

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELCC NO. E001 OF 2024
(FORMERLY NAKURU ELC CASE NO. 45A OF 2019)

CHARLES NJIHIA NGANGA.....PLAINTIFF

VERSUS

JOSEPH KIMANI GITARA/PETER NJONJO GATHONI.....1ST DEFENDANT

BETH WANGARI KAHURIA.....2ND
DEFENDANT

NJENGA MUNIU/MAMA PETER.....3RD
DEFENDANT

HEZEKIAH NJUGUNA IRAYA.....4TH
DEFENDANT

JECINTA WAITHIRA KAMAU/MR. WAIRUBI.....5TH
DEFENDANT

EMILLY NYAMBURA KAIRU/MR NG'ANG'A.....6TH
DEFENDANT

JOSEPH LUKA MBUGUA KAMAMA.....7TH
DEFENDANT

MACHARIA HIRAM MWANGI.....8TH
DEFENDANT

NGANGA MATU/JOHN GICHURU MWANGI.....9TH
DEFENDANT

SAMMY NJIRI GITOGO.....10TH
DEFENDANT

ALICE MIHIOKO KIMANI.....11TH
DEFENDANT

WILFRED NGANGA KAMAU/MS. NJERI.....12TH
DEFENDANT

REUBEN KARIUKI WANJIRU.....	13TH
DEFENDANT	
GATUNA KUNGU.....	14TH
DEFENDANT	
JOHN RUIRU MUCHIRI.....	15TH
DEFENDANT	
TABITHA NJERI MICHORE/MR. WAIRUBI.....	16TH
DEFENDANT	
ANDREW GICHUKI CHEGE/BABA NJERI.....	17TH
DEFENDANT	
JOHN MWANGI KAHUNGURA/MR. KAMAU.....	18TH
DEFENDANT	
KIMANI NDIRANGU/MR. NGANGA.....	19TH
DEFENDANT	
DAVID KAMWEA NGANGA/MR. WAMWEA.....	20TH
DEFENDANT	
PERPETUAH TUTA KAMAU.....	21ST
DEFENDANT	
DAVID N. KARURU/ MR. ISOE.....	22ND
DEFENDANT	
LAND REGISTRAR NAKURU.....	23RD
DEFENDANT	
TAYARI FARMERS COMPANY LIMITED.....	24TH
DEFENDANT	

JUDGEMENT.

INTRODUCTION.

1. The Plaintiff commenced the present proceedings vide the
Plaint dated 14th May, 2019 which Plaint was amended on
21st April, 2021.

2. In the Amended Complaint the Plaintiff avers that he is a shareholder of Tayari Farmers Company Limited.
3. The Plaintiff also avers that Tayari Farmers Company Limited was registered as a land buying company on 4th September, 1974 and adds that it had 473 shareholders who owned a total of 619 shares.
4. The Plaintiff further avers that each share was equivalent to one *shamba* plot of 1.5 acres and one small plot of 50 x 100 feet.
5. It is his averment that each member of Tayari Farmers Company Limited paid Kshs. 11,000 to acquire one share.
6. It is also his averment that in the year 1984, he paid Kshs. 11,000/= and he was allocated one share of *shamba* plot No. 623 and a small plot No. 153.

- 7.** It is further his averment that he took possession of plot No. 623 and constructed a house made of timber.
- 8.** He avers that in the year 2001, a group of people violently invaded Plot No. 623, destroyed his Kei Apple fence and the crops he had planted.
- 9.** He also avers that the said group of people destroyed the temporary structure he had constructed and evicted his employees.
- 10.** He further avers that he reported the matter to the then Nakuru District Commissioner who instructed the OCPD Molo to arrest and prosecute the invaders.
- 11.** It is his averment that he was not able to get the identities of the persons who had invaded his parcel of land and therefore the matter stalled.
- 12.** It is also his averment that thereafter he was unable to do any farming activities on plot No. 623 as every time he

planted crops, they were stolen and/or destroyed by unknown persons which led to losses.

- 13.** It is further his averment that this was the situation until the years 2012/2013 when an office of the Chief was established nearby and the *Nyumba Kumi* security initiative started by the government.
- 14.** He avers that after the enactment of the Land Act 2012, he decided to check the status of Plot No. 623 at the Lands Office.
- 15.** He also avers that he shockingly discovered that Plot No. 623 had been illegally and fraudulently subdivided into 26 plots. The plots are registered in the names of the 1st to 22nd Defendants.
- 16.** The Plaintiff sets out particulars of fraud and states that the 26 plots are registered as;

***a. Mau Summit/Molo, Block 7/1529
(Tayari) - Sammy Njiri Gitogo.***

- b. Mau Summit/Molo, Block 7/1530 (Tayari) - Sammy Njiri Gitogo**
- c. Mau Summit/Molo, Block 7/1531 (Tayari) - Joseph Kimani Gitara.**
- d. Mau Summit/Molo, Block 7/1532 (Tayari) - Beth Wangari Kahuria**
- e. Mau Summit/Molo, Block 7/1533 (Tayari) - Alice Mihioko Kimani.**
- f. Mau Summit/Molo, Block 7/1534 (Tayari) - Njenga Muniu**
- g. Mau Summit/Molo, Block 7/1535 (Tayari) - Wilfred Nganga Kamau**
- h. Mau Summit/Molo, Block 7/1536 (Tayari) - Reuben Kariuki Wanjiru.**
- i. Mau Summit/Molo, Block 7/1537 (Tayari) - Gatuna Kangu**
- j. Mau Summit/Molo, Block 7/1538 (Tayari) - John Ruiru Muchiri**
- k. Mau Summit/Molo, Block 7/1539 (Tayari) - Hezekiah Njuguna Iraya.**
- l. Mau Summit/Molo, Block 7/1540 (Tayari) - Jecinta Waithira Kamau.**
- m. Mau Summit/Molo, Block 7/1541 (Tayari) - Tabitha Njeri Michore**

- n. Mau Summit/Molo, Block 7/1542
(Tayari) - Has no registered owner.**
- o. Mau Summit/Molo, Block
7/1543 (Tayari) - Emily Nyambura Kairu**
- p. Mau Summit/Molo, Block 7/1544
(Tayari) - Andrew Gichuki Chege**
- q. Mau Summit/Molo, Block 7/1545
(Tayari) - Joseph Luka Mbugua Kamama**
- r. Mau Summit/Molo, Block 7/1546
(Tayari) - Has no registered owner.**
- s. Mau Summit/Molo, Block 7/1547
(Tayari) - John Mwangi Kahungura**
- t. Mau Summit/Molo, Block
7/1548 (Tayari) - Joseph Luka Mbugua
Kamama.**
- u. Mau Summit/Molo, Block 7/1549
(Tayari) - Kimani Ndirangu**
- v. Mau Summit/Molo, Block 7/1550
(Tayari) - David Kamwea Nganga**
- w. Mau Summit/Molo, Block 7/1551
(Tayari) - Perpetuah Tuta Kamau**
- x. Mau Summit/Molo, Block
7/1552 (Tayari) - Macharia Hiram
Mwangi**

**y. Mau Summit/Molo, Block
7/1553 (Tayari) - Nganga Matu/John
Gichuru Mwangi.**

**z. Mau Summit/Molo, Block 7/1554
(Tayari) - David N. Karuru**

- 17.** It is his averment that he issued the 1st to 22nd Defendants with three-month notices to vacate the said plot through the Chief and sub-chief of Tayari Location.
- 18.** It is also his averment that the 1st to 22nd Defendants have failed to vacate his parcel of land to date.
- 19.** It is further his averment that the subdivision of Plot No. 623 into twenty-six plots and the subsequent registration in the names of the 1st to 22nd Defendants was illegal, unlawful and fraudulent.
- 20.** He avers that the 1st to 22nd Defendants colluded with the 23rd and 24th Defendants to defraud him his property.

21. He also avers that there was a previous suit which was Nakuru PMCC No. 24 of 1990. The Plaintiff was **Tayari Farmers Limited vs Charles Njihia Nganga**. He further avers that the said suit was abandoned.

22. The Plaintiff prays for judgement against the Defendants for;

a. An order declaring that all the undermentioned 26 plots are superimposed on my shamba (sic) No. 623 as per the Olweny & Associates Surveyors Map and are hereby cancelled.

1) Mau Summit/Molo, Block 7/1529

2) Mau Summit/Molo, Block 7/1530

3) Mau Summit/Molo, Block 7/1531

4) Mau Summit/Molo, Block 7/1532

5) Mau Summit/Molo, Block 7/1533

6) Mau Summit/Molo, Block 7/1534

7) Mau Summit/Molo, Block 7/1535

8) Mau Summit/Molo, Block 7/1536

9) Mau Summit/Molo, Block 7/1537

***10) Mau Summit/Molo, Block
7/1538***

***11) Mau Summit/Molo, Block
7/1539***

- 12) **Mau Summit/Molo, Block**
7/1540
- 13) **Mau Summit/Molo, Block**
7/1541
- 14) **Mau Summit/Molo, Block**
7/1542
- 15) **Mau Summit/Molo, Block**
7/1543
- 16) **Mau Summit/Molo, Block**
7/1544
- 17) **Mau Summit/Molo, Block**
7/1545
- 18) **Mau Summit/Molo, Block**
7/1546
- 19) **Mau Summit/Molo, Block**
7/1547
- 20) **Mau Summit/Molo, Block**
7/1548
- 21) **Mau Summit/Molo, Block**
7/1549
- 22) **Mau Summit/Molo, Block**
7/1550
- 23) **Mau Summit/Molo, Block**
7/1551
- 24) **Mau Summit/Molo, Block**
7/1552

**25) Mau Summit/Molo, Block
7/1553**

**26) Mau Summit/Molo, Block
7/1554**

**b. An order declaring the Plaintiff as the
rightful owner of shamba No. 623
measuring 1.5 acres and plot No. 153
measuring 50 * 100 feet as per the Olweny
& Associates map.**

**c. An order cancelling the registration of the
10th - 22nd Defendant (sic) by the 23rd and
24th Defendants as the owners of;-**

**i. Mau Summit/ Molo, Block 7/1529
(Tayari)- Sammy Njiri Gitogo**

**ii. Mau Summit/ Molo, Block 7/1533
(Tayari)- Alice Mihioko Kimani**

**I. Mau Summit/ Molo, Block
7/1535 (Tayari)- Wilfred
Nganga Kamau**

**II. Mau Summit/ Molo, Block
7/1536 (Tayari)- Reuben
Kariuki Wanjiru.**

**III. Mau Summit/ Molo, Block
7/1537 (Tayari)- Gatuna Kungu**

- IV. Mau Summit/ Molo, Block 7/1538 (Tayari)- John Ruiru Muchiri**
- V. Mau Summit/ Molo, Block 7/1541 (Tayari)- Tabitha Njeri Michore**
- VI. Mau Summit/ Molo, Block 7/1544 (Tayari)- Andrew Gichuki Chege**
- VII. Mau Summit/ Molo, Block 7/1547 (Tayari)- John Mwangi Kahungura**
- VIII. Mau Summit/ Molo, Block 7/1549 (Tayari)- Kimani Ndirangu**
- IX. Mau Summit/ Molo, Block 7/1550 (Tayari)-David Kamwea Nganga**
- X. Mau Summit/ Molo, Block 7/1551 (Tayari)- Perpetuah Tuta Kamau**
- XI. Mau Summit/ Molo, Block 7/1554 (Tayari)- David N. Karuru**

d. An order cancelling Title No's;-

**a. Mau Summit/Molo Block
7/1530 (Tayari) - Sammy
Njiri Gitogo**

**b. Mau Summit/Molo Block
7/1531 (Tayari) - Joseph
Kimani Gitara**

**c. Mau Summit/Molo Block
7/1532 (Tayari) - Beth
Wangari Kahuria**

**d. Mau Summit/Molo Block
7/1534 (Tayari) - Njenga
Muniu**

**e. Mau Summit/Molo Block
7/1539 (Tayari)- Hezekiah
Njuguna Iraya.**

**f. Mau Summit/Molo Block
7/1540 (Tayari)-Jecinta
Waithira Kamau.**

**g. Mau Summit/Molo Block
7/1543 (Tayari) - Emilly
Nyambura Kairu**

**h. Mau Summit/Molo Block
7/1545 (Tayari)-Joseph Luka
Mbugua Kamama**

i. Mau Summit/Molo Block 7/1548 (Tayari)- Joseph Luka Mbugua Kamama

j. Mau Summit/Molo Block 7/1552 (Tayari) - Macharia Hiram Mwangi

k. Mau Summit/Molo Block 7/1553 (Tayari)-Nganga Matu/John Gichuru Mwangi

e. An order for eviction of the defendants or their agents or servants from the suit property and removal of their structures.

f. A permanent injunction restraining the defendants from selling, alienating or in any other manner interfering with the plaintiff's peaceful possession, occupation, ownership and enjoyment of his Plot No. 623.

g. Compensation for the non use of the shamba from January 2018 up to the time of determination of this suit at a rate of kshs. 100,000 per year

h. Costs and interests.

- 23.** The 1st to 22nd Defendants filed their Statement of Defence dated 12th March, 2020 and it was amended on 2nd November, 2021.
- 24.** They admit that the 24th Defendant is a registered land buying company that has 473 shareholders who hold 619 shares.
- 25.** The 1st to 22nd Defendants also admit that the value of one share was kshs. 11,000/= and a shareholder could only be allocated a plot upon payment of the said sum.
- 26.** The 1st to 22nd Defendants deny the other averments in the Amended plaint and state that the Plaintiff's suit is misconceived and fatally defective.
- 27.** They also state that the Plaintiff is raising a claim over Plot No. 623 which does not exist.

- 28.** They further state that they are members of Tayari Farmers Company Limited and they were given the suit parcels of land upon payment of Kshs. 11,000/= each.
- 29.** The 1st to 22nd Defendants state that they are the registered owners of the suit parcels of land and deny that they acquired them fraudulently.
- 30.** The 1st to 22nd Defendants also state that the present suit is *res judicata* as there were similar suits that had been filed previously. The said suits are Nakuru CMCC No. 516 of 2001, Nakuru HC 478 of 1998, Nairobi HCC No. 321 of 1990 and Nakuru SPM CC No. 24 of 1990.
- 31.** The 1st to 22nd Defendants further state that Nakuru SPM CC No. 24 of 1990 was conclusively determined.
- 32.** The 1st to 22nd Defendants seek that the Plaintiff's suit be dismissed with costs.

- 33.** The 23rd Defendant filed his statement of defence dated 1st August, 2019. He denies the averments in the Plaint and seeks that the Plaintiff's suit be dismissed with costs.
- 34.** The 24th Defendant filed its Statement of Defence dated 20th May, 2022.
- 35.** The 24th Defendant states that it issued 628 shares upon each shareholder paying Kshs. 11,000/=.
- 36.** The 24th Defendant also states that the Plaintiff acquired his shares in two phases. In phase one, the Plaintiff was allotted Plot No. 256 and 399 which measured 1.5 acres each. He was also allotted Plot No. 1741.
- 37.** The 24th Defendant also states that under Phase 2, the Plaintiff was allotted two plots that measured 50 x 100 feet.
- 38.** The 24th Defendant further states that the Plaintiff was not allotted Plot No. 623.

- 39.** The 24th Defendant further states that he assumed office (sic) on 12th November, 1988 after the company's parcel of land was subdivided by Muritu Surveyors.
- 40.** The 24th Defendant states that Plot No. 623 was set aside for a public water tank.
- 41.** The 24th Defendant also states that the Plaintiff illegally acquired plot No. 623 when he was serving as a member of the Probe Committee. On 24th November, 1988, the probe committee handed over the assets of the company to the new leadership that was appointed at that time.
- 42.** The 24th Defendant further states that Plot No. 623 is public property that has a water tank on it and that the Plaintiff never objected to the developments made thereon.
- 43.** The 24th Defendant prays that the Plaintiff's suit be dismissed with costs.

FACTUAL BACKGROUND.

- 44.** This suit was filed in the Nakuru Environment and Land Court on 15th May, 2019 and hearing commenced on 8th December, 2021.
- 45.** On 11th December, 2023 the Judge who had commenced the hearing was transferred to Kericho Environment and Land Court
- 46.** As at the time of transfer, the Plaintiff and his five witnesses, the 1st to 22nd Defendant's witness and the 23rd Defendant's witness had testified.
- 47.** The Plaintiff filed the application dated 4th June, 2024 to the Presiding Judge to have the file transferred to Kericho so that the trial could be concluded. The application was allowed on 11th January, 2024.
- 48.** This background is useful in explaining how the Environment and Land court in Kericho assumed jurisdiction to determine this suit.

49. It is also worth mentioning that the Plaintiff in this suit was self- representing.

THE PLAINTIFF'S EVIDENCE.

50. Charles Njihia testified as **PW1**. In his opening statement, he stated that he would be calling four witnesses and that his evidence was in five parts as follows:

a. The history of Tayari Farmers Company Limited.

b. Survey of the farm by Olweny & Associates.

c. Payment by shareholders.

d. Balloting and settlement.

e. The genesis of the trouble and why he was in Court.

51. PW1 stated that he had filed a witness statement and prayed that the Court adopts the said witness statement as part of his evidence-in-chief which prayer the Court acceded to.

52. On part one of his evidence, he testified that the 24th Defendant was registered as a land buying company in the year 1974. He produced a copy of the Certificate of Incorporation of Tayari Farmers Company Limited as **Exhibit P1.**

53. He also testified that the company issued 619 shares with each share being the equivalent of 1 ½ acre parcel of land and a plot measuring 50 x 100 feet. He added that each shareholder paid Kshs. 11,000/= for their shares and produced copies of receipts of shares as **Exhibit P2.**

54. He further testified that the 24th Defendant had three parcels of land. They were land parcel No's 535, 10363 and 10364. The said parcels of land constituted the 24th Defendant's farm which measured 1174 acres.

55. It was his evidence that the said farm used to be known as Denisar Estates.

56. It was also his evidence that the 24th Defendant constituted of squatters who were living on the farm and who wanted to purchase it.

57. It was further his evidence that his parents were former squatters on the said farm.

58. He testified that the negotiations to purchase the suit parcel of land commenced but they broke down in the year 1975.

59. He also testified that the owner of the said farm, that is Denisar Estate filed Nakuru HC Case No. 288 of 1975. The Court delivered judgement in the Estate's favour as follows;

“The owner was to be paid Kshs. 3,600,000/= for the land and Kshs.1,900,000/= for compensation for livestock and pyrethrum.”

60. It was also his evidence that the shareholders of the 24th Defendant were to therefore pay Kshs. 5,500,000/=.

- 61.** He further testified that on 28th February, 1983, the Directors of the 24th Defendant asked the shareholders to contribute the Kshs. 5,500,000/= so that it could be paid to Denisar Estate.
- 62.** It was his evidence that he had in Court a copy of the land sale agreement dated 10th May, 1983 entered between Tayari Farmers and Denisar Estate. He produced a copy of the said land sale agreement as **Exhibit P3**.
- 63.** It was also his evidence that after the agreement was signed, a meeting of the members of the 24th Defendant was called on 3rd June, 1983. In the said meeting, a few members were elected and given the mandate to collect the money that was to be paid for the farm.
- 64.** It was further his evidence that **Mwangi Wakabi** was elected as the Chairman, **Geoffrey Mbuthia** as Secretary and he was elected as treasurer.

- 65.** He testified that the District Officer Molo, recommended them as officials so that they could collect the money.
- 66.** He also testified that at that time, co-operatives were required to involve the government in their affairs. He produced the recommendation letters dated 14th June, 1993 and 28th June, 1983 as **Exhibit P4 (a) & (b)**.
- 67.** On part two of his evidence which was on the survey, he testified that he had a map that had been drawn by Olweny & Associates. It showed that Plot No. 623 measured 1 ½ acres while plot No. 153 was a small plot measuring 50 X 100. The map was marked as **MFI P5**.
- 68.** On part three of his evidence which was on the payment of the purchase price, he testified that they went to the bank and they were given three copies of banking slips.
- 69.** He also testified that the first banking slip was left at the bank, the second banking slip remained with the 24th Defendant while the third banking slip was retained by the

shareholder. Upon payment, the 24th Defendant would issue receipts.

- 70.** He further testified that that was how they were able to collect the money efficiently. In about two years, they were able to pay for the farm. He produced an analysis of receipts of payment marked as A3 and A4 in his bundle of documents as **Exhibit P6 (a) and (b)**.
- 71.** On part four of his evidence which was on balloting and settlement, he testified that after payment, shareholders were allowed to take ballots for their *shamba* plots and residential plots.
- 72.** It was his evidence that members of the 24th Defendant were settled as per the survey map that had been marked as **MFI P5**.
- 73.** It was also his evidence that on 27th April, 1984, he balloted for his *shamba* plot and he was given Plot No. 623 and residential plot No. 153 as per **MFI P5**.

- 74.** On part 5 of his evidence, which was on why he was in Court, he testified that towards the end of the year 1988, they had finished paying for the farm.
- 75.** He also testified that the 24th Defendant was issued with a title deed on 16th December, 1985.
- 76.** He further testified that after balloting for their individual plots and *shambas*, the farm became private land. He reiterated that he was the owner of plot No. 623 and residential plot No. 153.
- 77.** It was his evidence that he put hedge around Plot No. 623, constructed a wooden house and then started cultivating the land.
- 78.** It was also his evidence that the 24th Defendant begun having issues after the year 1988.

- 79.** It was further his evidence that on 12th November, 1988 a meeting of the shareholders of the 24th Defendant was called.
- 80.** He testified that in the said meeting **Milton Kamau** was elected with the help of the then District Officer as Chairman of the 24th Defendant.
- 81.** He also testified that the only thing that was bringing people together was the mother title since each one of them had their individual plots.
- 82.** He further testified that the main issue in contention was the balance of Kshs. 1,100,000/= that had remained in the 24th Defendant's bank account after the payment of the purchase price to Denisar Estates.
- 83.** It was his evidence that the said amount of money was to be returned to the members of the 24th Defendant.

- 84.** It was also his evidence that documents were collected from **Mwangi Wokabi's** house.
- 85.** It was further his evidence that they were not worried about the money and the only problem was that the survey map marked as **MFI P5** was changed and/or interfered with.
- 86.** He reiterated that at that time, members of the 24th Defendant had settled on the suit parcel of land and they knew their plots and their *shambas*.
- 87.** He testified that parcel numbers were changed without the 24th Defendant's shareholders being informed and that his plot No. 153 was changed to 775.
- 88.** He also testified that 26 small plots were imposed on plot No. 623.
- 89.** He further testified that it was difficult to get documents from the Lands Office and when he was able to, he realized

that titles had already been issued to the owners of the small plots that had been imposed on his parcel of land.

