REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC LAND CASE NO. E008 OF 2024

JOSEPH KIPRONO KOECH……

……..PLAINTIFF

VS

ZIPPORAH WANGECI NJUGUNA ……..1ST DEFENDANT

JOHN MAINA KARIUKI……..2ND DEFENDANT

(Sued as the legal representative Ad-litem of the estate of DANIEL NJUGUNA MAINA - Deceased)

DISTRICT LAND REGISTRAR, NAIVASHA……..3RD DEFENDANT

NAIVASHA LAND ADJUDICATION & SETTLEMENT OFFICE……..4TH DEFENDANT

JUDGEMENT.

1. Vide a Plaint dated 26th March 2024, the Plaintiff herein sought the following orders:
    i. A declaration that the Plaintiff is the legal owner of LR No. Plot No. 910 Ol-Jorai Settlement Scheme measuring approximately 2.02 hectares.
    ii. An order of cancellation of title deed to LR No Plot No. 910 Ol-Jorai Settlement Scheme measuring approximately 2.02 hectares issued on 29th November 2022, registered in the name Daniel Njuguna Maina (deceased).
    iii. Costs of the suit and interests.
    iv. Any other and further relief as the Honourable Court may deem fit and just to grant.

2. Upon service, the 1st and 2nd Defendants filed their Statement of Defence and Counterclaim dated 17th July 2024, denying the contents contained in the Plaint while putting the Plaintiff to strict proof. They argued that Daniel Njuguna Maina (deceased) was the registered owner of the suit property and held a valid Title deed over the same. That indeed, the deceased together with the 1st Defendant had, since the allocation, continued to occupy the suit property, hence it was apparent that the Plaintiff herein was mistaken on the position of his land parcel, because the pleadings refer and relate to different land parcels from the one owned by Daniel Njuguna Maina (deceased). They thus denied that the Plaintiff was entitled to any Orders set out in the Plaint stating that the suit ought to be dismissed with costs.
3. In their Counterclaim, the 1st and 2nd Defendants reiterated the content of their Defence asserting that the deceased, Daniel Njuguna Maina, was the lawful proprietor of the land, having acquired it through a formal and legal administrative process. They detailed the specific steps taken by Daniel to secure the title, namely that he had received an official Letter of Offer (Ref: AS/C/108/910) from the Ministry of Lands and had paid the prescribed fees of Kshs. 14,200/= via receipt No. A9159524. That he then submitted a Letter of Acceptance, which led to the issuance of a Notification for Allotment Ref: DSO/NVS/S/859/910 directed to the Land Adjudication and Settlement office. These steps had then culminated in the issuance of a valid Title Deed on 29th November 2022.
4. The Defendants argue that the Plaintiff was never a party to the allocation process, as all records and letters were issued exclusively to Daniel. They clarified that Daniel passed away on 3rd February 2023, which was after the Title Deed had already been legally processed and issued in his name.
5. They argued that in the unlikely event that the Plaintiff laid claim to the suit property, then the process leading to the issuance of the allotment letter over the same had been done illegally and fraudulently. They particularized fraud and illegality on the part of the Plaintiff as:
    i. Procuring the acquisition of an allotment over the suit property without the authority of the initial allottee.

ii. Procuring registration of the letter of allotment without following due process.
iii. *Res ipsa loquitor.*

