thereafter duly acknowledged the payment of Kshs. 20,000,000/=.
41. He stated that the balance of the purchase price was paid to the defendants after their mother's death. That the defendants wrote a letter to the plaintiff, asking them to pay the final installment of Kshs. 3,500,000/= into an account which they had opened.
42. He maintained that the said balance was paid as requested and the defendants surrendered the original title and transfer. That the defendants' mother signed the application for consent of Land Control Board
43. It was also his testimony that upon the transfer of the suit land, they subdivided the suit land into 39 plots.

44. On cross-examination by Mr. Mogaka, he reiterated that the subject of the present suit was the parcel of land known as **KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2062** which they had purchased for Kshs. 32,500,000/=. That the first installment was Kshs. 10,000,000/= which was paid via RTGS on 17.7.2018 and receipt thereof acknowledged on 20.07.2018, the second installment of Kshs. 10,000,000/= was paid in cash and the same was to cater for those who were not signatories to the account where money was to be paid to.
45. He added that they also made a payment of Kshs. 4,000,000/= by way of RTGS and the final payment of Kshs. 3,500,000/= also paid by way of RTGS.
46. He conceded that they do not have an RTGS of Kshs. 10,000,000/= and further that they only have an acknowledgment of Kshs. 20,000,000/= dated 20.07.2018 and which was signed by four beneficiaries; Wanja Muchiga who imprinted her thumbprint, Joseph Gathaiya Mwangi, Bonface Mwangi and Anthony Nyaga Mwangi.
47. It was his testimony that they purchased a portion of 5 acres and that the suit land had not been transferred as at the time the transfer was effected.
48. He also stated that the caution against the suit land was registered on 07.08.2020. It was his claim that they transferred the purchase price to their advocate Mr. Atheru, who disbursed the money to the sellers and maintained that

there is evidence that the said money was transferred to their advocate.

49. He confirmed that the completion period was 90 days and admitted that the transaction took more than 90 days to complete.
50. When referred to Pexhibits 4 and 5, he stated that it was the vendors who asked that they pay in both cash and bank deposit.
51. On re-examination, it was his testimony that the Kshs. 10,000,000/= paid in cash was received by the vendors. That the vendors would not have asked for a balance of Kshs. 3,500,000/= if they had not received the Kshs. 10,000,000/= in cash.
52. When referred to the letter dated 10.09.2019, it was his testimony that it is the defendants who wrote the letter to the plaintiff.
53. It was also his testimony that they were not aware that Wanja Muchiga was dead as at the time they lodged the transfer documents at the Lands Registry.
54. He confirmed that the balance of the purchase price was to be paid within 3 months after survey and transfer of the land. He thus contended that they cleared the payment of the purchase price within 3 months after the completion documents were supplied to them.
55. It was his testimony that there was no complaint from the vendors at the time they were carrying out the subdivision.

56. The plaintiff thereafter closed their case.
57. The Defence case proceeded for hearing on 18.11.2025. Anthony Nyaga Mwangi, the 2nd defendant herein, testified as DW1. He adopted his witness statement dated 22.12.2020 and a supplementary statement dated 22.02.2024 as his evidence in chief.
58. He admitted that they sold the suit land to the plaintiff vide a sale agreement dated 17.07.2018, wherein 4 of them signed the agreement as vendors. It was his testimony that they were not represented by any advocate while the plaintiff/purchaser was represented by the firm of Thurania Atheru & Co. Advocates.
59. He stated that they do not know the firm of Mulondo Owuondo, Muriuki & Co. Advocates and that they never gave them any instructions to act for them in any transaction. He maintained that they signed the sale agreement but that they were never represented by an advocate.
60. That the suit land was originally registered in the name of their mother, who died on 05.06.2019, but that the suit land is currently in the name of the plaintiff, having been transferred illegally 3 months after the death of their mother.
61. He confirmed that the purchase price was Kshs. 32,500,000/=. That a sum of Kshs. 10,000,000/= was deposited on 19.07.2018 to account No. 01109686128700 at Co-operative Bank, Uganda Road Branch, Eldoret.