- 90.** It was his evidence that the Land Registrar had a register when he was working with **Mr. Kamau**.
- 91.** It was also his evidence that the fraud related to the renaming of the plots. For instance, plot No. 153 became plot No. 775 and 26 plots measuring 70 X 30 were imposed on Plot No. 623.
- 92.** It was further his evidence that he wrote letters to the Land Registrar alleging fraud which letters he produced as **Exhibit P7 (a), (b), (c), (d) and (e)**. The letters were marked as B5, B8, B10, B12 and B13 in his bundle of documents.
- 93.** He also testified that he went to the Land Registry several times.

- 94.** He produced the document marked as B13 in his bundle of documents as **Exhibit P8 (a)**. He testified that the said document contained all the dates that he visited the Land Registry.
- 95.** He produced the document marked as B1 in his bundle of documents as **Exhibit P8 (b)**. It is a letter to the District Commissioner informing him that his (**PW1**) crops had been destroyed.
- 96.** He produced the document marked as B2 in his bundle of documents as **Exhibit P8(c)**. It is a letter written to the Land Registrar Nakuru seeking for permission to see some documents.
- 97.** He produced the document marked as B3 in his bundle of documents as **Exhibit P8 (d)**. It was a notice issued to 21 persons asking them to vacate his land.

98. He produced the document marked as B6 in his bundle of documents as **Exhibit P8 (e)**. It is a letter addressed to **Kamau Milton**.

99. He produced the document marked as B7 in his bundle of documents as **Exhibit P8 (f)**. It is a letter addressed to **Suguti** Land Registrar that was sent through Express Mail Service.

100. He produced the document marked as B9 in his bundle of documents as **Exhibit P8(g)**. It is a letter addressed to Suguti Land Registrar. It was sent through Express Mail Service.

101. He produced documents marked as B11 in his bundle of documents as **Exhibit P8 (h)**. They are a bundle of receipts issued for Express Mail Service.

102. He produced the document marked as B14 in his bundle of documents as **Exhibit P8 (i)**. It is was a letter from the Land Registrar.

103. He produced the documents marked as B4 in his bundle of documents as **Exhibit P8 (j)**. They are a bundle of receipts issued for Express Mail Service.

104. He testified that when a map is changed, the original map must be used as a reference point and explained that this fact of change to a new map facilitated fraud.

105. He also testified that he went to the Land Registrar and he gave him a list of the *fake owners* of land parcel No's 1529 to 1554 which were the plots that had been superimposed on his parcel of land. He produced the said list as **Exhibit P9**.

106. He further testified that the reason why he was in Court was because the Land Registrar did not have the correct records for Tayari Farmers Company Limited.

107. It was his evidence that from the documents produced by the Defendants, **Kamau** was masquerading as the Chairman of Tayari Farmers.

108. It was also his evidence that he was able to get the map of the Tayari Farm from the Survey Office.

109. It was further his evidence that people had been settled on his parcel of land and that he wanted the Court to declare that he was the owner of the said parcel of land.

110. He testified that he also wanted the land to be registered in his name, that the Defendants be removed from the land and that he be compensated.

111. PW1 also testified that he has a list of members of the 24th Defendant that was used when shares were being paid for. The list was marked as **MFI P10**. The list is marked as A2 in his bundle of documents.

112. He further testified that he has in Court a letter of Authority to hold an Annual General Meeting. The letter was marked as A8 in his bundle of documents and he produced it as **Exhibit P11.**

113. It was his evidence that the letter marked as A9 in his bundle of documents is dated 9th June, 1983 and it showed the list of the officials of the 24th Defendant. He produced a copy of the said letter as **Exhibit P12.**

114. It was also his evidence that the letter marked as A15 in his bundle of documents is a letter inviting members of the 24th Defendant for balloting and allocation of plots. He produced a copy of the said letter as **Exhibit P13.**

115. It was further his evidence that the document marked as A16 in his bundle of documents was the transfer from Denisar Estates to the 24th Defendant. The letter was produced as **Exhibit P14.**

116. He testified that the documents marked as C2-12 in his bundle of documents were Certificates of Official Search which showed the parcels of land that had been superimposed on Plot No. 623. He produced copies of the Certificates of Official Search as **Exhibit P15 (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j).**

117. He also testified that the document marked as C14 in his bundle of documents referred to a suit that had been filed by **Mr. Kamau** wherein he contended that Plot No. 623 belonged to the 24th Defendant.

118. He further testified that he did not appear in Court and because of the document marked as A5 in his bundle of documents, the said suit did not proceed. He produced the pleadings filed in Civil Case No. 1084 of 2009 as **Exhibit P16.**

119. It was his evidence that the document marked as A5 in his bundle of documents is a letter dated 13th August, 1991 addressed to **Kamau** which letter stated that the suit parcel

of land belonged to him. He produced a copy of the said letter as **Exhibit P17**.

120. In his witness statement dated 14th May, 2019, **PW1** states that on 28th February, 1983, the then directors of the 24th Defendant who were the late **Joseph Ngugi Kugwa** (Chairman), the late **Mbugua Karonga** (Treasurer) and **Samuel Kiberenge** (Secretary) agreed to pay the sum as ordered by the Court in HC Case No. 288 of 1975.

121. He also states that the said directors finalized their work and in an Annual General Meeting held on 3rd June, 1983, new directors were elected. They were **Mwangi Wokabi** (Chairman), **Geoffrey Mbutia** (Secretary) and himself as the treasurer.

122. He further states that on 14th June, 1983, the District Officer Molo authorized the new directors to collect money from the shareholders to enable them buy the Denisar Estate Farm and pay for the expenses related to the transaction.

123. He states that the money they were to pay as per the Court order was Kshs. 5,500,000/= while the expenses were Kshs. 1,309,000/=.

124. He further states that it was decided that each member was to pay Kshs. 11,000/= per share in order to raise the said amount.

125. The rest of his witness statement reiterates his averments in the Amended Plaint.

126. Upon cross examination by Counsel for the 1st to 22nd Defendants, **PW1** confirmed that he lives in Molo.

127. He also confirmed that he had a parcel of land in Molo which measures 1 ½ acres. The said land was Plot No. 623 and it was occupied by some people.

128. He also confirmed that he does not own Plot No. 256 and stated that there are trees planted on the said parcel of land.

129. He further confirmed that he had a 1 ½ acre parcel of land in Tayari Farm which he was using together with Plot No. 589.

130. He reiterated that he had a 1 ½ acre parcel of land and another plot where he had built a house.

131. He also admitted that he held two shares and stated that he had produced receipts and a schedule of payments.

132. He further admitted that the letter dated 13th August, 1991 which he produced as **Exhibit P17** did not state the number of shares he owned.

133. He confirmed that he took possession of Plot No. 623 in the year 1984. He put a hedge around it, planted trees and begun cultivating crops.

134. He also confirmed that numerous structures were now constructed on Plot No. 623. Some were permanent houses while others were temporary structures.

135. He further confirmed that out of the 26 plots, eight had permanent houses, six had temporary structures while the other eight were not occupied.

136. He admitted that the said structures were built in the year 2016 when he was living in Nakuru.

137. He confirmed that he did not seek orders of injunction and added that he instead reported the said issue to the local administration. He reiterated that he followed the administrative structure.

138. He also confirmed that he had the map that had been drawn by Olweny & Associates.

139. He admitted that he did not have any minutes for the 24th Defendant which stated that the only map was the map drawn by Olweny & Associates.

140. He also admitted that he had nothing from the directors of the 24th Defendant which stated that they had received any formal complaints that the plot numbers that were currently in use were not correct.

141. He was then referred to the copy of the green card on the list of documents filed by the 23rd Defendant and he confirmed that Plot No. 623 was reserved for a water tank.

142. He admitted that the said plot was community land for a water tank.

143. He also admitted that land parcel No. 153 was registered in the name of **Doris Nyaruiru Njiri**. He confirmed that he knew her as she was his neighbor and the wife of one **Njiri** who was one of the Defendants in the present suit.

144. He also confirmed that he did not sue her.

145. He admitted that he wrote several letters. He also admitted that the said letters mentioned one **Milton Kamau** who was a director of the 24th Defendant.

146. He further admitted that he did not sue the said **Milton Kamau** in his personal capacity.

147. He confirmed that the receipts he produced as **Exhibit P6 (a)** and **(b)** did not state the plot number.

148. He also confirmed that he had a ballot card for Plot No. 623. He admitted that the said ballot card was prepared by the 24th Defendant's secretary.

149. He admitted that there was a change in the numbering of the plots after the drawing of the Olweny Survey Map. He confirmed that he monitored the process.

150. He explained that his contention that plots had been superimposed on his parcel of land meant that new numbers had been created over the original parcel number.

151. When he was referred to the Registry Index Map, he confirmed that Plot No. 623 was on the map and there was no indication of any superimposition.

152. He stated that after adjudication, a survey was done. He confirmed that the Registry Index Map was drawn by Muritu Surveyors and it was the one that changed the land parcel numbers as was indicated in the Olweny Survey Map.

153. He admitted that he had not sued Muritu & Associates Surveyors.

154. He also admitted that he produced a bundle of Certificates of Official Searches. He further admitted that the said Certificates did not show the mother title and neither did they indicate the genesis of the subdivision.

155. He explained that he was able to make a connection between the twenty-six parcels of land and plot No. 623 since he was living on Plot No. 623 and he had one of his workers as a witness.

156. He admitted that he reported the said issue on 5th October, 2017 and he was given an OB number.

157. He also admitted that he reported the matter to the District Commissioner Molo.

158. He further admitted that he first reported the invasion of the suit parcel of land in July, 2001. After he made the report, the people who invaded the land did not visit the suit parcel of land and he continued to be in possession.

159. He confirmed that he had filed in Court a judgement, which judgement was marked as C1 in his bundle of documents, where **Mr. Olweny** testified.

160. He also confirmed that **Mr. Olweny's** testimony was to the effect that he was aware that another surveyor had been appointed by the new management of the 24th Defendant.

161. He admitted that he had no proceedings that showed that **Mr. Olweny** had complained of any irregularity.

162. He also admitted that there was a letter written by **Mr. Olweny** dated 1st March, 1990, where he complained about his payment. The Court, however, observed that the letter written by **Mr. Olweny** complained of an impending robbery.

163. He confirmed that by the year 1990, he was no longer a director of the 24th Defendant.

164. He also confirmed that **Mr. Olweny** complained that he was not paid and yet he had completed his work.

165. He reiterated that by the year 1984, he had already settled on his parcel of land.

166. He also reiterated that each shareholder was to pay Kshs. 11,000/=.

167. He confirmed that he paid Kshs. 22,000 and admitted that the receipts he produced were with respect to Plot No. 623.

168. Upon clarification by the Court, he stated that the payment of Kshs.11,000/= entitled a shareholder to a *shamba* plot and a residential plot.

169. He confirmed that the Defendants (sic) further list of documents had a list for Phase 1 of Tayari Farmers.

170. He reiterated that he had a 1 ½ acre portion of land that he was using. He then admitted that he also had a plot that he was utilizing.

171. He further reiterated that he was in occupation of a 1 ½ acre parcel of land and that he had a title deed in his name. He admitted that he had another plot measuring 50 by 100 feet where he had built his home.

172. He also admitted that in Nakuru HCC No. 478 of 1994, the 24th Defendant was given a go ahead to subdivide the farm and added that the pleadings filed in the said suit were part of the Defendant's further list of documents.

173. He further admitted that he was not aware if the Defendants he had sued were members of the 24th Defendant.

174. He stated that he was only aware that they were in possession of his parcel of land. He also stated that the Defendants were young people and he therefore did not think that they were members of the 24th Defendant.

175. He confirmed that he did not sue the original owners and stated that he went through a lot just to get their names.

176. He also confirmed that the Defendants claimed that they purchased their respective parcels of land.

177. He stated that a person who conducted a search and purchased the land would not be an innocent purchaser.

178. Upon further cross examination by Counsel for the 23rd Defendant, he confirmed that the Land Registrar was the custodian of all land ownership documents.

179. He stated that if there was fraud then the documents in the custody of the Land Registrar would not be correct.

180. He confirmed that the Lands Office was the custodian of the Green cards for land parcel No's 623 and 153.

181. He admitted that land parcel No. 623 was registered in the name of the Government of Kenya.

182. He also admitted that land parcel No. 623 had been his parcel of land since the year 1983.

183. He reiterated that previously, the whole parcel of land belonged to **Denisar Estates**. He stated that he had produced the titles.

184. He reiterated that land parcel No. 623 was reserved for a water tank.

185. He stated that the parcel of land registered as land parcel No. 623 that was reserved for a water tank was not the same as his parcel of land. He also stated that he filed the suit so that changes would be made to correct this anomaly.

186. He admitted that he did not have any title deed or document to show that he was the owner of Plot No. 623.

187. He reiterated that he acquired Plot No. 623 after he paid for his shares.

188. He stated that the documents marked as A3 in his bundle of documents which had been produced as **Exhibit P6 (a)** and **(b)** show how he paid the Kshs. 11,000.

189. He confirmed that he paid the first installment on 1st August, 1983.

190. He stated that at the time he worked as a Manager of a Farm in Nakuru and that it took him four months to make the said payments.

191. He also stated that he went to Court and sought that corrections be made on the mistakes that had been made.

192. He confirmed that the first entry on both the green cards for land parcel No's 153 and 623 were the Government of Kenya.

193. He also confirmed that they purchased the said parcels of land as members of Tayari Farmers Company Limited.

194. He further confirmed that there were public utilities on the Tayari Farm.

195. He admitted that there were several cases with respect to the Tayari Farm but there were also several other persons who were amicably settled by the Land Registrar.

196. He stated that the Land Registrar did not resolve his issues despite writing several letters.

197. He was then referred to the document marked as B13 in his bundle of documents which was a schedule that showed the numerous visits he had made to the Land Registrar. The said schedule had been produced as **Exhibit P8 (a)**. He admitted that he received two letters from the Lands Office after he had written a series of letters.

198. He confirmed that the Land Registrar stated that they did not have any records.

199. He admitted that he went to the head office and the head office wrote to **Mr. Suguti.**

200. He also admitted that he did not have any documentation to prove that the Land Registrar stated that they did not have the correct records.

201. He confirmed that the letter marked as B14 in his bundle of documents which had been produced as **Exhibit P8 (i)** was never responded to.

202. He also confirmed that in the Certificates of Official Search that he produced, there was no signature on the part of the Applicant/Advocate.

203. He admitted that he had never reported any fraud to the Police or the Directorate of Criminal Investigations.

204. He confirmed that among the prayers sought in his Plaint was a prayer for compensation for non-use of land.

205. When asked why the government should compensate him, he stated that he was only seeking for compensation and that the Court will make the appropriate orders.

206. Geoffrey Muthoki Mbuthia testified as **PW2**. He stated that he filed a witness statement dated 20th October, 2021 and prayed that the Court adopts it as part of his evidence in Chief, which prayer the Court acceded to.

207. It was his evidence that he was living in Tayari Farm Molo and was a Director and Secretary of the 24th Defendant.

208. It was also his evidence that he issued receipts to the members of the 24th Defendant when they paid for their shares.

209.It was further his evidence that members paid money to Barclays Bank Molo Branch A/c No. 1937/2.

210.He testified that in their office they had bank slips that were stamped and had the bank account number. This bank slips enabled the members to pay for their shares in the required bank account.

211.He also testified that the receipts were issued to members in triplicate. The original receipt was with the bank while the duplicate and the triplicate were taken to the office.

212.He further testified that the triplicate would be kept in the office while the shareholder would take the duplicate.

213.It was his evidence that each member who paid was issued with a receipt from the receipt book that the 24th Defendant had.

214. It was also his evidence that a full payment of kshs. 11,000 entitled a member to a plot measuring 100 by 50.

215. It was further his evidence that the members who had settled on the 1 ½ acre plots also paid the Kshs. 11,000.

216. He testified that the payment of kshs. 11,000 was to facilitate the purchase of the farm. The payment was to go to **Denisar Estates** and **Mrs. H. D Taylor**.

217. He also testified that he had a list of receipt books which contained the duplicate slip.

218. He further testified that a survey was done by the Ministry of Agriculture which was used for the settlement of the members of the 24th Defendant.

219. It was his evidence that the second survey was done by Olweny. It was for the 100 x 50 plots.

220. It was also his evidence that some people had taken possession of the land set aside for Tayari Primary School and added that those persons were relocated to the plots measuring 1 ½ acres.

221. It was further his evidence that this work was completed by Olweny & Associates who produced a map to that effect.

222. He testified that each member was given a plot measuring 1 ½ acres and another plot measuring 100 x 50.

223. He also testified that each 100 x 50 plot had a beacon while the 1 ½ acre plots did not have beacons.

224. He further testified that for the people who were relocated, their 1 ½ acre plots had beacons.

225. It was his evidence that the Plaintiff had a *shamba* which was Plot No. 623 on the **Olweny** Map and added that it measured 1 ½ acres.

226. He reiterated that he was the one who issued receipts to shareholders of the 24th Defendant after confirming that payment had been made to the bank.

227. He testified that the receipts had his signature. He also testified that the Plaintiff balloted for Plot No. 623 which measured 1 ½ acres and plot No. 153 which measured 100 x 50.

228. He further testified that the balloting took place on 27th April, 1984.

229. It was his evidence that they had ledger books, cash books, ballot counter books which indicated the name of each member and the plot they owned.

230. It was also his evidence that the auditor had the receipts and they were also supposed to be given to the District Officer.

231. It was further his evidence that there was a list that was prepared by **D.N Kariuki** Auditors which was during the hand over given to the new directors.

232. He testified that the said list was signed by the Chief and he then took it to the District Officer.

233. He also testified that attached to the said list, was a list of ballot papers for those who had finished paying for their plots. He produced the list as **Exhibit P18.**

234. He further testified that after new directors were appointed, they went to the offices of the 24th Defendant in the company of police officers and they collected all the books. The only books they did not take were receipt books that were with the auditors.

235. It was his evidence that he later took the receipt books to **Wycliffe Soi** who was their area Chief.

236.PW2 gave the name of the team that took over management of the 24th Defendant as follows:

- a. Milton Kamau- Chairman**
- b. Benson Kiragu- Secretary**
- c. William Asuva - Treasurer**
- d. Joseph Gichuhi Mweri - Director**
- e. Joseph Njoroge - Director**
- f. Hosea**
- g. Christopher Monyo**
- h. Christopher Kamano.**

237. It was his evidence that those were the names that he could remember.

238. It was also his evidence that thereafter, he was not consulted and also added that he is not the one who took the documents to the Land Registrar.

239. It was further his evidence that instead of the numbers on the Olweny Map continuing serially, other numbers were imposed on the plots.

240. He testified that he resided on the Tayari Farm and he was therefore aware that there were numerous complaints. The nature of the complaints were that there was further subdivision of plots which affected work that had already been done.

241. He also testified that the leadership of **Milton Kamau** brought about confusion as the acreage that each member was entitled to was reduced and new plots created in between the original plots.

242. He further testified that this was the main complaint and it led to many disputes and cases in Court.

243. It was his evidence that the Land Registrar begun to issue titles and vide the gazette Notice of 14th May, 1999, the Land Registrar was restrained from issuing title deeds secretly until the dispute was heard. He produced a copy of the said gazette notice as **Exhibit P19**.

244. It was also his evidence that the Mapping Unit of the Ministry of Agriculture prepared a map and reiterated that Mr. Olweny also prepared a map.

245. It was further his evidence that neither of those maps were used and instead, a new map was drawn that reduced acreages and created new plots and added that this was the source of the legal disputes.

246. He testified that there was no document that captured the said changes. He also testified that complaints were made to the Land Registrar.

247. In his witness statement, **PW2** states that he issued the following receipts to the Plaintiff;

a. Receipt No. 084 dated 1st August, 1983 for Kshs. 1,000/=.

b. Receipt No. 372 dated 11th November, 1983 for Kshs. 300/=.

c. Receipt No. 488 dated 29th December, 1983 for Kshs. 700/=

d. Receipt No. 515 dated 4th January, 1984 for Kshs. 500/=

e. Receipt No. 523 dated 6th January, 1984 for Kshs. 1,300/=

f. Receipt No. 552 dated 11th January, 1984 for Kshs. 1,500/=.

g. Receipt No. 557 dated 13th January, 1984 for Kshs. 5,700/=.

248. He also states that the said receipts totaled up to Kshs. 11,000/=.

249. He further states that upon completion of payment, the Plaintiff was allowed to ballot and he was allocated plot No. 623 which measured 1 ½ acres and Plot No. 153 which measured 50 x 100.

250. Upon cross examination by Counsel for the 1st to 22nd Defendants, **PW2** stated that the Plaintiff had three shares and he ought to have therefore paid Kshs. 33,000/= and explained that he would have to look at the records to find out how much money was paid by the Plaintiff.

251.He confirmed that the plot in dispute was worth Kshs. 11,000/=.

252.PW2 was then referred to the copy of register that was on the Supplementary List of documents dated 24th January, 2021.

253.He admitted that he did not know the said document but confirmed that the name of the Plaintiff was written next to Plot No's 256 and 399.

254.He stated that he could not confirm anything since he did not know the source of the said register.

255.He admitted that the Plaintiff was in possession of three acres of land.

256.When he was referred to the Audit List produced as **Exhibit P18**, he confirmed that receipt No. 084 was issued from receipt book No. 001 to 100.

257. He also confirmed that that receipt No. 084 was issued on 1st August, 1983 and he used the said receipt book from 13th June, 1983 to 18th August, 1984.

258. He further confirmed that receipt No. 372 that was issued on 11th November, 1983 was issued from receipt book No. 301 - 400. The receipt book was used from 6th October, 1983 to 26th November, 1983.

259. He admitted that receipt No. 488 which was issued on 29th December, 1983 was issued from receipt book No. 401-500 and added that he used the receipt book from 26th November, 1983 to 3rd January, 1984.

260. He also admitted that receipt No. 515 dated 4th January, 1984 and receipt No. 523 dated 6th January, 1984 were issued from receipt book No. 501-600 and added that the receipt book was used from 3rd January, 1984 to 21st January, 1984.