6. They argued that the Plaintiff's claim to the land was illegitimate for the reasons that the Plaintiff completely ignored the established legal process for land acquisition, and therefore, the court should revoke his Letter of Allotment.
7. They maintained that Daniel Njuguna Maina's ownership was never legally contested during his lifetime, cementing his status as the rightful proprietor, and therefore, they were not restricted from filing a succession suit. That once legal authority was granted, they intended to fully occupy, farm, and utilize the property as they saw fit.
8. They prayed for the Plaintiff's suit to be dismissed with costs and judgment be entered in their favour against the Plaintiff for the following orders:
    i. A declaration that the issuance of the Allotment Letter to Daniel Njuguna Maina (deceased) over land parcel No. LR No. Naivasha/Ol Jorai Phase II/910 was legal and proper.
    ii. A declaration that Daniel Njuguna Maina (deceased is the lawful and registered owner of the land parcel known as LR No. Naivasha/Ol Jorai Phase II/910.
    iii. A declaration that the issuance of Title Deed over lad parcel No. LR No. Naivasha/Ol Jorai Phase II/910 was legal and proper.
    iv. A permanent injunction restraining the Plaintiff, his agents, his representatives and/or employees from interfering with occupation by the 1st and 2nd Defendants' parcel of land No. Naivasha/Ol Jorai Phase II/910.
    v. Any other suitable or appropriate relief that the court may deem fit to grant.
9. In rejoinder, Plaintiff challenged the Defendants' title, asserting his long-standing ownership and occupation of the property to the effect that he was the original genuine allottee of Plot No. 248A by the Agricultural

Development Corporation (ADC). He explained that the original plot numbers were later changed by the Land offices, where his Plot 248A became LR No. 910, while the Defendants' and their son's neighbouring plots (247B and 248B) became LR Nos. 911 and 909, respectively.

10. That he took possession and built a house on the land, which the Defendants allegedly demolished and were later forced by police to rebuild. He only vacated the land on police advice due to the Defendants' violent nature.
11. He contended that the title deed issued to Daniel Njuguna Maina was obtained secretly and fraudulently in collusion with the Land Adjudication and Settlement Department (the 3rd and 4th Defendants).
12. He referred to a definitive ownership record known as the "Black Book," which was signed by local elders and administration officials stating that the Land offices have hidden this book to facilitate illegal land dealings. He labelled the ground report dated 28th June 2017—which the Defendants rely on—as fake, claiming no such meeting occurred and that the witnesses listed therein did not live in the area.
13. He claimed that the 2nd Defendant was his neighbour and had actually been taking care of the land on his behalf while he was away, maintaining constant communication with him and noted that this matter had been ventilated in numerous forums, including the Chief's office, police stations, and even a citation for letters of administration in a Nakuru Case No. 305 of 2023).
14. He argued that even if the Defendants had receipts and a title deed, these documents were of no consequence because they were founded on fraud and affirmed his willingness to pay any prescribed fees to the Land office, asserting his right over the manufactured title of the deceased.
15. The Plaintiff requested that the Defendants' Counterclaim be dismissed with costs and judgment be entered in his favour as per his original Plaint.
16. Despite the service of Pleadings, the 3rd and 4th Defendants did not enter an appearance and/or file their defences.
17. The Plaintiff, 1st and 2nd Defendants having complied with the pretrial

directions, the matter proceeded for hearing on 4th November 2024 where Counsel for the Plaintiff in his opening statement stated that the Plaintiff was the owner of the suit land having been allocated the same by the Agricultural Development Cooperation (ADC) where he had been in control of the same.

18. That after the ADC had then handed over control of the land parcels to the Adjudication and Settlement Office and the Land Registrar, they ignored both his allotment letter from ADC and possession of the land parcel. That subsequently, they had colluded to issue a letter of offer and a title deed to the suit land to one Daniel Njuguna Maina (Deceased), despite various committees confirming that the same belonged to the Plaintiff. The land parcel is currently unoccupied due to the Defendants' hostility, which led to the filing of the suit.

19. Thereafter, PW1, one Joseph Kiprono Koech, the Plaintiff herein, adopted his Witness Statement dated 26th March 2024 as his evidence in chief and then stated that he was the owner of the suit land, having been allotted the same by the ADC vide a Letter of Allotment dated 30th April 1993. However, it was on 14th February 1994 that he was shown the land and the beacons by a surveyor called Terer. He produced the Allotment Letter as Pf exh1 before confirming that the suit land was No. 248B, measuring approximately 5 acres at the Ol-jorai ADC Settlement Scheme. That he had cleared the bush and put up a temporary house therein.

20. His evidence was that he resided on the land with his sister, called Linah Chepkemoi, and they started farming on the suit land from the year 1994 to the year 1998. However, after 1998, he returned to Bomet to look for a job because he had faced many challenges, and his mother was also unwell. That he got a job at Bomet County Government as a ground man, and left his sister on the suit of land, who kept updating him from time to time about the suit land.