62. It was however his testimony that in the executed agreement, the deposit to be paid was supposed to be Kshs. 20,000,000/= which was never received. He stated that a sum of Kshs. 4,000,000/= paid in April 2019 as second installment and the 3rd installment was Kshs. 1,000,000/= paid on 07.05.2019. The 4th installment was Kshs. 3,500,000/= paid on 10.07.2019. He produced the bank statement as an exhibit.
63. He maintained that they were not given any money in cash and that even after the above-mentioned payments, a balance of Kshs. 10,000,000/=, which was to be paid as part of the deposit was still due and owing. That despite writing to the plaintiff and demanding for the said payment, the same has never been paid.
64. Further, he denied signing any acknowledgment stating that they received Kshs. 20,000,000/= or the document stating authorization to pay dated 17.07.2018. That no money was received in cash amounting to Kshs. 10,000,000/= neither did they sign any document thereto.
65. It was also his testimony that they did not sign the transfer documents and denied knowledge of the letter dated 10.09.2019.
66. In conclusion, he reiterated that the plaintiff still owes them and urged the court to dismiss the plaintiff's suit, annul the agreement with costs and interest.

67. On cross-examination by Mr. Atheru, he confirmed to have attended and signed the sale agreement on 17.07.2018. That his deceased mother and two brothers were also present. He confirmed that the signatures contained in the sale agreement belong to them and that the said agreement was signed in their home and that they read the agreement before signing.
68. He also confirmed that a representative of the plaintiff, one Elijah Muthuri was also present.
69. When referred to clause 5 of the sale agreement, he confirmed that the same indicated that the vendor's advocate was Mulondo, Oundo, Muriuki & Co. Advocates but maintained that the said firm was not present at the time the agreement was being signed neither was one Marete Mugambi Advocate present at the time.
70. He confirmed that the suit land was originally/previously registered in the sole name of their deceased mother and thus she was the only one who could transfer the suit land. That the sons of the deceased were just beneficiaries.
71. He denied knowledge that his late mother signed any transfer documents in respect to the suit land before her death. When referred to the letter of Authorization, he confirmed that the same stated that money was to be paid in their joint account and by cash.
72. The witness was also referred to the Acknowledgment receipt dated 20.07.2018 and he confirmed that the same is

signed by one Marete Mugambi Advocate and the same was for Kshs. 20,000,000/= . He further confirmed that the same showed that it was signed by the 4 of them although his mother's thumbprint could not be seen. He confirmed that the signature against his name is his.

73. He was referred to the RTGS dated 04.04.2019 and he confirmed that they acknowledged the receipt of the said amount. That they also acknowledged the receipt of the sum in the RTGS dated 07.05.2019.
74. When referred to the letter dated 10.09.2019, he confirmed that his signature was on the said letter but disowned the letter. He confirmed that the 1st defendant also signed the document but he could not confirm that the signature was indeed the 1st defendant's and stated that the same could have been forged.
75. He also confirmed to have received a sum of Kshs. 9,000,000/= in the RTGS dated 17.09.2019. It was his testimony that the Kshs. 3,500,000/= indicated in the letter dated 10.09.2019 was part of the amount paid on 17.09.2019 by way of RTGS.
76. He maintained that he is not aware of Pexhibits 4 and 5 and neither has he ever signed the same and only learnt about the same when the case was filed. That the documents never emanated from their side. He however conceded that he has never made any reports of forgery to the police.