261. He further admitted that receipt No. 552 dated 11th January, 1984 and receipt No. 557 dated 13th January, 1984 were also issued from receipt book No. 501-600.

262. He confirmed that the money was paid by the members and admitted that the receipts did not indicate the 50 x 100 plots as they were not balloted for.

263. He stated that anyone who owned and settled on a 1 ½ acre plot had also paid for a 100 x 50 plot.

264. He confirmed that the money they received was to be paid as the purchase price to **Denisar Estate** and **Mrs. H.D Taylor** who were owners of the land since they had settled on it peacefully.

265. He reiterated that Kshs. 11,000/= that was paid was for a share and each share would entitle a shareholder to a 1 ½ acre plot and 100 x 50 plot.

266. He admitted that he could not tell how many plots the Plaintiff owned as people had over the years sold their plots.

267. He confirmed that Plot No. 623 measured 1 ½ acres. He also confirmed that as per his records, the said plot belonged to the Plaintiff.

268. He admitted that he did not have any copies of documents as they were handed over to the new directors.

269. He also admitted that he could not tell the particular plots the 1st to 22nd Defendants were in occupation of. He further admitted that he did not know the size of their plots but stated that he knew that the plots were less than 50 x 100. He then changed his mind and stated that he did not know the size of the plots.

270. He stated that he was not aware that Plot No. 623 measured 2 ½ acres.

271. He confirmed that he was only aware of the people who had been relocated from the school site as they were the ones he handed over.

272. He admitted that the map was prepared by a surveyor and that it had a scale.

273. When he was referred to paragraph 12 of the Plaint he confirmed that he was a resident of Tayari Farm.

274. He admitted that the Plaintiff's house was demolished and also admitted that he saw what was happening on the ground.

275. He confirmed that he did not have any documents to prove the contention in paragraph 12 of the Plaint.

276. When he was referred to the ballot paper dated 27th April, 1984, he confirmed that he was the one who wrote it and that it had the company seal.

277. He stated that it was the company seal that allowed him to write the ballot and that the resolutions were contained in the minutes of the company.

278. He stated that there was no possibility of acquiring the other plots.

279. He reiterated that the receipt books were handed over and that the only reason why he had the list was because he got it from the auditor.

280. He admitted that the said list showed the source of the receipts, and the ballot papers and added that the list was in respect of plots that measured 100 x 50.

281. He confirmed that the list was handed over so that when the owners completed payment, they would take the ballot papers.

282. He confirmed that the Olweny Map was altered after the new directors came into office. He admitted that he could not remember the exact date.

283. He confirmed that after the new directors were appointed, they immediately began their work and that is when complaints began.

284. He also confirmed that the Muritu Survey was done after the new directors were appointed.

285. PW2 further confirmed that he had a letter dated 4th June, 1983 which was written by the Provincial Commissioner. He explained that the said letter introduced him to the bank and allowed him to collect money from members of Tayari Farmers Company Limited. The letter was marked as A10 in the Plaintiff's bundle of documents.

286. He admitted that as per the green card on the 23rd Defendant's list of documents, land parcel No. 623 was reserved for a water tank and it measured 0.2606 Ha.

287. He also admitted that he had never filed any suit challenging the Muritu Survey Map even though there were several suits that were filed in Court.

288. He further admitted that he did not know the outcome of the suit in respect of which the gazette notice was issued and neither did he have the orders that had been issued in the said suit.

289. He confirmed that he did not know when the titles to the 1st to 22nd Defendants were issued.

290. He stated that the new directors were appointed unlawfully as the police were involved and added that the new directors were not elected.

291. He further stated that the police took documents forcefully and he was not aware if the handover was to the right officials.

292. He stated that the documents that were taken away have never been produced in Court as they were hidden.

293. He stated that the said documents were taken by the police and the District Officer's *askaris* and he did not know where they were taken.

294. He also stated that he was lucky to have collected the receipt books that were with the auditor.

295. He further stated that the general membership had to be involved in the decision-making process by the directors and confirmed that the settlement could not have been done without a general meeting being called.

296. He stated that the new Directors had no right to go against the **Olweny** Survey Map and have another map prepared by **Muritu**.

297. He also stated that the **Olweny** Survey Map contained the 1 ½ acre plots and the 100 x 50 plots and added that it was the map that was used by the Mapping Unit.

298. Upon further cross examination by Counsel for the 23rd Defendant, he stated that his evidence was based on what he had seen.

299. He admitted that there was no water tank on land parcel No. 623.

300. He confirmed that Plot No. 623 was sub divided into small plots. He also confirmed that he lived near the said parcel of land and he could see the small plots.

301. He admitted that he did not have any documents to show any such subdivision.

302. He was then referred to the list of members of Tayari Farmers that had been produced as **Exhibit P2**. He confirmed that member No. 96 was **David Ndungu Karuru**.

303. He also confirmed that the green card for land parcel No. 153 showed that the registered owner was **David Ndungi Karuru**.

304. He stated that they allocated three parcels of land that were owned by the 24th Defendant.

305. He also stated that the first settlement was done by the Mapping Unit while the second mapping was for the 100 x 50 plots and to relocate people from the school.

306. He admitted that they had not bought the said parcels of land from the owner.

307. He confirmed that they left two sites for the water tank and the school. He also confirmed that with regard to the map prepared by **Olweny**, he was not aware if any mutation was prepared.

308. He admitted that he had been to the Land Registry several times.

309. He confirmed that subdivision of the said parcels of land was done twice. The first subdivision was done by the Mapping Unit of the Ministry of Agriculture which was used to settle the shareholders on the 1 ½ acre plots.

310. He stated that the remaining plots had not been paid for which were the 100 x 50 plots that were mapped out in the Olweny map.

311. He reiterated that initially there were no complaints and that the complaints only came after the **Muritu** Survey.

312. He confirmed that the three parcels of land were LR No. 535/5, 10363 and 10364 which were transferred from Denisar Farm to Tayari Farm.

313. He also confirmed that the Kenya Gazette which he produced was issued in the year 1999 while the balloting had been done in the year 1984.

314. He admitted that he owned land at Tayari Farm and that he did not yet have a title deed.

315. He also admitted that with respect to Plot No. 623, he did not know the minimum size of land in respect of which a title deed could be issued.

316. He further admitted that he had not seen any title deed.

317. He confirmed that as per the green card for land parcel No. 623, the said parcel of land was reserved for a water tank and it could not therefore be subdivided.

318. He admitted that he had not seen any resultant subdivisions of land parcel No. 623.

319. Upon re-examination, he stated that they complained to the District Officer on the manner in which their documents were taken.

320. He also stated that they were afraid that if they did not have copies of the company documents then they would not have been able to address the complaints from the shareholders.

321. He further stated that they attended the meeting that was held on 12th November, 1998 and added that at the meeting they complained that the new officials were illegally in office.

322. He stated that they were unpopular because they failed to involve the politicians in their dealings.

323. He also stated that the **Olweny** map clearly indicated that Plot No's 604 to 627 measured 1 ½ acres.

324. He further stated that the green card that had been filed in Court by the 23rd Defendant that showed that land parcel N0. 623 was set aside for a water tank was from a different map.

325. He stated that he did not know Plot No's 626 and 399 as they were not on the Olweny map.

326. He also stated that the Plaintiff's claim was that his parcel of land had been encroached upon and given to other people.

327. He further stated that **Olweny** produced a map in Court when he testified and that in the **Olweny** Map, plot No. 623 was not set aside for a water tank.

328. Eliud Ngugi Mbugua testified as **PW3**. He stated that he filed a witness statement dated 20th October, 2021 and

prayed that the Court adopts it as part of his evidence-in-Chief ,which prayer the Court acceded to.

329.It was his evidence that he lived on Plot No's 625 and 626.

Both parcels of land measured 1 ½ acres each and they were on the map drawn by **Olweny**.

330.It was also his evidence that Plot No. 623 belonged to the Plaintiff.

331.It was further his evidence that **Olweny** was contracted by the 24th Defendant to do a survey of the Tayari Farm.

332.He testified that he settled on the said parcels of land in the year 1984 and added that they were initially owned by his deceased father.

333.He also testified that the house that they were living in was constructed by his deceased father.

334. He further testified that there was no water tank on Plot No. 623.

335. It was his evidence that previously Plot No. 623 had a live fence of Kayaba Plants.

336. In his witness statement, he states that the Plaintiff constructed a timber house on Plot No. 623.

337. He also states that Plot No. 625 and the Plaintiff's Plot No. 623 were separated by Plot No. 624 and added that all these parcels of land measured 1 ½ acres each.

338. He further states that he started living on Plot No. 625 in the year 1984 when he was in class two and that at the time he was at Molo Academy Primary School.

339. Upon cross-examination by Counsel for the 1st to 22nd Defendants, he reiterated that he lived on Plot No's 625 and 626 that were on Tayari Farm in Molo.

340. He confirmed that he grew up on the said parcels of land.

341. He admitted that he knew **Gatonye Kamau** and that his deceased father had sued him in ELC Case No. 79 of 2016.

342. He confirmed that the said suit was with regard to a parcel of land that had been imposed on their parcels of land.

343. He admitted that the said suit was dismissed and that after the said dismissal they filed an appeal.

344. He then reiterated that he was still in possession of plot No's 625 and 626.

345. He confirmed that Plot No. 623 was supposed to be 1 ½ acres in size. He admitted that he did not know the people who were in possession of the said parcel of land but confirmed that there were people living on it.

346. He also confirmed that Plot No. 623 was subdivided and there were people living on the said parcel of land.

347. He admitted that Plot No. 626 was not subdivided and they were the ones in occupation of it.

348. He also admitted that as per the green card, land parcel No. 623 measured 0.2606 Ha and it was reserved for a water tank.

349. He confirmed that the said parcel of land measures 1 ½ acres because the acreage of the plots at Tayari Farm were uniform. This was as per the map that was drawn by **Olweny.**

350. He admitted that he did not have the government map.

351. Counsel for the 23rd Defendant was not present in Court to cross examine **PW3.**

352. Upon re-examination, **PW3** stated that the appeal from the judgement delivered in ELC Case No. 79 of 2016 was yet to be determined.

353. He also stated that in the said suit, the Land Surveyor and District Registrar stated that plot No's 625 and 626 be reinstated under different numbers and the plots that were superimposed be done away with.

354. Hannah Gathoni testified as **PW4**. She stated that she filed a witness statement dated 20th October, 2021 and prayed that the Court adopts the said statement as part of her evidence-in-Chief, which prayer the Court acceded to.

355. It was her evidence that she lives in Tayari Farm Molo and is a sister of the Plaintiff.

356. It was also her evidence that she farmed Plot No. 623 since the year 1986.

357. It was further her evidence that the said plot was fenced with Kayaba trees and there was no water tank on it.

358. She testified that at the time she was farming the said parcel of land there was no dispute.

359. She also testified that the dispute started in the year 2000 and in the year 2001, the house that was on the land was demolished and crops uprooted.

360. In her witness statement, she states that in July, 2001, two police men went to her home and arrested her. They took her to Molo Police Station and later to Molo Law Courts.

361. She also states that she was charged in Criminal Case No. 1357 of 2001.

362. She further states that the complainant was **Pastor Njiri** and he alleged that she had destroyed his crop of oats that had been planted on Plot No. 623.

363. She states that the said allegations were not true as she was the one farming on Plot No. 623 where she had planted maize and pyrethrum.

364. She also states that she attended Court on 6th September, 2001, 19th September, 2001, 23rd October, 2001, 24th October, 2001, 27th November, 2001, 23rd January, 2002 and 21st February, 2002 which was a total of seven times.

365. She further states that the suit was dismissed after two years.

366. Upon cross examination by Counsel for the 1st to 22nd Defendants, she confirmed that she was not living on plot No. 623. She also confirmed that she was only farming it.

367. She stated that Plot No. 623 was still there and there was no one living on it and that there were no buildings constructed on it.

368. She also stated that after she was evicted, she did not go back to the land and she was not aware if there were people living on it.

369. She admitted that she lived on Plot No. 322 in Tayari Farm.

370. She also admitted that the Plaintiff had another plot which measured 1 ½ acres. She further admitted that she did not know the plot number.

371. She confirmed that there was a water tank on Tayari Farm which was near where she lived. She admitted that she did not know the measurement of the parcel on which it is.

372. She also admitted that the Plaintiff had a house near where she lived. She further admitted that the Plaintiff had three acres of land on Tayari Farm including the parcel of land he was living on.

373. She confirmed that she was farming on a parcel of land that measured 4 ½ acres.

374. She also confirmed that the Plaintiff had four Plots in Tayari Farm.

375. She explained that each *shamba* had a plot which measured 50 x 100. On two of the 50 x 100 plots there were rental houses constructed on them and she did not know who the caretaker was.

376. She admitted that she did not have any photos that showed the house that was on the *shamba*.

377. She confirmed that the Kayaba fence was uprooted and also confirmed that she had no letter from the Chief that stated that she lived in Tayari Farm.

378. She stated that she had come from Molo and that the suit parcel of land was located in Molo.

379. Upon further cross examination by Counsel for the 23rd Defendant, she confirmed that Plot No. 623 belonged to her brother.

380. She explained that she knew that the said parcel of land belonged to her brother as she farmed it from the year 1986 to the year 2000.

381. She confirmed that she saw the papers for the purchase of the said *shamba* and admitted that she knew where the said parcel of land was but she did not know the land parcel number.

382. Upon re-examination, she stated that she did not go to school and that she only attended class one and two.

383. She further stated that she later did adult education but she could not read or write.

384. She stated that the only conversation she had with the Plaintiff over the suit parcel of land was about the farming activities she was undertaking on it.

385. She also stated that their father had a parcel of land which he left for her and which parcel of land she was in occupation of.

386. She further stated that the parcel of land that she was living in was purchased for her by her family. She then stated that her father gave her the parcel of land that she was living on.

387. Susan Wangari testified as **PW5**. She stated that she filed a witness statement dated 20th October, 2021 and prayed that the Court adopts the said statement as part of her evidence-in-Chief, which prayer the Court acceded to.

388. It was her evidence that she was the Plaintiff's sister and that she undertook adult education.

389. It was also her evidence that she was farming plot No. 153 which measured 50 x 100 and added that she was growing potatoes on the said plot.

390. It was further her evidence that she begun to farm the said parcel of land in the year 1992 and added that before then, she was living in Kuresoi.

391. She testified that the plot she was farming was fenced off and no one had tried to evict her since she started farming it.

392. In her witness statement, she states that the Plaintiff paid for Plot No. 153 in the year 1984 when he was paying for Plot No. 623.

393. Upon cross-examination by Counsel for the 1st to 22nd Defendants, she confirmed that she was the Plaintiff's sister and also confirmed that the Plaintiff was older than her.

394. She further confirmed that the Plaintiff had built a house on Tayari Farm and admitted that she did not know the acreage of the parcel of land where the Plaintiff had built.

395. She admitted that the Plaintiff's plot in Tayari Farm measured 1 ½ acres and that was where the Plaintiff's family lived.

396. She also admitted that she did not know if the Plaintiff had another plot.

397. She confirmed that she was living on Plot No. 153 with her brother's permission as he had allowed her to live on it after the clashes.

398. She clarified that she was living on Plot No. 153 which measured 50 x 100.

399. She confirmed that she built a house on the said parcel of land but she could not remember when she built the said house.

400. She also confirmed that she built the house with stones and stated that she did not get re-married after her husband died.

401. She further confirmed that she was not living with her sister.

402. She then clarified that she lived with her sister **Hannah Muthoni** on the parcel of land that was left to them by their deceased father.

403. She admitted that they also farm on the other plots that were owned by the Plaintiff.

404. She also admitted that she did not know the number of plots the Plaintiff owned.

405. She stated that she only farmed the plot that she was in occupation of and had not built any house on it.

406. She also stated that she was aware that her brother had one other plot where he had built and clarified that it was not the parcel of land that she was farming.

407. She clarified that she was only aware of three plots. One plot measured 1 ½ acres, the other plot the Plaintiff had built on it while she was in possession of the third plot.

408. She admitted that she could read a bit as she did adult education.

409. She also admitted that in her statement she referred to Plot No. 623. She confirmed that it was the Plaintiff who told her about it and it was the one that had a dispute. She further admitted that she knew where the said parcel of land was located.

410. She admitted that there were people in possession of plot No. 623 and they had built on it.

411. She stated that no one told her how to respond to the questions she was being asked.

412. The Court observed that **PW5** had a difficulty in expressing herself and answering questions. The Court also observed that **PW5** seemed afraid and unsure despite several reassurances from the Court.

413. Upon re-examination she clarified that she did not live on the parcel of land that she was farming.

414. She stated that her house was not on the plot that she was farming.

415. She also stated that she lived in a house that had been built by her child. She further stated that **Hannah** lived far away from where she lived and that they only met in church.

416. She reiterated that there was no house constructed on plot No. 153 where she was farming.

417. She stated that the parcel of land that she lived on measured 50 x 100.

418. She reiterated that she did not live with **Hannah** and stated that after the clashes, her family helped her and her child and built them a house.

419. By consent of the parties, proceedings in Criminal Case No. 1084 of 2009 were produced as **Exhibit P20**.

420. **Gibson Wahome Werugia** testified as **PW6**. It was his evidence that he was a licensed land surveyor based in Nakuru.

421. It was also his evidence that he studied Land Survey in Canada and graduated in the year 1971.

422. It was further his evidence that after he graduated, he was employed by the government of Kenya until the year 2004.

423. He testified that he worked as the provincial surveyor of Kakamega in the year 1978.

424. He also testified that he worked as a provincial surveyor Nakuru between the years 1980 to 1994 before he retired and went to private practice.

425. He further testified that he prepared a report dated 16th March, 2022 which report was filed in Court on 21st March, 2022.

426. It was his evidence that he received a survey map from the Plaintiff and added that the said survey map had been drawn by Mr. Olweny.

427. It was also his evidence that he got a Registry Index Map from the Regional Office which map was attached to his report.

428. It was further his evidence that he visited the resultant subdivisions of LR No's 535/5, 10363 and 10364 that were in Molo.

429. He testified that the resultant subdivisions were in the plan prepared by Olweny & Associates.

430. He also testified that during his visit, he used the Registry Index Map and the map prepared by Olweny and found that land parcel No. 623 had been subdivided into many small portions.

431. He further testified that the Plaintiff pointed out the old boundary of the suit parcel of land and stated how he had fenced it.

432. It was his evidence that he saw the old Kay Apple fence and when he looked at the neighboring plots, he observed that Plot No. 625 had not been subdivided and its old fencing was still visible.

433. It was also his evidence that he visited Plot No. 153 and observed that it was a smaller plot and its boundaries were visible.

434. It was further his evidence that he had a google map of the area which showed the ground situation. It showed that Plot No. 623 had been subdivided.

435. He testified that both the google map and the Registry Index Map showed that Plot No. 623 had been subdivided.

436. He also testified that the Registry Index Map was the official map and further testified that title deeds were issued based on the said Registry Index Map.

437. He further testified that in his report, he concluded that the Olweny Map was prepared before the Registry Index Map was drawn.

438. It was his evidence that the fact that the Olweny Plan had been prepared before Registry Index Map was supported by various receipts which referred to Plot No. 623.

439. It was also his evidence that plot No. 623 was not on the Registry Index Map.

440. It was further his evidence that his second conclusion was that the Registry Index Map ignored the existence of the 1 ½ acre plots and instead they were all subdivided into smaller portions.

441. He testified that Plot No. 623 was subdivided into twenty-six sub -plots.

442. He reiterated that the remnants of the old fencing on Plot No.623 still existed on the ground.

443. He also testified that Plot No. 153 on the Olweny Map was intact on the ground and was land parcel No. 775 on the Registry Index Map.

444. He produced the document marked as A13 on the Plaintiff's bundle of documents as **Exhibit P21** and his report as **Exhibit P22**.

445. Upon cross examination by Counsel for the 1st to 22nd Defendants he confirmed that he had the report that he had prepared.

446. He also confirmed that the Registry Index Map and the **Olweny** Map were not in consonance.

447. He admitted that he did not know what informed the difference and also admitted that the **Olweny** Map was not registered.

448. He confirmed that since the **Olweny** Map was not registered, it could not form the basis for the Registry Index Map.

449. He then stated that there was a procedure for adoption of a survey plan. The process was initiated by the presentation of the Field Sheet to the Director of Surveys for the preparation of the Registry Index Map.

450. He stated that from his observation, the **Olweny** field sheet was not presented to the Director of Survey.

451. He reiterated that plot No. 623 on the Olweny Map was not on the Registry Index Map.

452. He confirmed that as per the Registry Index Map, land parcel No. 623 measured 0.2696 Ha which was slightly more than half an acre.

453. He also confirmed that as per the Registry Index Map, land parcel No. 153 measured 0.5547 Ha and was registered in the name of **David Ndung'u**.

454. He further confirmed that from his report, land parcel No. 623 measured 1.5 acres.

455. He confirmed that the general position was that the plot numbers in the field sheet would be changed when the Registry Index Map was being prepared.

456. He stated that the person who gave Olweny the job was not bound by the work he did.

457. He admitted that he was aware of the field sheet that had been prepared by Muritu but he did not look at it.

458. He stated that he was not faulting anyone and that his evidence was that the map drawn by **Olweny** was prepared before the Registry Index Map was drawn and before **Muritu** prepared his field sheet.

459. He admitted that he was aware that Muritu's field sheet was used to prepare the Registry Index Map.

460. He also admitted that he did not know why the directors of Tayari Farmers decided to use Muritu's Field sheet as opposed to Olweny's.

461. Upon further cross examination by Counsel for the 23rd Defendant, he confirmed that he did not rely on the information given to him by his client.

462. He stated that he looked at the maps and also went to the suit parcel of land and reiterated that he saw the remnants of the old fence.

463. He also stated that there was no need to measure and that he used google maps.

464. He further stated that plot No. 623 was subdivided into twenty-six plots.

465. He confirmed that he went to the ground with the Olweny map and as per google maps, the land had been subdivided.

466. He also confirmed that as per the Registry Index Map, there were twenty-six plots on the ground.

467. He admitted that he was not sure if title deeds were issued for the twenty-six plots.

468. He stated that as per the **Olweny** Map, there was plot No. 623 but on the ground there were subdivisions where plot No. 623 ought to have been.

469. He also stated that it was not possible for two parcels of land to have the same parcel number that is No. 623 at the Lands Office.