21. That his sister lived on the suit land up to the year 2007, when she went to Bomet to vote. Unfortunately, whilst she was away, post-election violence erupted, and she was not able to return immediately. During that period,

their neighbour, John Waweru Maina (the 2nd Defendant herein), called his sister and informed her that the area had been affected by violence, that there was no security and that he was in that IDP camp. He also informed her that the house he (PW1) had constructed had been demolished, along with most of the houses in the area, and that she should stay away for security reasons. She thus stayed away for 4 months.

22. When peace finally prevailed, and his sister went back to the suit land in the same year 2007, she found that the house had been felled, the Mabati stolen, but the building posts had been kept by his neighbour, the 2nd Defendant herein. That his sister had informed him that not only had the 2nd Defendant kept the poles, but he had also planted trees on their land parcel, and when she confronted him, he had informed her that his son had mistakenly planted the said trees.

23. That his sister had reported the matter to Reuben Kipkubut, the village elder and the area chief, who visited the site and told his sister that many houses had been demolished and that she should wait for information as to who the owners of the land parcels were. Subsequently, the area chief formed a committee to look into the land dispute.

24. That he had been informed of the date when the committee was to sit and asked to be present. The committee, which comprised the village elders, the chief, and land officials, held its meeting in 2012 on a date he could not remember. He was present, and they had resolved that he was the owner of the land parcel. He was then asked to wait for an allotment letter after verification from the land's office, a letter he is still waiting for to date, having followed up on the matter at the Naivasha Lands Office three times.

25. That subsequently, the 1st committee was disbanded because of irregularities therein, as it had given people the wrong parcels of land, where a 2nd Committee had been formed. The 2nd committee, comprising the Provincial Commissioner and the land officials, was tasked with investigating the issues. That accordingly, in the year 2016, he was informed to avail himself on the ground, and a resolution was passed to the effect that he was the landowner. That upon the committee signing the said resolution, he was

asked again to wait for an allotment letter. When the same was not forthcoming, he had found it necessary to come to court.

26. That he had written a complaint letter dated 10th October 2016 to the District Land Adjudication Committee and copied to several other persons, complaining that he did not receive the allotment letter. He produced the complaint letter as Pf exh 2 and then testified that, after he had written the complaint letter, the village elder had also written another letter, dated 10th October 2016, addressed to the District Land Registrar informing him/her that the committee had agreed that the land was his (Plaintiff's). He marked the letter as PMFI 3.

27. When he was referred to a letter dated 29th June 2017, he confirmed that the same had been written by James Wachira, an officer from the land office and addressed to the Director of Land Adjudication Settlement about the suit land, informing him that they had allocated the suit land to Daniel Maina. He produced the said letter as Pf exh 4.

28. He was referred to another letter dated 16th August 2010, where he confirmed that the same had been addressed to Daniel Njuguna Maina by the Director, Land Adjudication Settlement, informing him that he had been issued with a letter of offer on the land parcel. He produced the letter as Pf exh 5.

29. In reference to a receipt dated 28th March 2012, he confirmed that the same was for Kshs. 14,000/= in Daniel Njuguna's name for the purchase of land No. 910 Ol-jorai Phase II, the suit land herein. He produced the receipt as Pf exh 6.

30. He also testified that a letter dated 28th June 2017 was addressed to the Director, Nairobi, by the District Land and Settlement Office, Naivasha, confirming that Daniel Njuguna Maina had accepted the offer. He produced the letter as Pf exh 7.

31. Upon being referred to a letter dated 21st February 2018, he confirmed that the same had been written by a group of five people who made up the committee members. He confirmed that Reuben Kiplangat was the village elder. That the said letter had been written to the Chief of Oljorai Location

with a copy to the Deputy County Commissioner, District Land Adjudication office and Director of Settlement Nairobi. The content of the said letter was to the effect that it had been resolved that he was the owner of the land hence the registration of Daniel Njuguna was not proper. He marked the letter dated 21st February 2018 as PMFI 8.