77. In conclusion, he conceded that after the death of their mother, they have never instituted any succession proceedings in respect to her estate due to disagreements among the siblings and thus, he does not have any powers to make any claim on behalf of his late mother.
78. On re-examination, he confirmed that his family had agreed to sell the suit land for Kshs. 32,500,000/=. That the 1st installment paid to them was Kshs. 10,000,000/= instead of Kshs. 20,000,000/=. It was his testimony that no document has been provided to show that they received 20 million. That in their account, they received Kshs. 10,000,000/= less the transaction costs.
79. He reiterated that the 1st installment they received was Kshs. 10,000,000/=, then Kshs. 4,000,000 as 2nd installment, then Kshs. 5,000,000 and lastly Kshs. 3,500,000/=.
80. He confirmed that succession has not been instituted in respect to her late mother's estate.
81. He maintained that they have never received the sum of Kshs. 20,000,000/= as alleged in the Acknowledgment receipt dated 20.07.2018.
82. In conclusion, he reiterated that the plaintiff still owes them a sum of Kshs. 10,000,000/=
83. The defendants thereafter closed their case.
84. Upon close of the defence case, the court issued directions on the filing of final written submissions. On a perusal of the court record, the plaintiff has filed his submissions on

18.12.2025 together with authorities while the defendants filed their submissions dated 2.2.2026 together with authorities, which I have read and considered.

Analysis and Determination:

85. I have carefully considered and reviewed pleadings filed herein, the testimony in court together with the respective exhibits produced by the parties as well as the submissions in totality and it is my considered opinion that the following issues arise for determination: -

- a. *Whether the plaintiff was/is in breach of the sale agreement dated 17.07.2018.*
- b. *Who is the actual, bonafide, beneficial and registered proprietor of the suit land.*
- c. *Whether the plaintiff is entitled to the reliefs sought in the plaint.*
- d. *Whether the defendants are entitled to the reliefs sought in the counter-claim.*
- e. *Who shall bear the costs of the suit and the Counter-claim.*

Whether the plaintiff was/is in breach of the sale agreement dated 17.07.2018;

86. The first issue herein seeks to determine whether the plaintiff was in breach of the terms of the sale agreement

- dated 17.07.2018, particularly on the issue of payment of the entire purchase price.
87. The plaintiff has maintained that they paid the full purchase price amounting to Kshs. 32,500,000/= as agreed in the sale agreement. That the said payment was done in 4 installments whose receipt was duly acknowledged. PW1 adduced Pexh.5, 6,7 and 9 respectively in support of the plaintiff's claim that the purchase price was paid in full.
 88. The defendants on the other hand, in their defence, counter-claim and testimony in court through DW1, maintained that the plaintiff failed to pay the agreed consideration price in full and a balance of Kshs. 10,000,000/= is still outstanding despite the completion period having lapsed. They thus contend that the said failure to finalize the payment of the consideration price amounts to a breach of the sale agreement on the part of the plaintiff.
 89. It is common ground that the parties herein entered into an agreement for sale of the suit land measuring approximately 5 acres dated 17.07.2018, at an agreed consideration price of Kshs. 32,500,000/=. The terms of the said agreement are also not contested.
 90. What however appears to be in dispute and is at the centre of the present suit is the payment of the said consideration price of Kshs. 32,500,000/=.
 91. I have carefully considered the rival position taken by the parties herein, the testimonies of the PW1 and DW1 as well

as the exhibits adduced in determining whether the full purchase price was indeed paid or not.

92. As stated hereinabove, PW1 demonstrated the payment of the entire purchase price in 4 installments as follows: -

1st Instalment and/or deposit - Kshs. 20,000,000/=

2nd Installment - Kshs. 5,000,000/=

3rd Installment - Kshs. 4,000,000/=

4th and final Instalment - Kshs. 3,500,000/=

93. In support of the said averments, PW1 produced Pexh. 5, 6, 7 and 9 respectively. The said exhibits remained uncontroverted as the defendants did not produce any contrary exhibit.

94. DW1 in his testimony duly acknowledged receipt of the payments made in the 2nd, 3rd and 4th installments. He however maintained that the payment made as deposit was Kshs. 10,000,000/= and not Kshs. 20,000,000 as alleged.