470. Upon re-examination he admitted that he attached Tayari Sheet 1 and Tayari Sheet 3 to his report.

471. He stated that the maps he was shown were not in the sheets that he submitted.

472. He reiterated that field sheets were used to produce the Registry Index Map and stated that he had not been shown the field sheet that had been prepared by **Muritu**.

473. He also stated that Field Sheet No. **3** was exactly as contained in the **Olweny** Map.

474. He further stated that a field sheet could cover the whole farm while the Registry Index Map broke down the farm. The Registry Index Map was broken into Sheet No's **2** and **3**.

475. He stated that the details in Sheet 3 and the **Olweny** Field Sheet were one and the same.

476. He also stated that nothing had changed on Plot No. **153** which was where there were some small plots.

477. He further stated that the larger plots were subdivided. He confirmed that the perimeter boundary and location were the same and the only difference was the subdivision of the larger plots.

478. He stated that in the **Olweny** map, **623** was a large plot but it was subdivided in the other maps.

THE 1ST TO 22ND DEFENDANTS EVIDENCE.

479. **John Gichuru Mwangi** testified as **DW1**. He stated that he filed a witness statement on 29th November, 2021 and prayed that the Court adopts the said statement as part of his evidence-in-chief, which prayer the Court acceded to.

480. He testified that Plot No. 623 is located in Tayari Farm and he owned it together with twenty-five other people.

481. He produced the documents in the list of documents dated 12th March, 2021, 24th November, 2021 and 7th February, 2022 as exhibits.

482. On the list of documents dated 12th March, 2021 he produced the following documents;

a. A copy of a ruling delivered on 7th June, 2000 in High Court Civil Case No. 478 of 1994 as Exhibit D1.

b. A copy of a ruling delivered on 10th February, 2006 in High Court Civil Case No. 478 of 1994 as Exhibit D2.

c. A copy of the register of Tayari Farmers Company Limited as Exhibit D3.

d. Copies of ballot cards and receipts issued by Tayari Farmers Company Limited as Exhibit D4.

e. Copies of letters from the District Land Registrar in respect of land parcel No's

Mau Summit Molo Block 7/1549, 1538, 1542 and 1544 as Exhibit D5.

f. A copy of a transfer for plot numbers 7/1549, 1536, 1538 and 1541 together with the sale agreements as Exhibit D6.

g. Copies of title deeds for land parcel No's Mau Summit/Molo Block 7/1552, 1532, 1543, 1540, 1530, 1531, 1548, 1545, 1553 and 1533 as Exhibit D7.

483. On the list of documents dated 24th November, 2021 he produced the following documents;

a. A copy of the register of Tayari Farmers Company Limited as Exhibit D9.

b. A copy of the map from the Lands registry as Exhibit D10.

484. On the list of documents dated 7th February, 2022 he produced the following documents;

a. A copy of the title deed for land parcel No. Mau Summit/Molo Block 7 Plot No. 399 as Exhibit D11.

b. A copy of the title deed for land parcel No. Mau Summit/Molo Block 7 Plot No 256 as Exhibit D12.

485. He testified that there was a water tank on land parcel No. 623.

486. He also testified that he had a title deed for his parcel of land and added that some of his co-defendants had title deeds while other Defendants were yet to collect theirs.

487. It was his evidence that they had constructed permanent residential houses on their parcels of land where they lived with their families.

488. In his witness statement, he states that the 24th Defendant is a land buying Company and it engaged the services of Muritu & Associates Surveyors to survey its land and subdivide it amongst its members.

489. He also states that Muritu & Associates Surveyors surveyed the 24th Defendant's land and prepared a map which was given to the Nakuru District Surveyor for issuance of title deeds.

490. He further states that he and his co-defendants were members of the 24th Defendant and they exercised due diligence before purchasing their parcels of land and that they are therefore bonafide purchasers for value.

491. He states that the 1st to 22nd Defendants are registered proprietors of their respective parcels of land and they have overriding interests which are indefeasible against any other claim.

492. He also states that the 1st to 22nd Defendants deny all the allegations of fraud in the Plaint and any claim by the Plaintiff should be against the Tayari Farmers Company Limited.

493. He further states that the 1st to 22nd Defendants did not play any role in the survey and subdivision of the 24th Defendant's parcel of land.

494. He states that after they paid and received their respective title deeds, they ceased to be members of Tayari Farmers Company Limited.

495. He also states that the Plaintiff had filed other suits which included Civil Case No. 478 of 1994 and CMCC Case No. 516 of 2001 and explains that in Civil Case No. 478 of 1994, the Court delivered a ruling on 7th June, 2000 and allowed the 24th Defendant to continue subdividing its land. and that CMCC Case No. 516 of 2001 was dismissed and the Plaintiff proceeded to file the present suit seeking similar reliefs.

496. He further states that the Plaintiff testified in ELC Case No. 79 of 2016 which was in respect of Plot No. 625 (Tayari) which suit was dismissed on 30th April, 2019.

497. He states that it is clear that Plot No. 623 does not belong to the Plaintiff and they are the rightful proprietors of their plots.

498. Upon cross examination by the Plaintiff, he confirmed that he was the registered owner of land parcel No. Mau Summit Block 7/1553. He also confirmed that the said parcel of land was on Sheet No. 2 on the map prepared by Muritu & Associates.

499. He admitted that he was not sure of the date the said parcel of land was surveyed.

500. He confirmed that he purchased his parcel of land from **Nganga Matu** before later purchasing a small plot in the year 2001.

501. He also confirmed that he did not participate in the balloting and settlement that took place in the year 1984 but admitted that **Nganga Matu** participated.

502. He also admitted that **Nganga Matu** was a member of the 24th Defendant and he paid for his plots.

503. He confirmed that he was not aware if **Nganga Matu** was issued with receipts but what he knew was that he had passed on.

504. He admitted that at the time he purchased his parcel of land he was aware that there disputes and challenges over it.

505. When he was referred to **Exhibit D4** which was Receipt No. 029 that was dated 7th July, 2000, he confirmed that it was issued by Tayari Farmers.

506. He admitted that he agreed with **Nganga Matu** that he was to pay the required money for the small plot.

507. He confirmed that he could not claim that he was an innocent purchaser because he was aware of the disputes pertaining to the Tayari parcels of land.

508. He stated that he was not aware of the person who led the invasion into the Plaintiff's parcel of land.

509. He confirmed that he was testifying on behalf of the 1st to 22nd Defendants as they were owners of the suit parcels of land.

510. He reiterated that his parcel of land was No. 7/1553 and that he had a title deed.

511. He confirmed that the other Defendants had title deeds and land sale agreements.

512. He reiterated that he was testifying on behalf of the other Defendants and that they had given him the authority to do

so. He admitted that the said authority was with his advocates.

513. He stated that it was not true that he did not have the authority and also stated that they all owned Plot No. 623.

514. He admitted that there was a water tank on land parcel No. 623 while plot No. 623 was subdivided into small plots. He confirmed that according to the map, land parcel No. 623 did not belong to the Plaintiff.

515. Upon further cross examination by Counsel for the 23rd Defendant, he reiterated that he was the owner of parcel No. 7/1553.

516. He stated that according to the map that the Plaintiff relied on, Plot No. 623 had been subdivided and admitted that he did not know the said map.

517. He confirmed that as per the copy of register that had been produced as **Exhibit D9**, land parcel No. 623 was stated to be a water tank.

518. He also confirmed that the green card for land parcel No. 623 stated that the said parcel of land was reserved for a water tank.

519. He further confirmed that there was a water tank on land parcel No. 623.

THE 23RD DEFENDANT'S EVIDENCE.

520. Collins Liyai Aliela testified as **DW2**.

521. he introduced himself as an advocate of the High Court of Kenya and also stated that he is the Land Registrar Nakuru.

522. It was also his evidence that he had in Court the green cards for land parcel No's Mau Summit Molo Block 7/153 and 623 (Tayari).

523. It was further his evidence that the green card for land parcel No. Mau Summit Molo Block 7/623 was opened on 6th July, 1996.

524. He testified that the said parcel of land measures 0.2606 Ha and stated that the first entry is dated 6th July, 1996 and it is the date when the said parcel of land was registered in the name of the Government of Kenya.

525. He also testified that on the easement section of the said green card, the parcel of land was reserved for a water tank. There was no other entry on the said green card and he produced it as **Exhibit D23(1)**.

526. He further testified that the green card for land parcel No. Mau Summit Molo Block 7/153 was opened on 7th June, 1996 and added that the said parcel of land measured 0.5547 Ha.

527. It was his evidence that the said parcel of land is on Map Sheet No. 118/1/23 and further explained that the first entry is dated 7th June, 1996 when it was registered to the Government of Kenya.

528. It was also his evidence that Entry No. 2 is dated 11th June, 1996 when it was registered in the name of **David Ndung'u Karuru** and that Entry No. 3 is dated 11th June, 1996 when the title deed was issued.

529. It was further his evidence that Entry No. 4 is dated 16th June, 2015 when the land was transferred to **Doris Nyaruiru Njiiri**. It was his further evidence that Entry No. 5 is dated 16th June, 2015 and shows that a title deed was issued to **Doris**.

530. He explained that Entry No. 5 is the last entry on the register and there were no encumbrances or easements registered on the green card. He produced the green card as **Exhibit D23 (2)**.

531. When referred to the green card for land parcel No. Mau Summit Molo Block 7/623 that he produced as **Exhibit D23 (1)**, he testified that if the said parcel of land had been subdivided, then an entry would have been made on the green card.

532. He also testified that the green card shows that the said parcel of land has not been subdivided.

533. He further testified that the process of sub-division of land involved the division of land into several portions by either a government or private surveyor.

534. It was his evidence that the surveyor would visit the parcel of land in the company of the proprietor or persons in whose favour the land was to be subdivided.

535. It was also his evidence that measurements would be taken and a sketch drawn. The sketch would then be transformed into a Mutation Form.

536. It was further his evidence that the Mutation Form was the registrable instrument at the Survey Office.

537. He testified that a sketch would have an imitation of numbers in the form of Alphabets. After registration of the mutation forms, the alphabets are given numbers. For this to be done, the surveyor must have sought for the consent of the Land Control Board for subdivision.

538. He also testified that once a surveyor drew the mutation forms and numbers were allocated, the mutation forms would be presented with the consent to subdivide.

539. He further testified that a copy of the mutation form together with the consent would then be forwarded to the

Land Registrar for purposes of endorsement and the amendment of the Registry Index Map.

540. It was his evidence that the endorsed copy would then be sent back to the surveyor and explained that this is the point at which the old number would be erased from the map and the new number imposed.

541. It was also his evidence that before endorsement for purposes of amendment, a Certificate of Compliance ought to have been obtained from the County Physical Planning Department.

542. It was further his evidence that after the amendment of the Registry Index Map, the mutation form, the endorsement and the Certificate have to be presented for registration and have to be accompanied with the original title if one had been issued and added that the process has a total of five documents.

543. He also testified that after this process the mutation form would be registered, the title number closed and a new register would then be issued with the new numbers.

544. He further testified that a new register is opened in the name of the proprietor of the original number because the Land Control Board Consent was limited to subdivision.

545. It was his evidence that the above set out procedure had to be completed for a subdivision to be deemed as legal.

546. Upon cross examination by the Plaintiff, **DW2** was referred to a copy of the surveyor's map that had been produced as **Exhibit P21** and the copy of the green card for parcel No. Mau Summit Molo Block 7/623 produced as **Exhibit (D23) 1**. He admitted that there was an inconsistency in the measurements.

547. He also admitted that the size of land parcel No. Mau Summit Molo Block 7/623 as indicated in **Exhibit (D23) 1** was 0.2606 Ha.

548. He was referred to the green card for land parcel No. Mau Summit Molo Block 7 /153 that he produced as **Exhibit (D23)2** together with **Exhibit P21**.

549. He stated that in summary, the Olweny map had Plot No's 1 to 603. The map also stated that each parcel of land measured 0.1148 acres.

550. He admitted that as per the register in his possession, land parcel No. 153 measured 0.5547 Ha.

551. He also admitted that he could not explain the inconsistency. He further admitted that he did not have the survey map of 1984 in his records.

552. He explained that he did not have the said map because the Registry Index Map was in the custody of the surveyor.

553. He also explained that the maps that would be in his custody were the maps that had followed the procedure he gave during his evidence in Chief.

554. He admitted that he did not know when the Registry Index Map for the suit parcel of land was produced. He also admitted that he did not know the survey map that was used.

555. He stated that the Regional Surveyor would be in a position to ascertain whether the map that was used was the Muritu Map or the Olweny Map.

556. He also stated that a surveyor would be in a better position to explain what would happen if a surveyor re-surveyed land that had already been surveyed.

557. He was referred to **Section 79** of the Land Act 2012 and he confirmed that it was with respect to rectification of a register.

558. He admitted that the said section allowed him to make corrections to the register but he could not do so on his own motion.

559. He was then referred to **Exhibit P7(a)** which was a letter dated 20th November, 2017 which was marked as B5a in the Plaintiff's bundle of documents. He admitted that the said letter requested him to make some corrections as per **Section 79** of the Land Registration Act.

560. He stated that at the time the said letter was written, the land was not registered in the name of the Plaintiff.

561. He also stated that for the rectification sought for in the letter to be effected, the Land Registrar was to be moved by way of an instrument.

562. He further stated that the instrument would be Form LRA 87 which was provided for in the regulations and ought to be accompanied by an affidavit.

563. He explained that if it was a rectification that touched on the acreage of land or its numbering, then a letter from the Regional Surveyor must also be attached.

564. He stated that the Plaintiff must have been advised of the same.

565. He confirmed that **Exhibit P5** was an introduction letter written by the Chairman and it did not have any instructions to the Land Registrar.

566. He admitted that they required that a letter of introduction be taken to the Land Registry before anything was done.

567. He clarified that title deeds were not issued based on the said letter of introduction.

568. He confirmed that Form LR A33 was a transfer form which was the basis for transfer from the Government of Kenya to the name of the person in the Letter of Introduction.

569. He also confirmed that they would verify the information with the members register that was in their custody.

570. He stated that he could not ascertain whether land parcel No's 1529 to 1554 had been superimposed on the Plaintiff's parcel of land and he could not also ascertain whether the said parcels of land had been registered.

571. He also stated that they were not obligated to visit parcels of land before registration. He explained that the Land Registrar only visited parcels of land on account of a Court order or when there was a boundary dispute.

572. He was then referred to **Exhibit P8(d)** which was a letter written by the Land Registrar to **Milton Kamau**. He stated

that he was not able to ascertain the conclusion of the said summons.

573. He clarified that the Plaintiff wrote the letter dated 20th November, 2017 which letter led to the Land Registrar inviting the Chairman of the 24th Defendant vide the letter that was produced as **Exhibit P8(d)**. The Chairman was to appear with the documents of Plot No. 623 that were in his custody.

574. He stated that the document in the custody of the Chairman was the members register which the Land Registrar would have compared with the list that had been deposited with him.

575. He also stated that it was not true that the summons were not concluded because of a fraudulent collusion between Mr. **Kamau** and the Land Registrar.

576. He admitted that at the time of the writing of the said letter, land parcel No. 623 had already been reserved for a water tank and explained that it was in the year 1996.

577. He was then referred to the letter written by Mr. Olweny and addressed to the Nakuru District Commissioner which stated that **Milton Kamau** intended to con members.

578. He confirmed that they not only relied on information from Mr. **Kamau** but also relied on the records that were in their custody which included the members register.

579. He was then referred to the Gazette Notice dated 14th May, 1999 which had been produced as **Exhibit P19**.

580. He confirmed that Tayari LR 535/5, 10363 and 10364 were situated in Nakuru.

581. He also confirmed that in High Court Civil Case No. 478 of 1994, the Court issued orders that the said parcels of land should not be subdivided until the said suit was determined.

582. He admitted that the directors ignored the said order and continued subdividing the land and issuing title deeds.

583. He also admitted that efforts to compel the proprietors of the land to surrender the title deeds failed.

584. He further admitted that a Notice was given that if no objection was filed within thirty days, then the Land Registrar would cancel the title deeds of the said parcels of land.

585. He stated that this would have had the effect of cancelling the title deeds that had earlier been issued to the members and they would have been of no effect.

586. He then stated that the gazette notice was issued by J.M Mamburi the then Land Registrar Nakuru County.

587. He confirmed that in Nakuru ELC Case No. 79 of 2016 that was referred to by **DW1** in his statement, Justice Munyao ordered that a site visit be done and a report be prepared.

588. He also confirmed that the said suit touched on the Olweny Map.

589. He further confirmed that at Paragraphs 1 and 2 of the said statement, **DW1** stated that the parcels of land in dispute in the said suit were Mau Summit/Molo Block 7/1590 and Plot No's 625 & 626 Tayari.

590. He confirmed that the findings of the report prepared in ELC Case No. 79 of 2016 were that Plot No's 625 and 626 Tayari were on the Olweny Field Sheet and that land parcel No. Mau Summit/Molo, Block 7/1590 had been superimposed on Plot No. 625 in the second survey.

591. He stated that in his own opinion this was not possible.

592. He also confirmed that land parcel No. Mau Summit/Molo, Block 7/1590 reflected on the Registered Index Map Sheet II.

593. He read out the recommendation on the report arising out of ELC Case No. 79 of 2016 as follows;

“The Plaintiff to acquire back his land comprised on 625 and 626. Parcel No’s 1577 - 1601, 1604 & part of 1602 and 1603 to be deleted on the RIM. New numbers to be issued to Plot 625 & 626 for the District Land Registrar to issue title deed as per the original demarcation the Defendant to remove the construction material.” (sic)

594. He confirmed that Plot No’s 625 and 626 were on the Olweny Map.

595. He observed that the officers who prepared the said report noted that Plot No's 625 and 626 were theoretically re-planned on the Registry Index Map with bad intentions.

596. He also observed that it appeared that a majority of the created parcels had never been marked on the ground.

597. He confirmed that the said report was prepared by **S.M Mwangi** the District Surveyor and **Magdalene Vigutsa Bunyonyi** Land Registrar No. 187.

598. He also confirmed that the earliest title deed was issued in the year 2000 while the latest was issued in the year 2016.

599. He further confirmed that eleven parcels of land were superimposed on the Plaintiff's parcel of land including land parcel No. 1539.

600. He admitted that he did not have the register and he could not therefore ascertain who was the registered owner after the land was registered to the Government of Kenya.

601. He reiterated that as per the green card for land parcel No. 623, the said parcel of land belonged to the Government of Kenya.

602. He confirmed that the first entry on the green card for land parcel No. 153 was the registration to the Government of Kenya. The land was then transferred to **David Ndungu Kariru** before it was registered in the name of **Doris Nyaruiru Njiri**.

603. He also confirmed that registration would be done by a transfer instrument and not vide a land sale agreement.

604. He stated that their records in respect of Tayari Farm were correct. He also stated that they prepared the green card and there was a first registration and subdivision.

605. He confirmed that they got the Tayari Farm information from the members register and the Survey Department.

606. He admitted that the green card for land parcel No. 623 did not have the Registry Index Map sheet number. He also admitted that not all green cards had the map sheet number.

607. He confirmed that there was a Notice to Produce that had been issued for Tayari Farm individual land ownership registers for Sheet No's 1, 2 and 3.

608. He stated that the said documents were in the custody of the Regional Surveyor.

609. When he was referred to the document marked as C13 in the Plaintiff's bundle of documents, he confirmed that it was a list of members of Tayari Farm as per the register in the Land Registrar's Office.

610. He admitted that the names that were ticked on the said list were superimposed on the Plot No. 623.

611. He also admitted that the Court would not be able to tell if those were the plots that had been superimposed onto the Plaintiff's parcel of land.

612. Upon re-examination, he reiterated that as per the report filed in ELC Case No. 79 of 2016, Plot No's 625 and 626 were theoretically re-planned with bad intentions.

613. He also reiterated that it appeared that a majority of the created parcels of land, had never been marked on the ground.

614. He stated that he could not tell the parcels that were being referred to in the statement as "*Created parcels of land*".

615. He reiterated that land parcel No. 623 had never been subdivided and it could be traced and marked on the ground.

616. He stated that the gazette notice that had been produced did not refer to land parcel No's 623 and 153.

617. He reiterated that the Olweny Map did not have a stamp of the Regional Surveyor and they therefore relied on the registered map.

618. He also reiterated that the **Olweny** Map was not registered.

THE 24TH DEFENDANT'S EVIDENCE.

619. Milton Kamau Mbugua, herein after referred to **DW3**, testified in support of the 24th Defendant's case.

620. He stated that he filed a witness statement on 12th July, 2022 and prayed that the Court adopts the said statement as part of his evidence in Chief, which prayer the Court acceded to.

621. It was his evidence that he lives on Tayari Farm in Molo Town. It was also his evidence that he has been the

chairman of the 24th Defendant for a period of over thirty-three years and added that he was first appointed in the year 1988 and was still holding the said position.

622. It was further his evidence that the land in dispute was land parcel No. 623.

623. He testified that he knew the Plaintiff who was a member of the 24th Defendant.

624. He also testified that the Plaintiff had two shares. That was share No's 399 and 256 which entitled him to two parcels of land measuring 1 ½ acres each.

625. He further testified that a share was equivalent to 1 ½ acres of land and every share entitled a member to a commercial plot that measured 50 x 100.

626. It was his evidence that the Plaintiff had two shares and two plots. That is two parcels of land that measured 1 ½ acres and two commercial plots that measured 50 x 100.

627. It was also his evidence that he could identify the plots on the ground.

628. It was further his evidence that in order to entitle a member to a share, each member was to pay Kshs. 2,150/=.

629. He testified that he had the register of members of the 24th Defendant from the year 1974 to the year 1977.

630. He also testified that the Plaintiff was not an original member of the 24th Defendant.

631. He further testified that he did not know from whom the Plaintiff purchased his parcel of land.

632. It was his evidence that if the Plaintiff gave the name of the person he purchased the land from, then he would find the name from the Original Member Register.

633. It was also his evidence that he had a register of titles. It was further his evidence that after purchase from the original owner he would confirm if the Plaintiff's name appeared in the Titles register.

634. He testified that he could confirm that they gave the Plaintiff the

title documents for the two shares that comprised of two parcels of land that measured 1 ½ acres each.

635. He also testified that in his witness statement, he stated that the Plaintiff was a member of the probe committee.

636. He further testified that the probe Committee was to investigate why **Mrs. Taylor** and **Densar Estate** enhanced the price of the parcel of land.