32. His response in reference to another letter dated 21st February 2018 was that the same been addressed to the land committee by Mark Cherutich, the Chief of Ol-Jorai confirming that the matter had been forwarded to the land adjudication to effect changes. The said letter was marked as PMFI 9.

33. He testified that there had also been another letter dated 22nd February 2018 that had been written by Muthike Ndambuki, the Deputy County Commissioner, addressed to the District Land Adjudication and copied to the Director, Land Adjudication, Nairobi, which had forwarded the committee's recommendation confirming that the suit land was his. The said letter was marked as PMFI 10.

34. That a further letter dated 23rd February 2018, written by Joseph Mwangi, a Co-ordinator of the Public Complaints and Resolution Committee, to the Adjudication Settlement Officer, Naivasha and copied to himself, had also confirmed receipt of his complaint. He produced the said letter as Pf exh 11.

35. That in relation to a letter dated 21st March 2019, he confirmed that the same had been written by Mark Cherotich, the Chief Ol Jorai location, indicating that Plot No. 910 Ol Jorai had been erroneously registered to Daniel instead of himself and which letter he marked as PMFI 12.

36. His response to being referred to the Summons dated 11th June 2020 was that the same had been written by Chief Sururu to Daniel Njuguna, Kelvin, Joseph and Daniel summoning them to appear before him over the malicious damage of his (Plaintiff's) house. The said letter was marked as PMFI 13.

37. When he was referred to a citation in Succession Cause No. 305 of 2023 dated 17th September 2023, he confirmed that he was citing John, Zipporah and Daniel the Defendants. He produced the said citation as Pf exh 14 and then testified that he had annexed an order dated 30th November 2023 in

the same succession cause for the Citees to take up letters of Administration within 30 days. He produced the order as Pf exh 15 and the letters of administration ad litem dated 21st December 2023 that had been issued to the 1st and 2nd Defendants herein in respect of the estate of Daniel Njuguna Maina, as Pf exh. 16.

38. He testified that it had been after the second Committee's decision that he had come to discover that the Defendants had title to the suit land. That, whereas he did not have a title to the suit land, he did not know how the Defendants got the title, as he had been following up on the issuance of the letter of offer, which was not forthcoming.

39. He confirmed that Zipporah Wangeci was the wife of Daniel Njuguna Maina, who was now deceased.

40. He prayed that the court cancel the title that had been issued to the Defendants who had not built on the suit land, but had been farming therein. He also informed the court that, despite there being injunctive orders, the Defendants had planted about 20 trees on the suit land and even constructed a dam.

41. When he was examined by the Court, he confirmed that he had used the suit land from the year 1994 to the year 1998, after which his sister had utilised it up to the year 2007. They had built a house for the second time in 2018 but the same was demolished. He explained that the people who had demolished the said house had been asked to construct another house for them which they did, but he was told not to occupy the same until the matter was finalized in court. That it was at the police station where the said people had been told to construct the house. He confirmed that the Defendants, who were his neighbours, were now using the suit land to keep their livestock.

42. In cross-examination, he confirmed that he was allocated the land by the ADC vide a letter dated 30th April 1993 and which letter he was referring to as an allotment letter. That whereas he was given plot No.248A, plot No. 248B was his sister's.

43. When he was referred to Pf exh 1, he confirmed that after he had been

given the 5-acre parcel of land, he had been told that the Estate Manager would show him the land, but the same had been shown to him by a surveyor called Terer instead. He contended that the Estate Manager referred to in Pf Exh 1 was the surveyor, and although he (surveyor) had placed beacons on the land, he was not issued with a beacon certificate.

44. That, whereas he did not know what a ground status report was, Wachira and Nyaga from the settlement scheme had written down something. He explained that Pf exh 1 stated he had to survey the land before taking possession, despite the land already having been surveyed. He admitted that he had not produced a map from the survey.

45. He confirmed that although he had not presented a receipt, they had paid a sum of Kshs. 3,000/= to ADC, and that he had not paid anything to the lands and Settlement office, and therefore had nothing to show how Plot No. 248A had become No. 910. That he had resided on the suit land since 1998, had visited the same from time to time, and had left his sister on the land.