95. From the above, the issue of payments appears to be on the amount received as deposit. While the plaintiff contends that it paid a sum of Kshs. 20,000,000/- as deposit, the defendants aver that they only received Kshs. 10,000,000/= as deposit.

96. The plaintiff produced a copy of the Authorization to make payment as Pexh. 4 and a duly signed Acknowledgment receipt dated 20.07.2018 for Kshs. 20,000,000/= as Pexh. 5 to prove the amounts paid as deposit.

97. I have critically perused the said pexh. 4 and 5. Pexh. 4 clearly states at the end and/or authorizes the payment of the purchase price into the Defendants joint account, held at Co-operative Bank and other monies to be paid in cash. It is the plaintiff's claim that the deposit was paid as follows; Kshs. 10,000,000/= was paid into the defendant's joint account as provided while the remaining Kshs. 10,000,000/= was paid in cash as duly authorized.
98. Pexh. 5 on the other hand, is an Acknowledgment Receipt dated 20.07.2018 which is a confirmation that the defendants as well as their deceased mother and brother Boniface Mwangi, duly received Kshs. 20,000,000/= from the firm of Thurania Atheru & Co. Advocates. From a cursory look at pexh. 5, the same bears the signatures of the defendants.
99. On cross - examination, when referred to pexh. 4 and 5, DW1 admitted that the signature contained in the said documents belong to him. He also confirmed that he read the said documents before appending his signature. Although he denied knowledge or signing the said documents, no proof was adduced to support his allegations of forgery.
100. The Evidence Act is clear on the fact that he who alleges must prove. The onus was on DW1 to prove that the signature contained on pexh. 4, 5 and 8 were a forgery. It is not enough for him to merely admit that the signature

belongs to him and at the same time claim that the said signature was a forgery without any proof of such claims. DW1 cannot approbate and reprobate.

101. Thus, in view of the foregoing, it is my considered opinion that the purchase price of Kshs. 32,500,000/= was paid and fully settled as agreed in the sale agreement (pexh. 3).
102. Consequently, it is my considered opinion that the plaintiff was/is not in breach of the sale agreement dated 17.07.2018.

Who is the actual, bonafide, beneficial and registered proprietor of the suit land;

103. The second issue seeks to determine who is the actual, beneficial and registered proprietor of the suit land herein.
104. It is the plaintiff's claim that Wanja Muchiga (who is since deceased) was the previous registered proprietor of the parcel of land known as Kaptagat/ Kaptagat Block 1 (Uasin Gishu)/ 1751. That the said Wanja duly presented duly signed but undated transfer form with their advocate. Subsequently, upon the full and final payment of the purchase price, they lodged the said documents for purposes of effecting transfer of the 5 acres portion to be excised from the parcel No. 1751.
105. On cross-examination, PW1 stated that at the time of lodging the necessary documents for purposes of transfer at the

lands' office, they were not aware that the said Wanja had already died.

106. From a look at clause 8 of the sale agreement on the completion, among the documents outlined to be handed over to the purchaser (plaintiff) by the vendor forthwith is undated but duly executed transfer forms. This clause corroborates the plaintiff's claim of transfer of the suit land in its favor.
107. The defendants on the other hand averred that the transfer of the suit land was fraudulent and illegal. They did not however produce any evidence in support of the said claims of fraud and illegality. It is trite law that a claim based on fraud must be specifically pleaded and strictly proved. The defendants never proved fraud.
108. The plaintiff produced a copy of the title deed of the suit land as Pexh. 1. From a look at the same, Entry No. 4 and 5 entered on 27.09.2019 confirms the registration of the suit land in the name of the plaintiff and the issuance of the title deed thereto respectively.
109. The upshot of the above analysis is that the plaintiff is the actual, bonafide, beneficial and registered proprietor of the suit land herein and is therefore entitled to exclusive rights and interests accruing thereto to the exclusion of everyone one else including the defendants.