637. It was his evidence that they had agreed to purchase the land for Kshs. 1,100,000/= but **Mrs. Taylor** asked to be paid Kshs. 6,000,000/= and explained that Mrs. Taylor asked for the said amount of money alleging that the members and directors of the 24th Defendant had sold her cows, wheat and other farm produce.

638. It was also his evidence that the probe committee was to establish whether cows and/or wheat were stolen. He produced a copy of the report prepared by the Probe Committee as **Exhibit D13** which is document No. 5 on the list of documents dated 20th May, 2023.

639. It was further his evidence that the probe committee's mandate was given in the year 1982 and it was to run for six

months but they were not able to finish the task within the said six months.

640. He testified that instead of sticking to their mandate, the probe committee engaged in fraudulent activities.

641. He explained that the Plaintiff, for instance, took the parcel of land where the water tank was located and added that the water tank was to serve 22,000 people.

642. He further testified that he had the title deed for land parcel No. 623 which the Plaintiff was claiming and added that the said title deed had been produced as **Exhibit D23 (1)**.

643. It was his evidence that land parcel No. 623 was reserved for a water tank and added that dug a borehole on it.

644. It was also his evidence that the Plaintiff assisted other members of the probe committee to “grab” land and gave an example that **Geoffrey Mbuthia** grabbed five shares while **Joseph Njoroge** took **J.K Waigwa’s** parcel of land.

645. It was further his evidence that both parcels of land were given back to their owners by the Courts. He explained that one of such cases was Nakuru HC Case No. 478 of 1994. He produced a ruling delivered in the said suit as **Exhibit D14**.

646. He testified that they also appeared before Justice Rimuta and produced a ruling delivered on 10th February, 2006 as **Exhibit D15**. He explained that the said suit was in Court for seven years before it was dismissed.

647. He further testified that a surveyor by the name Olweny was appointed by the probe Committee while the original surveyor was appointed by the general meeting.

648. It was his evidence that he did not know Olweny and that if at all he was appointed, then he was doing his personal work and not that of the members of the 24th Defendant.

649. It was also his evidence that after they agreed to purchase the said parcel of land from **Mrs. Taylor** of Denisar Estates, they found squatters living on the land and explained that the said squatters were employees of **Mrs. Taylor**.

650. It was his evidence that the squatters were living in a village on a portion of the parcel of land and added that the squatters had semi-permanent houses made of mud and grass thatch.

651. He testified that the said employees lived like slaves and that their immediate task was to resettle them. He explained that they approached the District Commissioner Nakuru who gave them a surveyor known as **Wanyonyi** and the said surveyor was to survey the land and settle Mrs. Taylor's employees temporarily.

652. DW3 further testified that **Wanyonyi** prepared and gave them a map which map was used to settle 409 people.

653. It was his evidence that Tayari Farm had 628 members and the map prepared by **Wanyonyi** did not make provision for the primary school, nursery school, water tank and other public utilities. He explained that this went to show that **Wanyonyi's** work was temporary.

654. It was also his evidence that in the year 1982, they wanted to settle the 24th Defendant's members and that is when they learnt that **Mrs. Taylor** had enhanced the purchased price.

655. It was his testimony that they formed a probe committee to look into the matter of the enhanced purchase price but they discovered that the probe committee was engaging in fraudulent activities and the general meeting of the members of the 24th Defendant dismissed them.

656. He testified that the general meeting elected new directors and he was appointed as the Chairman. There were nine

other directors who were appointed and they were all deceased. He was the only surviving director.

657. He also testified that he had the minutes of the meeting that expelled the probe committee which took place on 12th November, 1988. The said minutes are on document No. 2 on the list of documents dated 20th May, 2022. The minutes were produced as **Exhibit D16**.

658. He further testified that the probe committee handed over a report dated 17th November, 1988 to the elected directors. The minutes appeared as document No. 1 on the list of documents dated 20th May, 2022. The minutes were produced as **Exhibit D17**.

659. It was his evidence that after the meeting of the general members that took place on 12th November, 1988, the elected directors together with the former directors went to the Registrar of Companies and the names of the former directors were replaced.

660. It was also his evidence that he had a letter dated 12th December, 1988 that stated that they were the new directors. The letter is document No. 4 on the list of documents dated 20th May, 2022 and was produced as **Exhibit D18.**

661. It was further his evidence that they subsequently called a general meeting and added that before the meeting, they approached the then District Commissioner one **Mr. Abuduba** who assigned to them a District Surveyor by the name **Zacharia Muritu.**

662. He testified that **Zacharia Muritu** attended the general meeting and they thereafter drafted an agreement dated 18th February, 1989 between the 24th Defendant and **Zacharia Muritu.** The said agreement is document No. 6 on the list of documents dated 20th May, 2022 . It was marked and produced as **Exhibit D19.**

663. He also testified that **Zacharia Muritu** in doing his work, first established the total acreage of the farm and the number of members.

664. He further testified that **Zacharia Muritu** then took note of the other developments that were needed to be done which included the Primary & Secondary Schools, the water tank and the Police Post.

665. It was his evidence that fifteen acres were set aside for Tayari Primary and Secondary Schools and they both had title deeds. The Police post was assigned $\frac{3}{4}$ of an acre while nursery schools were to be established in each of the four blocks. He added that the nursery schools were to be established in blocks (A), (B), (C) & (D).

666. It was also his evidence that water tanks were to be established on a half an acre parcel of land. Water tanks were to be constructed and filled with water which water would flow with gravity to members houses.

667. It was further his evidence that all those public amenities had title deeds and he had copies of the said title deeds.

668. DW3 testified that the 24th Defendant had a bank account and money from the said account was used to pay Mr. Muritu.

669. He also testified that shareholders of the 24th Defendant were required to pay Kshs. 1,375/= towards the processing of their title deeds and added that every member who paid money was issued with a title deed.

670. He further testified that the shareholders of the 24th Defendant also paid Kshs. 600 as survey fees which money was paid to **Mr. Muritu.**

671. It was his evidence that as per the titles register, 628 title deeds were issued for the shares that entitled members to a 1 ½ acre parcel of land.

672. It was also his evidence that he had in his possession the titles register for commercial plots. The commercial plots that were issued were 603 in number.

673. He reiterated that the Plaintiff had two title deeds for parcels of land that measured 1 ½ acres and two title deeds for commercial plots.

674. He testified that Plot No. 623 and the Plaintiff's parcels of land were two kilometers apart and that he did not understand what was the Plaintiff's contention was.

675. He also testified that he knew the history of the parcels of land that the Plaintiff was claiming.

676. He further testified that in Nakuru HCC Case No. 478 of 1994, the Court delivered a ruling on 10th February, 2006 and ordered the Plaintiff and his friends to return the forty acres they had taken to the 24th Defendant. The Court also ordered the 24th Defendant to share the forty acres amongst

its shareholders. The ruling had been produced as **Exhibit D15**.

677. It was his evidence that there was a water tank on land parcel No. 623 and it served 22,000 people.

678. He was then referred to paragraph 12 of the Amended Plaint. He testified that according to the Phase III register of the 24th Defendant, Plot No. 1529 was registered to **Jane Wamara** and not the Plaintiff.

679. He also testified as per Phase III register, Plot No. 1530 was registered in the name of **Samuel Njiri Gatogo** the 10th Defendant while Plot No. 1531 was registered in the name of **Peter Njonjo Gathoni** the 1st Defendant.

680. He further testified that Plot No. 1532 was registered in the name of **Wioe Self Help Group** that was not a party to the suit while Plot No. 1533 was registered in the name of **Alice Mihioko Kimani** the 11th Defendant.

681. It was his evidence that Plot No. 1534 was registered in the name of **Njenga Muniu** the 3rd Defendant.

682. It was also his evidence that the plots that measured 30 x 70 initially belonged to members of the 24th Defendant.

683. It was further his evidence that the Plaintiff was not part of Phase III.

684. He testified that all those plots had been developed and there were permanent houses on them that had cost a lot of money to put up.

685. He reiterated that there was a water tank on Plot No. 623 and that the Defendants were not in possession of the said plot.

686. He testified that there was a security officer who was guarding the said tank and he urged the Court to dismiss the Plaintiff's suit.

687. In his witness statement he states that the members of the 24th Defendant held a special general meeting on 18th December, 1982 and appointed a probe committee to audit its assets and liabilities.

688. He further states that the probe committee was to also find out the assets the 24th Defendant was going to purchase from Denisar Estates.

689. He also states that the probe committee presented its report which was rejected by the members of the 24th Defendant because the probe committee members had committed several irregularities that included allocating themselves extra shares.

690. He states that in the year 1989, the members of the 24th Defendant formed a panel to investigate the members of the probe committee and recover any land that was illegally allocated.

691. He also states that the Plaintiff was among the persons found to have illegally allocated themselves extra shares.

692. He further states that during the election of the new directors in the year 1988, the Plaintiff contested against him for the position of the Chairman of the 24th Defendant and adds that he was elected thereby defeating the Plaintiff which led to the Plaintiff harboring hatred towards him.

693. He also states that after Muritu Surveyor was appointed, he declined to so the survey until the land rates were paid and that he proceeded to pay the land rates on 7th May, 1994.

694. He further states that the 24th Defendant never contracted Olweny & Associates to carry out any survey work.

695. He states that Tayari DEB Primary School was allotted plot No. 2048, a nursery school was allotted Plot No. 577, Tayari

Secondary School was allotted Plot No. 2047 while the water tank was allotted Plot No. 623.

696. He also states that the any shares acquired by the Plaintiff and any other member after 18th December, 1982 was illegal and fraudulent. In particular, the shares and receipts exhibited by the Plaintiff in his list of documents were not authentic and neither did they emanate from Tayari Farmers Limited.

697. He further states that the allotment of the parcels of land by the 24th Defendant was done in three phases. In phase I members were allotted 1 ½ acre parcels of land, in Phase II members were allotted plots measuring 50 x 100 feet while under Phase III members were allotted plots measuring 30 x 70 feet.

698. He states that the Plaintiff was a beneficiary of the allotments that took place under Phase 1 and 2. Under Phase 1 he was allotted Plot No's 256 and 399 which measured 1 ½

acres each. Under Phase 2, the Plaintiff was allotted Plot No. 1741 and two other plots that measured 50 x 100 feet.

699. He also states that the Plaintiff made illegal entries claiming to be the allottee of Plot No. 747 under Phase II despite an earlier finding that all the plots that were fraudulently acquired be surrendered back to the company.

700. He further states that the Plaintiff's contention that he was allocated three plots under Phase II upon payment of Kshs. 11,000/= is unfounded.

701. He states that the payment of Kshs. 11,000/= only entitled a member to one plot and the payment was meant to compensate the losses that were incurred by Densar Estates.

702. He also states that some of the Defendants in this suit are deceased.

703. On cross-examination, the Plaintiff informed the Court that he wrote a letter dated 4th October, 2021 where he set out his disabilities. He therefore requested the Court to allow his son one **George Njihia** who was present in Court to ask questions on his behalf.

704. Neither of the parties objected to the said request and the Court allowed **George Njihia** to ask the questions on behalf of the Plaintiff.

705. The Court was informed that the questions were sixteen in number.

706. On the first question, **DW3** was referred to **Exhibit P4** which was the judgement that had been delivered in Molo SPM Criminal Case No. 1084 of 2009 Republic vs Gachengo.

707. **DW3** stated that **Olweny** had been appointed by the Plaintiff in his personal capacity as a member of the probe committee and not as a director.

708. He was then referred to the second last paragraph on **Exhibit P4** and he reiterated that **Olweny** was brought to Tayari Farm by the Plaintiff and added that the Plaintiff did not consult the 24th Defendant's members before engaging the services of **Olweny**.

709. In response to the second question, he confirmed that the reason why the members of the 24th Defendant rejected **Olweny's** survey and asked for a government surveyor was because the Plaintiff did not engage them before appointing **Olweny**.

710. In response to the third question, he reiterated that **Olweny** was not working for the 24th Defendant and he was instead working for the Plaintiff and the probe committee.

711. In response to the fourth question, **DW3** denied having knowledge of the **Olweny** map. He stated that he had never seen it and added that the only map he knew was the Survey of Kenya Map. He further stated that if the Court

found that the **Olweny** Map was the map that was at the Survey of Kenya offices then the said map ought to have been used.

712.In response to the fifth question, he stated that if the shareholders of the 24th Defendant were agreeable to the **Olweny** map, then they would not have engaged another surveyor.

713.In response to the sixth question, he admitted that he was elected as the 24th Defendant's Chairman on 12th November, 1988 as he stated in his witness statement.

714.He confirmed that he was not the 24th Defendant's director at the time **Olweny** was appointed but he was a member of the 24th Defendant and he ought to have known if the membership had approved of his appointment.

715.For question No. 7, **DW3** was referred to the judgement delivered in Molo SPM Case No. 1084 of 2009 Republic vs

Gachengo (**Exhibit P4**) and he confirmed that as per the said judgement, he admitted upon cross-examination, that his name was not on the company register or the list of directors.

716. He denied that the said judgement was a true reflection of his testimony before that Court.

717. He stated that he could not have been appointed as a Chairman if he was not a member of the 24th Defendant. He also stated that he did not agree with the said judgement.

718. For question No. 8, **DW3** was referred to the Ruling delivered in HCC Case No. 478 of 1994 on 20th September, 2000 (**Exhibit D14**). He confirmed that as per the third last paragraph on page 4 of the said ruling, two maps had been presented to the said Judge.

719. He admitted that they attended Court in the said suit and stated that they did not know the **Olweny** Map. He stated that it was the finding of the Court of Appeal that the **Muritu**

Map was the valid survey map. He also stated that he had the judgement and/or ruling of **Lady Justice Martha Koome** as she then was.

720. He clarified and admitted that there was no judgement that found that the **Muritu** Map was the valid map as HCC Case No. 478 of 1994 was dismissed.

721. In response to question No. **9**, **DW3** stated that there was no need to go to Court to establish which of the two maps was valid. The two maps being the **Muritu** Map and the **Olweny** Map.

722. He also stated that the Plaintiff had in his possession two title deeds that he was given based on the **Muritu** Map.

723. In response to question No. **10**, he reiterated that they did not know the map and the only map they knew was the **Muritu** Map. **Olweny**

724. In response to question No. **11**, he confirmed that the map that was used to issue title deeds for the Tayari farm was the **Muritu** map. He reiterated that the title deeds in possession of the Plaintiff that were issued by the 24th Defendant resulted from the **Muritu** Map. He also reiterated that they did not know the **Olweny** Map.

725. He further reiterated that he had a register which showed that the Plaintiff had been given Plot No's 256 and 399. **DW3** then asked why the Plaintiff did not use the **Olweny** Map to obtain the title deeds for the other parcels of land.

726. In response to question No. **12**, he stated that the **Olweny** Map did not make provision for public utilities.

727. He was referred to paragraph **26** of his witness statement and he explained that he must have been referring to the **Wanyonyi** Map as he did not know anything about the **Olweny** Map.

728. For question No. 13, he was referred to the Letter of Recommendation from the District Officer Molo that had been produced as **Exhibit P13**. He confirmed that the Letter of Recommendation referred to a meeting that was held on 13th April, 1984. He admitted that he was not present at the said meeting as he was working in Nairobi.

729. Upon clarification by the Court, he confirmed that he became a director in the year 1988. He also confirmed that as at 13th April, 1984 he was a member of the 24th Defendant.

730. Upon further clarification by the Court, he confirmed that his parents were also members of the 24th Defendant and that one **Nganga Kamau** was member No. 162. He admitted that the said **Nganga Kamau** was his father in law and his name was entered on the register on 4th March, 1976. At that time there were 200 shares.

731. Upon clarification by the Court, he confirmed that his name appeared on the Tayari Farmers Phase I register and he was given Plot No. 534 which measured 1 ½ acres. He also

confirmed that the Plaintiff's name was on the Tayari Farmers Phase I register which showed that he was allocated plot No. 256 that measured 1 ½ acres and Plot No. 399.

732. The Court confirmed the evidence from the register.

733. In response to question No. **14**, he admitted that as at 13th April, 1984 he was a member of the 24th Defendant. He also admitted that they moved to Tayari Farm in the year 1957 when he was still in school.

734. In response to question No. 15, he reiterated that the only map he knew was the **Muritu** Map and admitted that he did not know the map that was used to do the balloting on 13th April, 1984.

735. In response to question No. **15**, he denied that the Plaintiff balloted for plot No. 623. He reiterated that he did not know the map that the Plaintiff had produced in Court and the only map he knew was the **Muritu** Map.

736. Upon further cross examination by Counsel for the 23rd Defendant, **DW3** reiterated that the Plaintiff had two shares which entitled him to two parcels of land that measured 1 ½ acres each.

737. He reiterated that each 1 ½ acre plot entitled the Plaintiff to a commercial plot. He confirmed that the Plaintiff therefore had four title documents.

738. He reiterated that as per his register, the Plaintiff had Plot No's 256 and 399. He admitted that he had not seen the Land Registrar's report.

739. The Land Registrar's report was read out and explained to him. The said report was to the effect that land parcel No's 1741 & 747 were commercial plots while land parcel No's 256 and 399 measured 1 ½ acres each and **DW3** then confirmed that those parcels of land gave rise to four title documents.

740.DW3 reiterated that Plot No. 623 was a public utility plot that had a borehole and a water tank.

741.He confirmed that the green card for land parcel No. 623 that had been produced as **Exhibit (D23)1** tallied with his records which showed that it had been reserved for a water tank.

742.He also confirmed that the map pursuant to which the Plaintiff was issued with title documents and the reserve for the water tank tallied with his records.

743.Upon re-examination, he stated that the Molo judgement was on a criminal matter

744.He read out paragraph **3** of the second page of the ruling delivered in HCC No. 478 of 1994 that had been delivered on 10th February, 2006 and confirmed that in the said ruling, an application seeking an order of injunction was dismissed and the Respondents given the liberty to subdivide the land amongst its members.

745. He stated that after the delivery of the said ruling, they continued to subdivide the said parcel of land using the **Muritu** Map.

746. He reiterated that there was no meeting or letter from the members that gave Olweny & Associates the authority to conduct any survey.

747. He stated that with regard to the judgment delivered in the criminal matter, he could confirm that both him and his mother were members of the 24th Defendant and that he was elected as the Chairman of the 24th Defendant because he was a member.

748. He also stated that his evidence in the criminal matter was not recorded properly.

749. He was referred to the Letter of Recommendation written by the District Officer Molo (**Exhibit P13**) and he reiterated that on 13th April, 1984 he was working in Nairobi.

750. He stated that the said Letter of Recommendation was a notice calling for a meeting that was scheduled for 27th April, 1984. He also stated that he had not seen the agenda and minutes of the second meeting. He further stated that he could confirm that no such meeting took place and that **Olweny** was not given work and neither did he do any work.

751. He reiterated that the Plaintiff had in his possession four title deeds for four parcels of land that were issued pursuant to the **Muritu** Map.

752. He stated that the Plaintiff insisted that the **Olweny** Map was the correct map but he had not taken back the title deeds that were issued to him from the **Muritu** Map.

753. The 24th Defendant's case was then closed.

754.The 1st to 22nd Defendants' case and the 23rd Defendant's case was also closed.

ISSUES FOR DETERMINATION.

755.The Plaintiff filed submissions dated 19th February, 2025 while the 1st to 22nd Defendants filed submissions dated 28th February, 2025. The 23rd and 24th Defendants did not file submissions.

756.The Plaintiff in his submissions sets out a summary of his evidence, the 1st to 22nd Defendant's evidence and the Land Registrar's evidence.

757.The Plaintiff submits that the Land Registrar, Nakuru did a site visit and confirmed that land parcel No. 623 in the Registry Index Map is 23 Kilometers away from Plot No. 623 in the Olweny & Associates Map of 1984.

758.The Plaintiff also submits that the Land Registrar confirmed that land parcel No. **153** on the Registry Index Map is 1

Kilometer away from Plot No. 153 in the Olweny & Associates Map of 1984.

759. The Plaintiff further submits that the Land Registrar is aware of the alleged fraudulent survey of the Tayari Farm that was done in the 1990s.

760. It is the Plaintiff's submissions that the Land Registrar issued gazette Notice No. 2546 of 14th May, 1999 and cautioned against the issuance of title deeds.

761. It is also the Plaintiff's submissions that the Land Registrar wrote a report dated 10th November, 2016 that was done jointly with the Nakuru District Land Surveyor. The report was filed in Nakuru ELC Case No. **79 of 2016 Mbugua Thuo vs Laban Kamau**. It is further the Plaintiff's submissions that from the said report, the 23rd Defendant was aware that Olweny & Associates had surveyed the Tayari Farm in the year 1984.

762. The Plaintiff submits that the 23rd Defendant was also aware that after the survey by Olweny & Associates, there was no more land left in Tayari Farm to be surveyed.

763. The Plaintiff also submits that Olweny & Associates complained to the Nakuru District Commissioner through a letter dated 1st March, 1990 that there was a scheme by the new management of the 24th Defendant to rob the Tayari Farm members by engaging Muritu & Associates to survey the land that had already been surveyed and beacons.

764. The Plaintiff further submits that the third batch of directors acted unfairly by engaging another surveyor to survey land that had already been surveyed.

765. It is the Plaintiff's submissions that the 23rd Defendant suspected that the third batch of directors added more members to the original Tayari Farm members thereby causing the resurvey by Muritu & Associates.

766. It is also the Plaintiff's submissions that the 23rd Defendant was aware that Plot No's 625 and 626 were theoretically re-planned by superimposing plots on them.

767. It is further the Plaintiff's submissions that the theoretical re-planning of Plot No's 625 and 626 also happened to his plot No. 623.

768. The Plaintiff submits that the 23rd Defendant does not have the Olweny & Associates Map and yet it was the map that settled members in the year 1984.

769. The Plaintiff also submits that the 23rd Defendant relied on information provided by **Milton Kamau** to establish the owners of land parcel No's 1529 and 1554 which were superimposed on his land. The owners of the said parcels of land were given title deeds between the year 2000 to 2016.

770. The Plaintiff further submits that the 23rd Defendant did not verify the information that was provided by **Milton Kamau**.

771. It is the Plaintiff's submissions that the records in the 23rd Defendant's office are not correct as they do not show the original owner of the land who was Denisar Estates Limited.

772. It is also the Plaintiff's submissions that the records on Tayari Farm that are with the 23rd Defendant are not correct since some green cards do not bear the registry map sheet number.