46. That he had not settled on the land because of the dispute. That land parcel No. 248B once belonged to his other sister Evelyne, from whom the 2nd Defendant had bought it, and therefore, he had no dispute with the same. He, however, maintained that Plot No. 248A was his land and that, whereas he had been visiting the land since 1998, he had taken action in 2016.

47. That he had taken his dispute with the 2nd Defendant herein to the committee that heard the case. He confirmed that Daniel was the one with the title. In 2016, he did not know John Maina but only knew his father; hence, he reported the said Daniel Maina to the committee. He conceded that he had not presented evidence or seen the committee minutes, and also acknowledged that Daniel had been issued an allotment letter for the land.

48. He acknowledged that in the year 2010, he was on the ground and had written a complaint letter in the year 2016. Although he had pursued the letter of offer, he had not been given the same by the settlement. He

confirmed that the first committee had sat in 2012, while the second Committee had sat in 2016. He admitted that he had not brought the committee's 2012 decision. That whereas he had complained to the ADC in the year 2012, he had not produced the said complaint.

49. When he was referred to PMFI 8 – 11, he confirmed that the said letters had all been written on the same date, that is, 22nd February 2018, apart from the one dated 23rd February 2018. The village elder had been assisting him to follow up on his land from the chief's office, the District Commissioner and the settlement office. He confirmed that the dispute on the ground was not tribal.

50. He also confirmed that Daniel's family had built a dam and planted trees on the suit land, wherein the 2nd Defendant had stated that the trees had been planted there by mistake. However, no farming was taking place on the suit land, and neither was his sister residing there.

51. In re-examination, he confirmed that his supplementary list of documents contained

    i. a letter dated 21st January 2015 by the Director of Land Adjudication and Settlement, marked as PMFI 17,
    ii. a letter dated 14th October 2009 written by DO Elementaita division to the DC Naivasha over the land parcel was marked as PMFI 18,
    iii. the minutes of the meeting of Ol Jorai Settlement Scheme delegates referring to the suit land held on 8th October 2009, marked as PMFI 19,
    iv. photographs with the first set (a-c) showing his demolished house and which photographs was marked as PMFI 20 (a - c),
    v. photographs 1 to 3 showing the house which the Defendants built for him on the suit land, marked as PMFI 21 (a - c),
    vi. a Demand Letter dated 8th December 2023 that had been written by his Advocate to the Defendants, produced as Pf

exh. 22.

52. He confirmed that he had been allocated Plot No. 248A and that Plot 248B belonged to his sister Everline Kirui, who had sold it to the Defendants for which he had no issue.

53. When he was referred to Pf exh. 1, he maintained that he had been taken to the land and shown the same by the surveyor with the acknowledgement of the manager. That currently, there was a dam and around 20 trees on the suit land but he was not aware if ploughing ongoing therein.

54. That the dispute had been going on from around the year 2008 (Post Election Violence) wherein he had been told to keep off the land. That the area chief, DC, village elders and the police had also been involved. That all the parties had been told to keep off the land. He confirmed that the structure currently on the suit land was his house, which the Defendants had built for him.

55. Lina Chepkemoi, who testified as PW2, confirmed that Joseph Kiprono Koech, the Plaintiff herein, was her brother. She confirmed that her brother had filed a suit against the 1st Defendant because Daniel Njuguna Maina (Deceased) was her husband. That she knew John Maina Kariuki, the 2nd Defendant herein, who was the Deceased's father.

56. She adopted her Witness Statement as her evidence in chief before testifying that Plot No. 910 Oljorai Phase 2 Settlement Scheme measures 5 acres and belongs to her brother by virtue of an allocation letter dated 30th April 1993 by ADC. She stated that at the time, the surveyor had been on the land, and the Plaintiff took occupation of the same when they were shown the land in the year 1994. At the time, the land was all bushy; the plaintiff cleared the bush, built a house and started ploughing the land. The ADC surveyor was called Terer.