Whether the plaintiff is entitled to the reliefs sought in the plaint;

110. The plaintiff in their plaint sought orders of permanent injunction, an order directing the removal of the cautions or any other restrictions lodged against the title of the suit land and/or its resultant subdivisions Nos. 2118 - 2156. They also sought general damages as well as costs of the suit.
111. In light of the finding in issue no. (i) and (ii) above, it is the finding of this court that the plaintiff is entitled to the order of permanent injunction as well as the removal of the caution lodged by the defendants over the suit land.
112. Section 73(1) of the Land Registration Act empowers the court to issue an order for the removal of the caution registered against a parcel of land. This court finds no reasonable cause to have the caution lodged by the defendants sustained and hereby directs that the said caution be removed forthwith.
113. On the issue of general damages, section 75 of the Land Registration Act provides for compensation on account of wrongful cautions. The section provides as follows: -
- “Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has sustained damage, to pay compensation to such person.”***
114. I therefore find that the plaintiff is entitled to an award of general damages as sought.

Whether the defendants are entitled to the reliefs sought in the counter-claim;

115. The defendants filed a counter-claim seeking orders of specific performance of the sale agreement dated 17.07.2018, payment of the balance of the purchase price of Kshs. 10,000,000/=, a declaration that the transfer of the suit land in favor of the plaintiff was null and void, cancellation of the entry no. 4 in the land register of the title of the suit land as well as costs of the suit.
116. The issue on payment of the purchase price and the transfer of the suit land and registration of the same in the name of the plaintiff has been dealt with extensively hereinabove and I do not wish to reiterate the same.
117. Accordingly, considering the findings in issues nos. (i), (ii) and (iii) above, it is the finding of this court that the defendants are not entitled to the orders sought in the counter-claim. The defendants have failed to sufficiently prove their claim to warrant the cancellation of the plaintiff's title as sought.
118. The grounds of cancellation of title are well settled and are provided under section 26 (1) (a) and (b) of the Land Registration Act. The said section provides as follows: -

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

proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

119. The defendants did not prove the grounds outlined above of fraud, misrepresentation, illegality or unprocedurally. The law is clear that he who alleges must prove. Having raised the said issues in their counter-claim, they had a duty of proving the same to the required standard and to the satisfaction of the court. This was not done.
120. As a result, therefore, this court finds that the counter-claim is not merited and consequently, the defendants are not entitled to the orders sought therein.

Who shall bear the costs of the suit and the Counter-claim

121. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.
122. In this case, having held that the Plaintiff has sufficiently proved its case against the Defendants on a balance of

probabilities, and successfully defended the counter-claim against it, it is the finding of this court that the plaintiff is entitled to costs of the suit as well as the costs of defending the counter-claim.

CONCLUSION:

123. The upshot of the above is that the Plaintiff's claim against the defendants is merited and is accordingly allowed on the following terms: -

a) An order be and is hereby issued removing the cautions or any other restrictions placed on L.R. No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2062 or its subdivisions L.R. No. KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2118 - 2156.

b) An order of permanent injunction be and is hereby issued against the defendants, their agents, servants, assigns, employees, family members, or anybody else acting at their behest, restraining them from entering, trespassing, grazing, remaining, cultivating, cutting crops, dealing with or in any other manner interfering with the plaintiff, plaintiff's members and/or agents in enjoyment of KAPTAGAT/KAPTAGAT BLOCK 1 (UASIN GISHU)2118 - 2156.

c) General damages of Kshs. 200,000/=

d)The Counter-claim by the Defendant dated 22.12.2020 be and is hereby dismissed.

e)Costs of the suit and the counter-claim be borne by the defendants.

124. It is so ordered.

DATED, SIGNED and DELIVERED in open court at **ELDORET** on **26TH** day of **FEBRUARY, 2026.**

**HON. C. K. YANO
JUDGE**

In the virtual presence of; -

Mr. Atheru for the Plaintiff.

Mr. Mogaka for the Defendants.

Court Assistant - Laban