773. The Plaintiff then sets out the evidence of the 24th Defendant's witness one **Milton Kamau Mbugua**. The Plaintiff submits that the said witness was not truthful in his evidence.

774. The Plaintiff submits that first, it was **Milton Kamau Mbugua's** evidence that he was unaware of the survey done by Olweny & Associates and yet he testified in Criminal Case No. 1084 of 2009 Republic vs George Gachengo where the Court observed that there were three surveys of the

Tayari Farm. The first survey was done by the Government Land Consolidation department, the second survey by Olweny & Associates while the third survey was done by Muritu & Associates.

775. It is the Plaintiff's submissions that **Milton Kamau Mbugua** admitted that he was neither a member nor a director of the 24th Defendant in the year 1984 when members were paying and balloting for their *shambas* when he testified in Criminal Case No. 1084 of 2009 Republic vs George Gachengo.

776. The Plaintiff submits that secondly, it was **Milton Kamau Mbugua's** evidence that he was not aware of the map that was drawn by Olweny & Associates and yet he was a party in Civil Case No. 478 of 1994 John Mureithi & 98 Others vs Milton Kamau & 3 Others where the Court observed that two surveys were done which were contentious and the Court was ready to determine which survey was fair and valid if asked to.

777. The Plaintiff also submits that at paragraphs 23, 26 and 27 of **Milton Kamau Mbugua's** statement, he has dwelt on the alleged irregularities on the Olweny & Associates Map and alleged that there was confusion between the Olweny and Wanyonyi map which was not true.

778. The Plaintiff further submits that **Milton Kamau Mbugua** lied that he (Plaintiff) was not a director of the 24th Defendant and yet he (Plaintiff) signed the Indenture of Transfer of Denisar Estates Limited to Tayari Farmers Company Limited dated 16th December, 1985 in his capacity as director.

779. It is the Plaintiff's submissions that **Milton Kamau Mbugua** lied when he testified that he inherited his land from **Nganga Kamau** who was a member of Tayari Farm and yet when he testified in Criminal Case No. 1084 of 2009 Republic vs George Gachengo, he stated that he purchased his land from **Nganga Kimani** who sold to him land that belonged to his (**Nganga Kimani**) wife.

780. It is also the Plaintiff's submissions that **Milton Kamau Mbugua** lied that he (Plaintiff) got two shares in Tayari Farm which entitled him to land parcel No's 399 & 256 and land parcel No's 1741 and 747 which measured 50 x 100 feet.

781. It is further the Plaintiff's submissions that the true position was that his first share entitled him to plot No. 328 or land parcel No. 399 in the Registry Index Map which measures 1.5 acres and Plot No. 589 or land parcel No. 1742 in the Registry Index Map which measure 50 x 100 feet.

782. The Plaintiff submits that Plot No. 642 or land parcel No. 256 in the Registry Index Map which measures 1.5 acres and plot No. 139 or land parcel No. 747 in the Registry Index Map are owned by his sisters and they were purchased by their father **Nganga Kihiko.**

783. The Plaintiff also submits that he swapped land parcel No. 399 which measured 1.5 acres with his sister's parcel of land

No. 256 after their family resolved that their sister would acquire a permanent house after the Plaintiff moved to Nakuru.

784. The Plaintiff further submits that that is why land parcel No. 399 is registered in the name of **Hannah Gathoni Nganga** who is his sister while land parcel No. 256 is registered in his name.

785. It is the Plaintiff's submissions that he did not bring up the said parcels of land because their ownership was not in dispute.

786. It is also the Plaintiff's submissions that the introduction of the said parcels of land in the present suit is an attempt to mislead the Court.

787. It is further the Plaintiff's submissions that the actual dispute is on his second share which was Plot No. 623 that measured

1.5 acres and plot No. 153 which measured 50 x 100 as per the Olweny & Associates Map of 1984.

788. The Plaintiff submits that he did not complain about land parcel No's 256, 399, 1741 and 747 which are in the Registry Index Map and are as set out in the Muritu Map because the said parcels of land were not interfered with even though the numbers were changed in the Muritu Map.

789. The Plaintiff sets out the evidence of **Milton Kamau Mbugua** and submits that the 30 x 70 feet plots were introduced by the third batch of directors with the intention of superimposing them on the 1 ½ acre parcels of land that had already been surveyed by Olweny & Associates in the year 1984.

790. The Plaintiff relies on the judicial decisions of Criminal Case No. 1084 of 2009 Republic vs George Gachengo, Civil Suit No. 79 of 2016 Mbugua Thuo vs Laban Gatonye Kamau, Civil Case No. 478 of 1994 John Mureithi Gitara vs Milton Kamau &

Others and urges the Court to grant him the reliefs sought in the Amended Plaint.

791. The 1st to 22nd Defendants submit on whether the Plaintiff has proved his case on a balance of probabilities.

792. The 1st to 22nd Defendants rely on **Sections 107 & 108** of the Evidence Act, the judicial decisions of **William Kabogo Gitau vs George Thuo & 2 Others [2010] 1 KLR 526, Palace Investment Ltd vs Geoffrey Kariuki Mwenda & another [2015] eKLR** and submit that it is the Plaintiffs contention that he paid Kshs. 11,000/= to the 24th Defendant in the year 1984 and was allocated Plot No. 623.

793. The 1st to 22nd Defendants also submit that the Plaintiff contends that he constructed a house made of timber on the said parcel of land and in the year 2001, some people invaded the land and evicted his workers.

794. The 1st to 22nd Defendants further submit that it is the Plaintiff's contention that he went to check on the said parcel of land in the year 2012 and discovered that it had been subdivided into 26 small plots registered in their names.

795. It is their submissions that the 24th Defendant called one **Milton Kamau Mbugua** its director as a witness.

796. It is also their submissions that **Milton Kamau Mbugua** testified that the Plaintiff was appointed as a treasurer of the probe committee which consisted of **Mwangi Wokabi** (Chairman), **Geoffrey Mbuthia** (secretary) and **John N. Kimotho**. This is as per the letter dated 9th June, 1983 that was marked as A9 in the list of documents.

797. It is further their submissions that the probe committee members were not directors of the 24th Defendant and that it was the probe committee that appointed the firm of Olweny & Associates to conduct the survey. This is as per the document marked as A12 in the bundle of documents.

798. The 1st to 22nd Defendants submit that Olweny & Associates surveyed LR No's 535/5, 10363 and 10364.

799. The 1st to 22nd Defendants also submit that the said survey was never approved and/or registered and it is therefore a nullity.

800. The 1st to 22nd Defendants further submit that there was no evidence that at the time of engaging the said firm of surveyors, that they were duly licensed to conduct surveys.

801. The 1st to 22nd Defendants rely on the judicial decision of **George Kigen Cheboiywo & others vs Kipngok Chirchir & Others Nakuru ELC Case No. 327 of 2014** in support of their submissions.

802. It is the 1st to 22nd Defendants submissions that Muritu & Associates Surveyors were appointed after a public participation exercise amongst the members of the 24th Defendant.

803. It is also the 1st to 22nd Defendants submissions that the Plaintiff did not object to their appointment and it was not until the year 1994 when the Plaintiff began to challenge the said survey.

804. It is further the 1st to 22nd Defendants submissions that after Muritu & Associates Surveyors conducted the survey, beacons were placed on the land and the Registry Index Map prepared. The Registry Index Map gave rise to the title deeds to the various parcels of land including those that were in dispute before Court.

805. They submit that they have produced evidence that they are in possession of their respective portions of land and it will not serve the interests of justice if the Court allows the implementation of the survey conducted by Olweny & Associates as this will cause tensions on the farm as the shareholders of the 24th Defendant have settled and developed their portions of land.

806. They also submit that the Court should find that the survey done by Muritu Surveyors as per the directions of the 24th Defendant to be proper and disallow the claim for eviction.

807. The 1st to 22nd Defendants refer to the minutes of the meeting held in November, 1988 and reiterate that the committee chaired by **Mwangi Wokabi** did not have the capacity to engage the services of Olweny & Associates.

808. The 1st to 22nd Defendants submit that in the year 1994, the Plaintiff and other persons filed Nakuru HCC No. 478 of 1994 John Mureithi Gitara & 98 Others vs Milton Kamau & 3 Others where the Court issued injunctive orders against the Defendants in the said suit.

809. The 1st to 22nd Defendants also submit that the said injunctive orders were discharged and the Court delivered a ruling on 20th September, 2002 where it dismissed an application for review. The Court observed that there were

two survey reports and if there was any challenge, the Court would have no problem determining and enforcing the proper survey plans.

810. The 1st to 22nd Defendants also submit that the Plaintiff thereafter filed Nakuru Civil Suit No. 516 of 2001 Charles Njihia Nganga vs Samuel Njiri & Others and sought interim reliefs. The Court delivered a ruling on 21st August, 2001 where it dismissed the said application as the Plaintiff had earlier filed Nakuru HCC No. 478 of 1994.

811. The 1st to 22nd Defendants further submit that the Plaintiff then filed Nakuru ELC Case No. 217 of 2018 Charles Njihia Nganga vs Joseph Kimani Gitara & Others which he withdrew before filing the present suit.

812. It is the 1st to 22nd Defendants submissions that the Plaintiff failed to disclose to this Court that he had filed other suits over the same subject matter.

813. It is also the 1st to 22nd Defendants submissions that the Plaintiff is a perpetual litigant who either withdraws his cases or deliberately fails to have the suits he has filed concluded.

814. It is further the 1st to 22nd Defendants submissions that the Court should find that the Plaintiff is forum shopping and has not moved the Court with clean hands.

815. The 1st to 22nd Defendants submit that the report prepared by the probe committee was rejected by the members of the 24th Defendant and the District Officer promised to appoint a four-man panel to assess the report and give recommendations. This was as per the minutes of 1st December, 1988.

816. The 1st to 22nd Defendants also submit that in the subsequent meeting held on 12th December, 1988, an issue arose that the members of the probe committee had unlawfully allocated themselves land.

817. The 1st to 22nd Defendants further submit that by relying on the initial survey, the Plaintiff is intending to sanitize what they had done which was later rectified by the appointment of new directors.

818. It is the 1st to 22nd Defendants submissions that the Plaintiff's contention that he paid kshs. 11,000/= for Plot No. 623 is unfounded. The 24th Defendant sued the Plaintiff herein over the said parcel of land in Nakuru PMCC No. 24 of 1990. This is as per the document attached to the Plaintiff filed in Nakuru ELC Case No. 217 of 2018.

819. It is also the 1st to 22nd Defendants submissions that the said sum of money was paid to compensate for the losses incurred by Denisar Estates. They refer to minute No. 2/12/11/88 of the meeting held on 12th December, 1988.

820. It is further the 1st to 22nd Defendants submissions that as per the evidence of the 24th Defendant, the Plaintiff was

allocated his parcels of land under Phase I and II which properties he is in possession of.

821. The 1st to 22nd Defendants submit that the property that the Plaintiff is now claiming is a public utility property as per the Registry Index Map.

822. The 1st to 22nd Defendants also submit that in instances where companies subdivided land amongst their members, they had to make provisions for public utilities that include schools and roads.

823. The 1st to 22nd Defendants further submit that the second survey overturned the first survey and the 24th Defendant had the right to decide which portions of the land were to be surrendered as public utilities.

824. It is the 1st to 22nd Defendants submissions that the Plaintiff has failed to prove his claim for compensation for lack of use

of land as he has never been in possession of it and neither does the land belong to him.

825.The 1st to 22nd Defendants conclude their submissions by urging the Court to dismiss the Plaintiff's suit with costs.

SUMMARY OF EVIDENCE AND DOCUMENTS.

826.The volume of documents produced as evidence in this matter and the number of witnesses who have testified can be both intimidating and daunting. Analysing the documents and determining the relevance of each document and witness was a herculean task.

827.The summary of the evidence of the parties herein and the summary of documents produced either in support of the claim or in opposition to it is useful in crystallising the issues for determination.

828.It is the Plaintiff's case that he is a member of Tayari Farmers Company Limited, the 24th Defendant herein.

829. It is also the Plaintiff's case that on 27th April, 1984, he balloted and was allocated Plot No. 623 measuring 1 ½ acres and plot No. 153 measuring 50 x 100 feet.

830. It is further the Plaintiff's case that he was allocated the said parcels of land after a survey was commissioned by the 24th Defendant, which survey was done by Olweny & Associates.

831. It is the Plaintiff's case that in the year 1988, members of the 24th Defendant appointed a new set of directors who commissioned another survey of the 24th Defendant's land.

832. It is also the Plaintiff's case that the second survey was done by Muritu & Associates and it resulted in the superimposition of 26 plots on the parcel of land previously allocated to him i.e. parcel No. 623.

833. It is further the Plaintiff's case that as a result of the second survey, his plot No. 153 was renamed plot No. 775.

834. It is the Plaintiff's case that persons, who include the 1st to 22nd Defendants, have been settled on his parcel No. 623. Consequently, he seeks that the Court issues a declaration that he is the owner of Plot No. 623 and the persons on his parcel of land i.e. No. 623 be evicted.

835. In support of his case, the Plaintiff produced a copy of the Tayari Farmers Company Limited Certificate of Incorporation dated 4th October, 1974 as **Exhibit P1**.

836. A bundle of copies of receipts for shares issued by Tayari Farmers Company Limited were produced as **Exhibit P2**.

837. A copy of a Land Sale Agreement dated 10th May, 1983 entered between **Tayari Farmers Company Limited** and **Denisar Estates Limited** was produced as **Exhibit P3**. The agreement is for the sale of LR No's 10363, 10364 and 535/5 Molo at a consideration of kshs. 3,600,000/= . Some of the terms of the agreement are that the Purchaser is already in possession of the said parcels of land and the purchase price

of kshs. 3,600,000/= is included in the sum of Kshs. 6,600,000/= awarded in Nakuru HCC No. 288 of 1975 Denisar Estates vs Tayari Farmers Ltd & Others.

838. Copies of Letters of Recommendation written by the District Officer Molo dated 14th June, 1993 and 28th June, 1983 (produced as **Exhibits P4 (a)** and **(b)**). The Plaintiff set out the contents of the said letters when he testified.

839. Copies of documents containing an analysis of the receipts issued to the Plaintiff upon payment for his *Shamba* plot No. 623 and Plot No. 153 were produced as **Exhibit P6 (a)** and **(b)**.

Exhibit P6(a) shows that the Plaintiff was issued with seven receipts upon making various payments that totaled to Kshs. 11,000/=. **Exhibit P6(b)** has fifteen receipts copied onto it and the only legible part of the receipts is that they were issued by Tayari Farmers Company Limited.

840. Copies of letters written by the Plaintiff and addressed to the Land Registrar were produced as **Exhibit P7(a), (b), (c), (d), (e), (f) and (g).**

- **Exhibit P7(a)** is a letter dated 20th November, 2017. The subject of the letter is "*Invasion of my shamba plot No. 623 Tayari Farm*" The Plaintiff informs the Land Registrar that in the year 2001, persons invaded his *Shamba Plot No. 623* and destroyed his house and fence.

In the said letter, the Plaintiff states that he checked the status of his parcel of land and discovered that the land had been subdivided into twenty-six plots that were registered as land parcel No's Mau Summit/Molo Block 7/1530 to 1554 (Tayari). The Plaintiff seeks that the said titles be cancelled by the Land Registrar.

- **Exhibit P7(b)** is a letter dated 12th February, 2018 addressed to **Mr. C.W Sunguti** the District Land Registrar, Nakuru. The subject of the letter is "*Mau Summit Molo Block 7/623*". The letter states that a

survey was done by Olweny & Associates and the Plaintiff allocated land parcel No. Mau Summit/Molo Block 7/623 (Tayari) and Plot No. 153.

The letter also states that twenty-six small plots have been superimposed on the Plaintiff's parcel of land and he sought that the titles of the said plots be cancelled. The twenty-six plots were registered as land parcel No's Mau Summit/Molo Block 7/1530 to 1554(Tayari).

- **Exhibit P7(c)** is a letter dated 22nd March, 2018 that is addressed to **Mr. C.W Sunguti** the District Land Registrar, Nakuru. The subject of the said letter is "*Invasion of my shamba plot No. 623 in Tayari Farm*". The letter requests the Land Registrar to cancel the title deeds for land parcel No's Mau Summit/Molo Block 7/1530, 1531, 1532, 1534, 1539, 1540, 1543, 1545, 1548, 1552 and 1553. The letter also requests that a caution be registered on land parcel No's Mau Summit/Molo Block 7/1529, 1533, 1535, 1536, 1537,

1538, 1541, 1542, 1544, 1546, 1547, 1549, 1550, 1551 and 1554.

- **Exhibit P7 (d)** is a letter dated 3rd April, 2018 addressed to the Chief Land Registrar. The subject of the letter is "*Invasion of my shamba plot No. 623 Tayari Farm*". In the said letter, the Plaintiff informed the Chief Land Registrar that he had a meeting with the Land Registrar, Nakuru one **C. W Sunguti** on 7th February, 2018. The Plaintiff also stated that he received the Land Registrar's verbal verdict on 21st March, 2018 and he was apprehensive that his issue was not accorded the seriousness it deserved.

- **Exhibit P7(e)** is a schedule of various dates that the Plaintiff is alleged to have visited the Nakuru Land Registry. It shows that the Plaintiff went to the Land Registrar's offices on 20th September, 2017, 20th November, 2017, 21st November, 2017, 23rd November, 2017, 15th December, 2017, 7th February, 2018, 13th

February, 2018, 27th February, 2018, 13th March, 2018, 16th March, 2018 and 21st March, 2018.

841. Copies of letters and a bundle of EMS receipts were produced as **Exhibit P 8(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j)**. The Plaintiff set out in great detail, the contents of the said documents when he gave evidence.

842. A copy of a list of owners of land parcel No's Mau Summit/Molo Block 7/1530 (Tayari) 1529 to 1554 was produced as **Exhibit P9**.

843. A copy of a letter dated 19th May, 1983 was produced as **Exhibit P11**. The letter is written by **W.A Chepkwony**, the District Officer Molo/Rongai. It states that there was to be an Annual General Meeting of members of Tayari Farmers Company Limited on 3rd June, 1983. The agenda of the meeting was as follows;

1) Purchasing of the farm.

2) Probe report.

3) Election

4) A.O.B

844. The speakers of the meeting were;

- 1. Joseph N. Kugwa (Chairman)**
- 2. Samwel Gathaiya (Secretary)**
- 3. Mbugua Karonga**
- 4. All Directors**
- 5. Mwangi Wokabi**

845. A copy of a letter dated 9th June, 1983 was produced as **Exhibit P12**. The letter is written by **W.A Chepkwony**, the District Officer, Molo/Rongai and addressed to the Manager, Barclays Bank. The subject of the letter is “*Bank Signatories*”. The letter states that a general meeting of Tayari Farmers Company Limited was held on 3rd June, 1983 and the following persons elected as bank signatories;

- a. Mwangi Wokabi - Chairman**
- b. Geoffrey M. Mbuthia - Secretary**
- c. Charles N. Nganga - Treasurer**
- d. John N. Kimotho**

846. A letter dated 13th April, 1984 was produced as **Exhibit P13**. The letter is written by **W. A Chepkwony** the District Officer Molo/Rongai and it stated that a meeting was to be held at

the Tayari Farm in Molo on 27th April, 1984. The agenda of the meeting was issuance of plots to shareholders.

847. A copy of a transfer dated 16th December, 1985 was produced as **Exhibit P14**. The transfer is for LR No. 535/5 from **Denisar Estates Limited** to **Tayari Farmers Company Limited**. The transfer is signed by directors of both companies whose names are not disclosed.

848. Copies of Certificates of Official Search were produced as **Exhibit P15 (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j)**.

- **Exhibit P15 (a)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1530 dated 6th September, 2017. It shows that the land was registered in the name of **Sammy Njiri Gotogo** on 4th June, 2002.
- **Exhibit P15 (b)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1531 dated 6th September, 2017 which shows that

Joseph Kimani Gitara was registered as the owner on 7th December, 2005.

- **Exhibit P15 (c)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1532 dated 6th September, 2017 which shows that **Betty Wangari Kahuria** was registered as the owner on 19th January, 2016.
- **Exhibit P15 (d)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1534 dated 6th September, 2017 which shows that **Njenga Muniu** was registered as the owner on 10th May, 2001.
- **Exhibit P15 (e)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1539 dated 6th September, 2017 which shows that **Hezekiah Njuguna Iraya** was registered as the owner on 3rd August, 2000.
- **Exhibit P15 (f)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1540 dated 6th September, 2017 which shows that

Jecinta Waithera Kamau was registered as the owner on 7th December, 2005.

- **Exhibit P15 (g)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1543 dated 6th September, 2017 which shows that **Emilly Nyambura Kairu** was registered as the owner on 7th December, 2005.
- **Exhibit P15 (h)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1545 (Tayari) dated 6th September, 2017 which shows that **Joseph Luka Mbugua Kamama** was registered as the owner on 25th February, 2014.
- **Exhibit P15 (i)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1548 dated 6th September, 2017 which shows that **Joseph Luka Mbugua Kamama** was registered as the owner on 25th February, 2014.
- **Exhibit P15 (j)** is a copy of a Certificate of Official Search for land parcel No. Mau Summit/Molo Block 7/1552 dated 6th September, 2017 which shows that

Macharia Hiram Mwangi was registered as the owner on 18th August, 2016.

849. A copy of a Plaintiff filed in Nakuru PM CC Case No. 24 of 1990 Tayari Farmers C. Limited vs Charles Njihia Nganga was produced as **Exhibit P16**. The Plaintiff in the said suit averred that the Plaintiff herein acquired Plot No. 623 (*shamba*) and commercial Plot No. 479 fraudulently and sought the following prayers;

a. A declaration that the purchase by the Defendant of a share after 18/12/1982 and the allotment to him of Plot No's 623 and the commercial plot No. 479 in Tayari Farm, Molo were unlawful.

b. An order that the Defendant do vacate from Plot No. 623 and the commercial plot No. 479 and that vacant possession thereof be given to the Plaintiff.

c. Costs of this suit

d. Interest on the costs.

e. Any other or further relief that this Honourable Court may deem fit to grant.

850. A copy of a letter dated 13th August, 1991 was produced as **Exhibit P17**. The letter has the address of Tayari Farm which is P.O Box 509, Molo and states that **Charles Njihia Nganga**, the Plaintiff herein paid for Plot No. 623 by depositing money in the Tayari Farmers Company Limited Barclays Bank Account No. 1937/2 and was issued with receipts by the Company.

Exhibit P17 is signed by the following persons;

- a. Mwangi Wokabi (Chairman)***
- b. Geoffrey M. Mbuthia (Secretary)***
- c. Michael Kiberenge (Director)***
- d. John N. Mwangi (Director)***

851. During the hearing, the Plaintiff testified that Nakuru PM CC Case No. 24 of 1990 Tayari Farmers C. Limited vs Charles Njihia Nganga did not proceed for hearing after the letter produced as **Exhibit P17** was written.

852. A copy of a list of members of Tayari Farm was produced as **Exhibit P18. Geoffrey Mbutia** who testified as **PW2** set out in great detail the contents of the said list in his evidence.

853. A copy of a Gazette Notice issued on 14th May, 1999 was produced as **Exhibit P19**. The Gazette Notice is No. 2546 and is a Notice of Cancellation of title deeds issued upon subdivision of LR No's 535/5, 10363 and 10364 during the subsistence of a Court order issued in Nakuru HCC No. 478 of 1994 that prohibited the subdivision of the said parcels of land. The notice was for thirty days and it is dated 14th May, 1999.

854. A copy of the judgement and proceedings of Molo SPM Criminal case No. 1084 of 2009 Republic vs George Gachengo were produced as **Exhibit P20**. The accused person was charged with nine counts of forcible entry into various portions of land located in Tayari Estate, Molo Town.

The accused person was acquitted under **Section 215** of the Criminal Procedure Code.

855. A Survey Map was produced as **Exhibit P21**. It is marked as A13 on the Plaintiff's bundle of documents. The map is not legible but was produced by **Gibson Wahome Werugia** who testified as **PW6**. This is document No. **12** on the Plaintiff's list of documents dated 14th May, 2019. It is described as "Map showing survey done on Tayari Farm LR No. 535/5, 10363 and 10364 Molo by Olweny & Associates Surveyor in 1983".

856. A report prepared by **Gibson Wahome Werugia** was produced as **Exhibit P22**. **Gibson Wahome Werugia** testified as **PW6** and he set out in detail the contents of the said report.

857. The 1st to 22nd Defendants case on the other hand is that they are members of the 24th Defendant who exercised due diligence before they purchased their portions of land.

858. It is also the 1st to 22nd Defendants case that they are registered proprietors of their respective parcels of land which the Plaintiff alleges to be forming part of Plot No. 623.

859. It is further the 1st to 22nd Defendants case that they did not play any role in the survey and subdivision of the 24th Defendant's parcels of land.

860. In support of their case they produced a copy of a ruling delivered on 7th June, 2000 in High Court Civil Case No. 478 of 1994 John Mureithi Gitara & 98 Others versus Milton Kamau & 3 Others as **Exhibit D1**. The ruling was in respect of an application which sought for the dismissal of the suit for want of prosecution. In the ruling, the Court dismissed the said application and discharged all the restraining (sic) orders issued against the Defendants.

861. A copy of a ruling delivered on 10th February, 2006 in High Court Civil Case No. 478 of 1994 John Mureithi Gitara & 98 Others versus Milton Kamau & 3 Others was produced as

Exhibit D2. The ruling was delivered on 10th February, 2006 and it dismissed an application which sought for amendment of the Plaint.

862. A copy of the register of Tayari Farmers Company Limited was produced as **Exhibit D3.** The list is in respect of Phase III Mau Summit Molo Block 7/Tayari and it has a stamp of Tayari Farmers Company Limited. The columns on the said list are not marked and portions of it are not legible.

863. Copies of ballot cards and receipts issued by Tayari Farmers Company Limited were produced as **Exhibit D4.** The ballot cards produced were for Plot No's 1529, 1535, 1536, 1538, 1552 and 1553. The ballot cards are issued by **Tayari Farmers Company Limited.** The receipts produced were issued by **Tayari Framers Company Limited** to **Peter Kariuki Ngugi** and **John Gichuru Mwangi.**

864. Copies of letters in respect of land parcel No's Mau Summit Molo Block 7/1549, 1538, 1542 and 1544 were produced as

Exhibit D5. The letters were addressed to the District Land Registrar, Nakuru by **Milton Kamau Mbugua** and **Benson Karagu Muritu** of Tayari Farmers Company Limited. The said persons are described as Chairman and Secretary of Tayari Farmers Company Limited respectively. The letters certify **John Ruiru Muchiri, Richard** (his other two names are not legible) and **Andrew Gichuki Chege** as members of **Tayari Farmers Company Limited.**

865. I have noted that that during the hearing, **John Gichuru Mwangi** who testified as **DW1** gave evidence that the said letters were written by the District Land Registrar. This is not the correct position.

866. Copies of transfer documents for plot numbers 7/1549, 1536, 1538 and 1541 together with various sale agreements were produced as **Exhibit D6.** The name of Tayari Farmers Company Limited appears on all the transfer documents.

- a. The transfer for Plot No. 1538 is dated 17th August, 2003 and is from John Muchiri to Anne Njeri Ndungu. The transfer is witnessed by William Makalasia, David Ndungu Kiboi and Samuel N. Kinyanjui.**
- b. The transfer for Plot No. 1541 is dated 8th October, 2008 and it is from Jack Kinywa Kamau to Tabitha Njeri Michore. The witnesses to the said transfer are Christophe Monyo and William Makalasin.**
- c. The transfer for Plot No. 1536 is dated 12th June, 2007 and it is from Hosea Kinuthia Njenga to Ruben Kariuki Wanjiru. The witnesses to the said transfer are Nancy Wangari Kariuki and William Makalasin.**
- d. The transfer for Plot No. 1549 is dated 18th October, 2010 and it is from Kimani Ndirangu to Simon Nganga Kamau. The said transfer is not witnessed.**
- e. A copy of a land sale agreement dated 13th February, 2017 was produced. It is between Anne Njeru Mungu (vendor)**

and Janeffer Wamuyu Rukwaro (purchaser) and it is for sale of land parcel No. Mau Summit/Molo Block 7/1538 for a consideration of Kshs. 270,000/=. The agreement is witnessed by James Gichuru Muturi, Grace Mumbi and Samuel Ndungu Kinyanjui. The agreement is drawn by D.K Otwere & Co. Advocates.

f. A copy of an undated land sale agreement between Paul Njenga Hosea (Vendor) and Reuben Kariuki Wanjiru (Purchaser) was produced. It is for the sale of Plot No. 1536 for a consideration of Kshs. 38,000/=. The agreement is witnessed by Kariuki Nancy Wangari and Willyam Makarasia.

g. A copy of a land sale agreement dated 8th January, 2014 between Reuben Kariuki Wanjiru (Vendor) and Peter Kariuki Ngugi (Purchaser) was produced. It is for the sale of Plot No. 1536 at a consideration of kshs. 400,000/=. The agreement is witnessed by Patrick M. Gichuhi and Florence Wairimu.

h. A copy of a land sale agreement dated 19th September, 2013 between Moses Muniu Njenga (Vendor) and Mary Njeri Kariuki was produced. It is for the sale of Plot No. 1535 for a consideration of Kshs. 350,000/=. The agreement is witnessed by Patrick Njoroge Mbugua and Francis Njogu Muthemba.

867. Copies of title deeds for land parcel No's Mau Summit/Molo Block 7/1552, 1532, 1543, 1540, 1530, 1531, 1548, 1545, 1553 and 1533 (Tayari) were produced as **Exhibit D7**.

a. The copy of the title deed for land parcel No. Mau Summit/Molo Block 7/1530 (Tayari) shows that Sammy Njiri Gitogo was registered as the owner on 5th June, 2002 and the land measures 0.0166 Ha.

b. The copy of the title deed for land parcel No. Mau Summit/Molo Block 7/1552 (Tayari) shows that Macharia Hiram Mwangi was registered as the owner on 18th August, 2016 and the land measures 0.0166 Ha.

c. The copy of the title deed for land parcel No. Mau Summit/Molo Block 7/1532 (Tayari) shows that Betty Wangari Kahuria was registered as the owner on 15th January, 2016 and the land measures 0.0166 Ha.

d. The copy of the title deed for land parcel No. Mau Summit Molo Block 7/1543 (Tayari) shows that Emilly Nyambura Kairu was registered as the owner on 7th December, 2005 and the land measures 0.0166 Ha.

e. The copy of the title deed for land parcel No. Mau Summit/Molo Block 7/1531 (Tayari) shows that Joseph Kimani Gitara was registered as the owner on 7th December, 2005 and the land measures 0.0166 Ha.

f. The copy of the title deed for land parcel No. Mau Summit/Molo Block 7/1548 shows that Joseph Luka Mbugua Kamama was registered as the owner on 12th March, 2014 and the land measures 0.016 Ha.

g. The copy of the title deed for land parcel No. Mau Summit/Molo Block

7/1545 (Tayari) shows that Joseph Luka Mbugua Kamama was registered as the owner on 6th March, 2014 and the land measures 0.0166 Ha.

h. The copy of the title deed for land parcel No. Mau Summit/Molo Block 7/1533 (Tayari) shows that Alice Mihioko Kimani was registered as the owner on 10th December, 2019 and the land measures 0.6 Ha.

868. A copy of the register of Tayari Farmers Company Limited was produced as **Exhibit D9**. It is for Phase I and it is for 1 ½ acre *shambas*. The list has a stamp of Tayari Farmers Company Limited and it shows that Plot No. 623 was reserved for a water tank while Plot No's 624 and 625 were reserved for water points.

869. A copy of the map from the Lands registry was produced as **Exhibit D10**.

870.A copy of the green card for land parcel No. Mau Summit/Molo Block 7/ 399 was produced as **Exhibit D11**. Entry No. 1 is dated 7th June, 1996 when the land was registered to the Government of Kenya.

a. Entry No. 2 is dated 3rd April, 2014 when Charles Njihia Nganga was registered as the owner. Entry No. 3 is dated 8th April, 2014 when the title deed was issued. The green card shows that the parcel of land measures 0.5752 Ha.

871.A copy of the green card for land parcel No. Mau Summit/Molo Block 7/256 was produced as **Exhibit D12**. Entry No. 1 is dated 9th June, 1996 when the land was registered to the Government of Kenya. Entry No. 2 is dated 3rd of April, 2014 when **Charles Njihia Nganga** was registered as the owner. Entry No. 3 is dated 8th April, 2014 when the title deed was issued. The green card shows that the land measures 0.65 Ha.

872. It is the 23rd Defendant's case that land parcel No. Mau Summit Molo Block 7/623 which measures 0.2606 Ha, is registered to the Government of Kenya and reserved for a water tank.

873. It is also the 23rd Defendant's case that land parcel No. Mau Summit Molo Block 7/153 which measures 0.5547 Ha is registered in the name of **Doris Nyaruiru Njiiri.**

874. It is further the 23rd Defendant's case that the County Surveyor is the custodian of the Registry Index Map and is best placed to confirm whether the Muritu or Olweny Map was used to prepare the Registry Index Map.

875. The 23rd Defendant produced copies of the green cards for land parcel No's Mau Summit/Molo Block 7/623 and 153 as **Exhibits D23(1) and (2)** respectively.

876. Collins Liyai Aliela who testified as **DW2** set out in great detail the contents of the said green cards.

877. It is the 24th Defendant's case that the Plaintiff is its member and he was given two shares. Each share entitled the Plaintiff to a 1 ½ acre *shamba* and a 50 x 100 commercial plot.

878. It is also the 24th Defendant's case that the Plaintiff is the registered owner of land parcel No's 399 and 256 which measure 1 ½ acres each.

879. It is further the 24th Defendant's case that land parcel No. 623 that the Plaintiff is claiming to belong to him is reserved for a water tank.

880. It is the 24th Defendant's case that its members did not appoint **Olweny** Surveyor and they instead appointed one **Zacharia Muritu** to survey its parcels of land.

881. It is also the 24th Defendant's case that the said **Zacharia Muritu** surveyed the land and prepared a map that was registered and used to subdivide its parcels of land amongst its members.

882. In support of its case, the 24th Defendant produced a copy of a Report prepared by the Tayari Farmers Company Limited Probe Committee as **Exhibit D13**. The report is in Swahili and it was prepared by the following persons;

- a. Mwangi Wakaba (Chairman)*
- b. Geoffrey Mbuthia (Secretary)*
- c. Charles Ng'ang'a (Committee Member)*
- d. Ng'ang'a Kimani*
- e. Michael Kiberenge*
- f. John N. Kimotho*
- g. John Njuguna Mwangi*

883. **Milton Kamau Mbugua** who testified as **DW3** set out in detail the contents of the said report.

884. A copy of a ruling delivered on 7th June, 2000 in Nakuru HC Case No. 478 of 1994 John Mureithi Gitara & 98 Others

versus Milton Kamau & 3 Others was produced as **Exhibit D14**. The 1st to 22nd Defendants also produced a copy of the said ruling as **Exhibit D1** and the contents of the said ruling have been set out in the preceding paragraphs.

885. A copy of a ruling delivered on 10th February, 2006 in Nakuru HC Case No. 478 of 1994 John Mureithi Gitara & 98 Others versus Milton Kamau & 3 Others was produced as **Exhibit D15**.

The 1st to 22nd Defendants also produced a copy of the said ruling as **Exhibit D2** and its contents have been set out in the preceding paragraphs.

886. A copy of the minutes of the meeting that took place on 12th November, 1988 was produced as **Exhibit D16**. **DW3** set out in detail the contents of the said minutes when he testified.

887. A copy of the minutes of the meeting held on 17th November, 1988 was produced as **Exhibit D17**. **DW3** set out in detail the contents of the said minutes when he testified.

888. A copy of a letter dated 12th December, 1988 was produced as **Exhibit D18**. The copy of the said letter is completely illegible.

889. A copy of an agreement dated 14th February, 1989 between Z. H Muritu and Tayari Farmers Company Limited was produced as **Exhibit D19**. The agreement has the stamp of Tayari Farmers Company Limited and it is for the survey of LR No's 10363, 10364 and 535/5.

The agreement is signed by the following persons;

a. Milton Kamau (Chairman)

b. Joseph Chege (Vice Chairman)

c. Benson Kiragu (Secretary)

***d. William (his second name is not legible)
(Treasurer)***

e. Hosea Njoroge and Benson Macharia (Directors)

890. The agreement is also signed by **J.K Rono** the District Surveyor Molo and **Z. N Muritu & D.K Njoroge** (surveyors).

ANALYSIS AND DETERMINATION.

891. It is not disputed that the Plaintiff is a member of the 24th Defendant. It is also not disputed that the Plaintiff was given two shares that entitled him to two 1 ½ acre *shamba* plots and two 50 x 100 Commercial Plots.

892. What is disputed is whether a survey was done by Olweny & Associates Surveyors and that the said survey resulted in the allocation of Plot No. 623 to the Plaintiff. Another point of dispute is whether land parcel No's Mau Summit/Molo Block 7/1529 to 1554 (Tayari) were fraudulently superimposed on Plot No. 623 on account of an illegal survey conducted by Muritu surveyor.

893. Therefore, considering the pleadings, the evidence adduced by the Plaintiff and Defendants plus the submissions filed, my view is that the following issues arise for determination:

***a. Whether a survey was done by
Olweny & Associates Surveyors and***

whether the Plaintiff was allocated Plot No. 623.

b. Whether land parcel No's Mau Summit/Molo Block 7/1529 to 1554 (Tayari) were fraudulently superimposed on Plot No. 623.

c. Whether the prayers sought in the Amended Plaintiff should be granted.

d. Who should bear costs of the suit.

A. Whether a survey was done by Olweny & Associates Surveyors and whether the Plaintiff was allocated Plot No. 623.

894. The Plaintiff contends that he is a member of the 24th Defendant. The Plaintiff also contends that the 24th Defendant appointed the firm of Olweny & Associates to survey its parcels of land before subdividing them amongst its members.

895. The Plaintiff further contends that on 27th April, 1984, he balloted and was allocated a *Shamba* Plot No. 623 which

measures 1 ½ acres and commercial Plot No. 153 which measures 50 X 100.

896. It is the Plaintiff's contention that 26 small plots have been fraudulently superimposed on his plot No. 623.

897. I will first address the issues of whether a survey was done by Olweny & Associates and whether the Plaintiff was allocated Plot No. 623.[issue (A)].

898. I will then address the issue of the alleged superimposition of 26 plots on Plot No. 623 under issue (B).

899. The 24th Defendant gave evidence through its Chairman one **Milton Kamau Mbugua (DW3)**.

900. It is his contention that members of the 24th Defendant appointed one **Zachary Muritu** to survey the 24th Defendant's parcels of land.

901. It is also his contention that **Zachary Muritu** surveyed the said parcels of land, sub-divided it and prepared a map which map was registered and was used to issue title deeds to the members of the 24th Defendant.

902. DW3 denied that that the 24th Defendant appointed Olweny & Associates to conduct any survey and instead contended that it was the probe committee, which the Plaintiff was a member of, that appointed the said surveyor.

903. In opposition to the Plaintiff's claim and to counter his allegations that Olweny was commissioned to undertake any survey, **DW3** produced a copy of an agreement dated 14th February, 1989 between **Z. H Muritu** and **Tayari Farmers Company Limited** as **Exhibit D19**. The agreement bears the stamp of Tayari Farmers Company Limited and it is for the survey of LR No's 10363, 10364 and 535/5. The agreement is signed by the officials of the 24th Defendant and **J.K Rono** the District Surveyor Molo and **Z. N Muritu & D.K Njoroge** (surveyors).

904. It is **DW3's** contention that according to the survey done on account of **Exhibit D19**, Plot No. 623 was reserved for a water tank

905. It was the evidence of **Geoffrey Muthoki Mbutia (PW2)** that a survey was been done on the Tayari Farm by Olweny & Associates.

906. Gibson Wahome Werugia who testified as **PW6** produced a report dated 16th March, 2022 as **Exhibit P22**.

907. The title of the said report is;

“Report on my field visit to Original Plot No's 623 & 153 in Tayari Farm Molo. Subdivision of LR No's 535/5, 10363 & 10364”

908. He states in his report that the Plaintiff gave him two documents. The first one was a Subdivision Proposal prepared by Olweny & Associates Licensed Land Surveyors.

He observed that Plot No. 623 appears on the said plan and it measures 1 ½ acres. He also observed that Plot No. 153 also appears and it measures 0.1148 acres.

909. The second document supplied by the Plaintiff was the Registry Index Map of the area. **PW6** observed in his report that the said map was not suitable for his use since it had been reduced due to photocopying. He therefore opted to purchase the area Registry Index Map from the Regional Surveyor's Office, Nakuru.

910. **PW6** observed that the area Registry Index Map was prepared in the year 1994 which was after Olweny & Associates had prepared the subdivision plan.

911. He also observed that from the Registry Index Map, all the 1 ½ acre plots in the Olweny subdivision plan were subdivided into smaller plots.

912. He further observed that Plot No. 623 in the Olweny Subdivision Plan was subdivided into 26 small plots.

913. It was his observation that the final title numbers of all the parcels of land were different from the allocation and/or ballot numbers. He stated that this was normal in most subdivisions of large farms.

914. Among the documents attached to the said report is the Subdivision Plan prepared by Olweny & Associates and copies of Sheets 2 & 3 of the Registry Index Map for Mau Summit Molo Block 7 (Tayari).

915. The first page of the subdivision plan prepared by Olweny & Associates is titled;

***“Tayari Farm Plots
0363 E 10364 - Molo
CTC of the Subdivision Proposal
Plan of LR No’s 535/5, 10363,
10364 by Olweny & Associates”***
(Emphasis mine)

916. Plot No. 623 is shaded in Orange on the said page.

917. The second page of the subdivision plan prepared by Olweny & Associates is titled;

**“CTC of the Subdivision Proposal
Plan of LR No’s 535/5, 10363 &
10364 by Olweny & Associates.”**

(Emphasis mine)

918. Plot No. 153 is shaded in Orange on the said page.

919. On the Registry Index Map of Nakuru District Mau Summit/Molo Block 7 (Tayari) Sheet 2, land parcel No’s 1529 to 1554 have been shaded in orange. The said sheet has a stamp of the Provincial Survey Records Office dated 8th March, 2022. On Sheet No. 3 of the said map, land parcel No. 775 is shaded in Orange.

920. It is evident that what the Plaintiff contends to be a Survey Map prepared by Olweny & Associates is instead a

Subdivision Proposal Plan. The Land Registrar, Nakuru (**DW2**) confirmed that he is not in possession of it.

921.DW2 also confirmed that the said document was not registered and neither did it have the stamp of the Regional Surveyor.

922.DW2 in his evidence gave details of the procedure to be followed for a survey and sub-division of land to be deemed as legal. He testified that this process has a total of five documents. The process is as follows:

a. Land is divided into several portions by either a government or private surveyor.

b. The surveyor visits the parcel of land in the company of the proprietor or persons in whose favour the land is to be subdivided.

c. Measurements are taken and a sketch drawn. The sketch is then transformed into a Mutation Form.

d. The Mutation Form is the registrable instrument it is then registered at the Survey Office.

e. Before registration of the mutation form, the sketch which usually has alphabets is given numbers. For this to be done, the surveyor must seek consent of the Land Control Board for subdivision.

f. Once the surveyor draws the mutation forms and numbers are allocated, the mutation forms are presented together with the consent from the Land control board (i.e. consent to subdivide)

g. A copy of the mutation form together with the consent of the Land Control Board would then be forwarded to the Land Registrar for purposes of endorsement and the amendment of the Registry Index Map.

h. Endorsed copy of mutation form together with the consent of the Land Control Board would then be sent back to the surveyor.

i. After this the old number is erased from the map and the new number imposed.

j. Before endorsement by the Land Registrar for purposes of amendment, a Certificate of Compliance is obtained from the County Physical Planning Department.

k. After amendment of the Registry Index Map, the mutation form, the endorsement from the Land Registrar and the Certificate of compliance are presented for registration accompanied with the original title (if one had been issued).

923. Apart from the Plaintiff contending that the Subdivision Proposal Plan prepared by Olweny & Associates is a Survey Map, his evidence is devoid of the procedure and lacking in documentary evidence as set out by the Land Registrar (**DW2**) in his evidence.

924. Importantly, during the hearing, evidence was led to the fact that land parcel No. 623 in the Registry Index Map is registered to the Government of Kenya and reserved for a water tank.

925. This evidence was not controverted.

926. Section 107 of the Evidence Act provides as follows;

“(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

927. Section 108 of the Evidence Act provides as follows;

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

928. Section 109 of the Evidence Act provides as follows;

“The burden of proof as to any particular fact lies on the person who wishes the Court to believe in

its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

929. The Court of Appeal in **Antony Francis Wareham t/a AF Wareham & 2 others v Kenya Post Office Savings Bank [2004] eKLR** held as follows;

“We have carefully considered the judgement of the superior Court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or the Court on the basis of those pleadings pursuant to the provisions of order XIV of the Civil Procedure Rules. And the burden of proof is on the plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only

evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail. It also follows that a Court should not make any findings on unpleaded matters or grant any relief which is not sought by a party in the pleadings.” (Emphasis mine)

930. From the totality of the evidence adduced in this matter, it is evident that the Plaintiff has failed to prove that a survey Map was drawn by Olweny & Associates, that the said survey map went through the registration processes as set out in the evidence of **DW2** and/or that the said survey is supported by documents as explained by the Land Registrar (**DW2**) in his evidence.

931. What has instead been produced is a Subdivision Proposal Plan prepared by Olweny & Associates.

932. I will now address the issue whether the Plaintiff was allocated Plot No. 623.

933. In his evidence, the Plaintiff testified that he was given two shares. This was confirmed by **DW3** who is the Chairman of the 24th Defendant.

934. It is not disputed that each share entitled the Plaintiff to one 1 ½ acre *Shamba* plot and one 50 x 100 commercial Plot.

935. It was the Plaintiff's evidence that in respect to one of his shares, he was allocated a 1 ½ acre *shamba* plot No. 623 and commercial plot No. 153.

936. In support of the contention that he was allocated Plot No. 623, the Plaintiff produced a Letter dated 13th August,

1991 (**Exhibit P17**). The letter states that the Plaintiff had paid for Plot No. 623.

937. It is therefore evident that the Plaintiff was allocated Plot No. 623. Did this then mean that this initial allocation of a parcel No. 623 led to a registration of the said parcel in the name of the Plaintiff?

938. The Plaintiff admitted in his evidence that after the Muritu Survey was done, Commercial Plot No. 153 was registered as land parcel No. 775.

939. PW6 confirmed in his report that in the subdivision of most farms, it was normal to have final title numbers for the parcels of land to be different from the ballot members.

940. DW3 testified that the Plaintiff was allocated parcels of land that are now registered as land parcel No's Mau Summit Molo Block 7/399 and 256 which measure 1 ½ acres each for his two shares.

941. DW1 produced copies of the Green cards for the said parcels of land as **Exhibits D11** and **D12** respectively.

942. The green card for land parcel No. Mau Summit/Molo Block 7/399 (**Exhibit D11**) shows that the Plaintiff was registered as the owner on 3rd April, 2014 and the land measures 0.5752 Ha which is approximately 1.421 acres.

943. The green card for land parcel No. Mau Summit/Molo Block 7/256 (**Exhibit D12**) shows that the Plaintiff was registered as the owner on 3rd April, 2014 and the said parcel of land measures 0.65 Ha which is approximately 1.606 acres.

944. In his submissions, the Plaintiff admits that his first share entitled him to land parcel No. Mau Summit/Molo Block 7/399 and a commercial Plot measuring 50 X 100.

945. With regard to land parcel No. Mau Summit/Molo Block 7/256, the Plaintiff submits that the said parcel of land

belongs to his sisters and it was purchased by his father one **Nganga Kihiko**.

946. The Plaintiff also submits that he exchanged land parcel No. Mau Summit/Molo Block 7/399 with his sisters for land parcel No. Mau Summit/Molo Block 7/256.

947. The Plaintiff further submits that he is now registered as the owner of land parcel No. Mau Summit/Molo Block 7/256 while his sister, one **Hannah Gathoni Nganga** is the registered owner of land parcel No. **Mau Summit/Molo Block 7/399**.

948. **Hannah Gathoni Nganga** testified as **PW4** and the Plaintiff's other sister, **Susan Wangari** testified as **PW5**. In her evidence, **PW4** testified that she lives on land parcel No. 322. It is important to note that **PW4** did not give evidence on land parcel No. Mau Summit/Molo Block 7/399.

949. In examination in Chief, **PW5** testified that she built a house on Plot No. 153 where she lives. She later clarified that she was living with **PW4** on a parcel of land left to them by their father. During re-examination, she stated that she had not built a house on Plot No. 153.

950. It is evident that the evidence of **PW5** is contradictory.

951. It is important to note that the Plaintiff has not produced any title document that shows that **Hannah Gathoni Nganga** is the registered owner of land parcel No. Mau Summit/Molo Block 7/399.

952. What is on the Court record is a green card of the said parcel of land (**Exhibit D11**) which shows that the Plaintiff is the registered owner.

953. It is also important to note that the Plaintiff did not adduce any evidence to show that his father **Nganga**

Kihiko had purchased any parcel of land let alone land parcel No. Mau Summit/Molo Block 7/256.

954. From the evidence on the Court record, it is evident that the Plaintiff was given two shares which entitled him to two 1 ½ acres *shamba* plots. It is also evident that he is the registered owner of land parcel **No's Mau Summit/Molo Block 7/399** and **256** and they both measure approximately 1 ½ acres each.

955. On a balance of probabilities, it is more probable than not that the two 1 ½ acre *shamba* plots that the Plaintiff is entitled to were actually allocated to and registered in his name.

956. I am inclined to believe, and rightly so, that the ballot paper for parcel No. 623; which numbers the Court has been told are bound to change upon survey and registration (Evidence of **PW6**), entitled the Plaintiff either to land parcel No. Mau Summit/Molo Block 7/399 or land parcel No. Mau Summit/Molo Block 7/256. These are the

parcels of land that are in the records of the 24th Defendant and are supported by records in the office of the 23rd Defendant.

957. Before penning off on this issue, it is important to note that from the evidence led, it is not clear, how many parcels of land the Plaintiff owns and/or is in possession of in addition to the two shares that he was allocated. He did not deem it necessary to make this disclosure.

958. During cross examination **PW2** admitted that he could not tell how many parcels of land the Plaintiff owned while **PW4** and **PW5** also admitted that the Plaintiff owned several parcels of land that constituted *shamba* plots and commercial plots.

959. In conclusion and in answer to this first question, I find that there is no evidence of a survey having been done by Olweny & Associates Surveyors and that what has been presented by the Plaintiff in evidence is in fact a

Subdivision Proposal Plan . Secondly, the Plaintiff's allegation that Plot No. 623 was registered to him pursuant to the survey done by Olweny & Associates surveyors is not supported by any documents legally known to form part of the registration process upon survey and/or sub-division.

960. Lastly and importantly, evidence has been tendered to support the fact that the Plaintiff's two shares held with the 24th Defendant entitled him to two 1 ½ acre *Shamba* plots and two 50x100 plots. The two 1 ½ acre *Shamba* plots were transferred to him and registered in him are:

a. Mau Summit/Molo Block 7/399 (Exhibit D11) measuring 0.5752 Ha which is approximately 1.421 acres.

b. Mau Summit/Molo Block 7/256 (Exhibit D12) measuring 0.65 Ha which is approximately 1.606 acres.

B. Whether land parcel No's Mau Summit/Molo Block 7/1529 to 1554 (Tayari) were fraudulently superimposed on Plot No. 623.

961. It is important to note that under issue (a) above, I have made the finding that what the Plaintiff refers to as the Olweny & Associates Map is actually a subdivision proposal plan prepared by Olweny & Associates.

962. This finding is further supported by the evidence of the land Registrar (**DW2**) whose evidence is uncontroverted and is crucial in understanding the steps that must be taken and documents that support those steps for a survey to be deemed as legal.

963. The Plaintiff contends that land parcel No's **Mau Summit/Molo Block 7/1529 to 1554 (Tayari)** were fraudulently superimposed on his Plot No. 623 which is on the subdivision proposal plan prepared by Olweny & Associates.

964. DW1 in his evidence denied the allegations of fraud and contended that the 1st to 22nd Defendants did not participate in the survey and subdivision of the 24th Defendant's parcels of land.

965. The Land Registrar who testified as **DW2** admitted during cross examination that he could not ascertain whether land parcel No's 1529 to 1554 were superimposed on the Plaintiff's parcel of land.

966. The evidence of **DW3** who testified on behalf of the 24th Defendant was to the effect that the 24th Defendant appointed **Zachary Muritu** to survey its parcels of land and prepare a map.

967. It was also **DW3**'s evidence that the map prepared by surveyor Muritu was registered and used to issue title deeds, two of which the Plaintiff is a beneficiary of and has no complaints about.

968. It was further **DW3**'s evidence that the parcels of land listed in the Plaint all measure 30 x 70 and Plot No. 623 was reserved for a water tank.

969. Fraud has been defined in Black's Law Dictionary 11th Edition as;

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”

970. The Court of Appeal in **Vijay Morjaria vs Nansingh, Madhusingh Darbar & another [2000] eKLR** held that:

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were

done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.” (Emphasis mine)

971. The Plaintiff has set out particulars of fraud in the Amended Plaintiff and they are as follows;

c. The secret alteration of the original Olweny & Associates Surveyors Map that was used to settle members in 1984 by changing the map scale from 1:1000 to 1:2500.

d. The breaking of the single block in the Olweny & Associates Map into two blocks.

e. The insertion of dead persons as owners of some of the plots illegally subdivided on my land. (sic)

f. The changing of the original numbers given to the 1.5 acre shambas and the 50 x 100 feet plots.

g. All this fraud was done on paper at the registration stage and does not reflect the reality on the ground. This was despite

warning (sic) and complaint by Ms. Olweny & Associates Surveyors.

h. The 26 plots are as hereunder;

- i. Mau Summit/Molo, Block 7/1529
(Tayari) - Sammy Njiri Gitogo.***
- ii. Mau Summit/Molo, Block 7/1530
(Tayari) - Sammy Njiri Gitogo***
- iii. Mau Summit/Molo, Block 7/1531
(Tayari) - Joseph Kimani Gitara.***
- iv. Mau Summit/Molo, Block 7/1532
(Tayari) - Beth Wangari Kahuria***
- v. Mau Summit/Molo, Block 7/1533
(Tayari) - Alice Mihioko Kimani.***
- vi. Mau Summit/Molo, Block 7/1534
(Tayari) - Njenga Muniu***
- vii. Mau Summit/Molo, Block 7/1535
(Tayari) - Wilfred Nganga Kamau***
- viii. Mau Summit/Molo, Block 7/1536
(Tayari) - Reuben Kariuki Wanjiru.***
- ix. Mau Summit/Molo, Block 7/1537
(Tayari) - Gatuna Kangu***
- x. Mau Summit/Molo, Block 7/1538
(Tayari) - John Ruiru Muchiri***
- xi. Mau Summit/Molo, Block 7/1539
(Tayari) - Hezekiah Njuguna Iraya.***

- xii. Mau Summit/Molo, Block 7/1540
(Tayari) - Jecinta Waithira Kamau.**
- xiii. Mau Summit/Molo, Block 7/1541
(Tayari) - Tabitha Njeri Michore**
- xiv. Mau Summit/Molo, Block 7/1542
(Tayari) - Has no registered owner.**
- xv. Mau Summit/Molo, Block 7/1543
(Tayari) - Emily Nyambura Kairu**
- xvi. Mau Summit/Molo, Block 7/1544
(Tayari) - Andrew Gichuki Chege**
- xvii. Mau Summit/Molo, Block 7/1545
(Tayari) - Joseph Luka Mbugua
Kamama**
- xviii. Mau Summit/Molo, Block 7/1546
(Tayari) - Has no registered owner.**
- xix. Mau Summit/Molo, Block 7/1547
(Tayari) - John Mwangi Kahungura**
- xx. Mau Summit/Molo, Block 7/1548
(Tayari) - Joseph Luka Mbugua
Kamama.**
- xxi. Mau Summit/Molo, Block 7/1549
(Tayari) - Kimani Ndirangu**
- xxii. Mau Summit/Molo, Block 7/1550
(Tayari) - David Kamwea Nganga**
- xxiii. Mau Summit/Molo, Block 7/1551
(Tayari) - Perpetuah Tuta Kamau**

**xxiv. Mau Summit/Molo, Block 7/1552
(Tayari) - Macharia Hiram Mwangi**

**xxv. Mau Summit/Molo, Block 7/1553
(Tayari) - Nganga Matu/John Gichuru
Mwangi.**

**xxvi. Mau Summit/Molo, Block 7/1554
(Tayari) - David N. Karuru**

972. Essentially, the particulars of fraud against the Defendants are that they secretly altered what the Plaintiff refers to as the “Olweny & Associates Surveyors Map” by changing the map scale and by breaking the single block on the said map into two.

973. It is important to note that the Plaintiff did not lead any evidence on the map scale of the subdivision proposal plan prepared by Olweny & Associates and map scale of the Registry Index Map.

974. The Plaintiff did not also lead evidence as to the number of block and/or blocks in the subdivision proposal plan

prepared by Olweny & Associates Map in comparison to the Registry Index Map.

975. The Plaintiff did not therefore prove these two items and/or particulars of fraud.

976. The other aspect of the particulars of fraud is that dead persons were inserted as owners of some of the twenty-six parcels of land listed in the Plaint.

977. In the Plaint, the Plaintiff has listed the registered owners of land parcel **No's Mau Summit/Molo Block 7/1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1543, 1544, 1545, 1547, 1548, 1549, 1550, 1551, 1552, 1553 and 1554.**

978. During the hearing, the Plaintiff did not lead any evidence as to which registered owner of the listed parcels of land was deceased.

979. The other item of fraud is that the original numbers given to the 1 ½ acre plots and 50 x 100 plots were changed.

980. PW6 who testified in support of the Plaintiff's case confirmed in his report produced as **Exhibit P22** that it was normal for the final title numbers to be different from the ballot numbers.

981. The Plaintiff contends that Plot No. 623 in the Subdivision Proposal Plan measures 1 ½ acres.

982. The Plaintiff also contends that land parcel No's **Mau Summit/Molo Block 7/ 1529** to **1554** in the Registry Index Map were allegedly superimposed on Plot No. 623 in the Subdivision Proposal Plan.

983. From the various copies of title deeds for land parcel No's **Mau Summit/Molo Block 7/ 1529** to **1554** produced as **Exhibit D7**, it is evident that each of the said parcels of land have different and distinct measurements.

984. For instance, land parcel No. **Mau Summit/Molo Block 7/1533** which is alleged to be one of the parcels of land superimposed on Plot No. 623 measures 0.6 Ha which is approximately 1.48263 acres.

985. It is therefore highly unlikely that 26 parcels of land were superimposed on Plot No. 623 which is alleged to measure 1 ½ acres when **one** of the alleged parcels of land actually measures approximately 1 ½ acres.

986. The burden of proof is on the Plaintiff to prove on a standard higher than a balance of probability but lower than beyond reasonable doubt that indeed the Defendants engaged in acts of fraud. From the totality of the evidence adduced, it is evident that the Plaintiff has failed to discharge the said burden.

987. No evidence of the alleged super imposition has been adduced and a random interrogation of one of the parcels

alleged to be superimposed onto Parcel No. 623 (**Mau Summit/Molo, Block 7/1533 (Tayari) registred in the name of Alice Mihioko Kimani.**) reveals that it is almost the same size as Parcel No. 623.

988. In any event what the Plaintiff is relying on is a Subdivision Proposal Plan which is not the same thing a survey map.

989. In conclusion and in answer to issue (B), I find that the Plaintiff has failed to prove that land parcel No's **Mau Summit/Molo Block 7/1529 to 1554 (Tayari)** were fraudulently superimposed on Plot No. 623.

C. Whether the prayers sought in the Amended Plaint should be granted.

990. The prayers sought in the Amended Plaint have been set out in the preceding paragraphs but I will nonetheless

replicate them hereunder for ease of reference. They are as follows:

i. An order declaring that all the undermentioned 26 plots are superimposed on my shamba (sic) No. 623 as per the Olweny & Associates Surveyors Map and are hereby cancelled.

- i. Mau Summit/Molo, Block 7/1529***
- ii. Mau Summit/Molo, Block 7/1530***
- iii. Mau Summit/Molo, Block 7/1531***
- iv. Mau Summit/Molo, Block 7/1532***
- v. Mau Summit/Molo, Block 7/1533***
- vi. Mau Summit/Molo, Block 7/1534***
- vii. Mau Summit/Molo, Block 7/1535***
- viii. Mau Summit/Molo, Block 7/1536***
- ix. Mau Summit/Molo, Block 7/1537***
- x. Mau Summit/Molo, Block 7/1538***
- xi. Mau Summit/Molo, Block 7/1539***
- xii. Mau Summit/Molo, Block 7/1540***
- xiii. Mau Summit/Molo, Block 7/1541***

- xiv. Mau Summit/Molo, Block 7/1542**
- xv. Mau Summit/Molo, Block 7/1543**
- xvi. Mau Summit/Molo, Block 7/1544**
- xvii. Mau Summit/Molo, Block 7/1545**
- xviii. Mau Summit/Molo, Block 7/1546**
- xix. Mau Summit/Molo, Block 7/1547**
- xx. Mau Summit/Molo, Block 7/1548**
- xxi. Mau Summit/Molo, Block 7/1549**
- xxii. Mau Summit/Molo, Block 7/1550**
- xxiii. Mau Summit/Molo, Block 7/1551**
- xxiv. Mau Summit/Molo, Block 7/1552**
- xxv. Mau Summit/Molo, Block 7/1553**
- xxvi. Mau Summit/Molo, Block 7/1554**
- j. An order declaring the Plaintiff as the rightful owner of shamba No. 623 measuring 1.5 acres and plot No. 153 measuring 50 * 100 feet as per the Olweny & Associates map.**
- k. An order cancelling the registration of the 10th - 22nd Defendant (sic) by the 23rd and 24th Defendants as the owners of;-**

- XII. Mau Summit/ Molo, Block 7/1529 (Tayari)- Sammy Njiri Gitogo**
- XIII. Mau Summit/ Molo, Block 7/1533 (Tayari)- Alice Mihioko Kimani**
- XIV. Mau Summit/ Molo, Block 7/1535 (Tayari)- Wilfred Nganga Kamau**
- XV. Mau Summit/ Molo, Block 7/1536 (Tayari)- Reuben Kariuki Wanjiru.**
- XVI. Mau Summit/ Molo, Block 7/1537 (Tayari)- Gatuna Kungu**
- XVII. Mau Summit/ Molo, Block 7/1538 (Tayari)- John Ruiru Muchiri**
- XVIII. Mau Summit/ Molo, Block 7/1541 (Tayari)- Tabitha Njeri Michore**
- XIX. Mau Summit/ Molo, Block 7/1544 (Tayari)- Andrew Gichuki Chege**

- XX. Mau Summit/ Molo, Block 7/1547 (Tayari)- John Mwangi Kahungura**
- XXI. Mau Summit/ Molo, Block 7/1549 (Tayari)- Kimani Ndirangu**
- XXII. Mau Summit/ Molo, Block 7/1550 (Tayari)-David Kamwea Nganga**
- XXIII. Mau Summit/ Molo, Block 7/1551 (Tayari)- Perpetuah Tuta Kamau**
- XXIV. Mau Summit/ Molo, Block 7/1554 (Tayari)- David N. Karuru**

I. An order cancelling Title No's;-

- a) Mau Summit/Molo Block 7/1530 (Tayari) - Sammy Njiri Gitogo**
- b) Mau Summit/Molo Block 7/1531 (Tayari) - Joseph Kimani Gitara**
- c) Mau Summit/Molo Block 7/1532 (Tayari) - Beth Wangari Kahuria**
- d) Mau Summit/Molo Block 7/1534 (Tayari) - Njenga Muniu**
- e) Mau Summit/Molo Block 7/1539 (Tayari)- Hezekiah Njuguna Iraya.**

- f) Mau Summit/Molo Block 7/1540
(Tayari)-Jecinta Waithira Kamau.**
- g) Mau Summit/Molo Block 7/1543
(Tayari) - Emilly Nyambura Kairu**
- h) Mau Summit/Molo Block 7/1545
(Tayari)-Joseph Luka Mbugua
Kamama**
- i) Mau Summit/Molo Block 7/1548
(Tayari)- Joseph Luka Mbugua
Kamama**
- j) Mau Summit/Molo Block 7/1552
(Tayari) - Macharia Hiram Mwangi**
- k) Mau Summit/Molo Block 7/1553
(Tayari)-Nganga Matu/John Gichuru
Mwangi**

**m. An order for eviction of the
defendants or their agents or servants
from the suit property and removal of
their structures.**

**n. A permanent injunction restraining the
defendants from selling, alienating or in
any other manner interfering with the
plaintiff's peaceful possession,
occupation, ownership and enjoyment of
his Plot No. 623.**

- o. Compensation for the non-use of the shamba from January 2018 up to the time of determination of this suit at a rate of kshs. 100,000 per year***
- p. Costs and interests.***

991. Given my finding on issues (A) and (B) above, the prayers sought in the Amended Plaintiff cannot be granted.

992. While most of these prayers are related to issues for determination (A) and (B), prayer (g) in the plaintiff deserves particular mention. It is in the nature of mesne profits. The law as relates to mesne profits is that they must specifically pleaded and proved. No evidence was led on loss incurred for non-use of Plot No. 623 **from** January 2018 up to the time of determination of this suit and no evidence was also led that the loss was at a rate of kshs. 100,000 per year.

993. In conclusion and in answer to issue for determination (**C**), I find that all the prayers sought in the amended plaint are devoid of merit and I decline to grant them.

994. It is worth mentioning that numerous documents were produced by the parties herein. They include Court rulings, letters exchanged between the Plaintiff & government officials and letters from government officials. The said documents were interrogated and I find that they were not relevant for determining the issues in dispute herein.

D. Who should bear costs of the suit?

995. The general rule is that costs shall follow the event. This is in accordance with the provisions of **Section 27** of the **Civil Procedure Act (Cap. 21)**.

996. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

DISPOSITION.

997. In the result, I find that the Plaintiff's suit lacks merit and it is hereby dismissed with costs.

998. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 19TH DAY OF FEBRUARY, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Charles Njehia - (Plaintiff in Person).

**Mr. Mwangangi holding brief for Mr. Chege for the
Defendants.**

Court Assistant; Mr. Joseph Makori.

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