57. That the Plaintiff had ploughed the land from the year 1994 to 1998, then left for Bomet to look for a job, leaving her on the suit land, where she lived with her husband Joshua Bowen and their 5 children up to the year 2007, when she also went back home in Bomet to vote in the elections. Unfortunately, after the elections, there were clashes, so she could not

return to the suit land.

58. While in Bomet, they had asked their neighbour, the 2nd Defendant herein, to take care of the suit land. During the clashes, she kept in contact with the 2nd Defendant (by phone), who kept her informed of the insecurity in the village, telling her that they had all left to seek refuge and pitch camp on Gideon Moi's land (for safety), from where they would go to visit the land during the day only.

59. That one month after the clashes, the 2nd Defendant had informed her that their house had been broken into and that the iron roof had been stolen, but he had taken the remaining posts for safekeeping. That was when she returned to the suit land; she realised that, in the entire village, only their house had been demolished. That she subsequently reported the matter to the village elder, Reuben Kipkebutt. The 2nd Defendant showed her the posts he had kept in his house.

60. That she also noted that about 20-30 blue gum trees had been planted both on the boundary and inside their compound, whereupon, making inquiries, the 2nd Defendant informed her that although he had bought the trees, his son had planted them, and he did not know the boundary. He asked her not to uproot them but to pay for them instead, but later changed his mind, telling her that, since she was his neighbour, she should not pay him for the trees.

61. That thereafter in the year 2008, they went to make a report on the demolished house to the chief, called Charles Koita, who informed them that houses in the next village, called Ngata, had also been burnt. He then advised them not to rebuild the burnt or demolished houses until a committee had been formed. She then rented a house at Kongasis Centre.

62. A committee was formed to identify the owners of the land, which consisted of selected villages, and comprised the District Officer, the Assistant Chief and the Chief. Subsequently, they had stood on the boundaries of their respective parcels of land with their identity cards, wherein the committee had confirmed that the suit land belonged to the plaintiff. That their neighbour was also present, and he too stood on his

land.

63. That they were all registered in a ‘’black book’’ and asked to wait for an allotment letter from the Settlement Fund Trustee so that they could make payments. It was while they waited for the letters that they received information from the land office that the whole land in OL-Jorai had been subdivided into 2 ½ acres.

64. That people then went on strike and refused to pick the letters. There was a request to take new measurements, and a new committee was formed. Another person from the Land office, called Nyangau was sent from the headquarters. The committee then went around the parcels of land. Once again, they stood on their respective parcels, and it was confirmed yet again that the suit land belonged to the Plaintiff. They were asked to pick up their allotment letters, but she did not find theirs after one month of looking.

65. That thereafter, she had gone to the DC’s office in Gilgil, Naivasha, lands office, wherein the lands officer had asked her if she could remember her neighbours’ names and which names she gave as Matayo and Janet Kipruto Koskei. Upon searching, he found that their plot had been registered to Daniel Njuguna Maina. That she returned to her neighbour’s home and told him what she had been informed, but he told her that he did not know Daniel. She had also gone to the village elder, who also told her that he did not know Daniel. It was one villager who had informed her that Daniel was Kariuki’s (the 2nd defendant herein) son.

66. With this information, she went back to the 2nd Defendant, who told her that he had registered the land to his son. Her evidence was that, in 1994, when they were allocated the land, the said Daniel was a child in Class 4. That she reported the said finding to the village elder and the chief, who had instructed them to go to the Naivasha Lands office, as there were other cases.

67. Mr Nyangau went to the suit land, the dispute was heard at the Chief’s office, where the attendees had been: the Plaintiff, the 2nd Defendant, Daniel, the village elder and the Chief. Mr Nyangau then informed them that it had been held that the land be returned to them. They were then asked to

wait for a letter. Again, the same was not forthcoming despite their follow-ups. This was the third time.

68. When they visited the land office, they found that Mr Nyangau had left, and in his place was Mr Wachira, who had told them that he would visit them on the ground. All this while, Daniel had not taken occupation. That, indeed, Mr Wachira went to the ground in the year 2016, where the parties took their positions as before, they were heard and informed that they would be informed of the award. In 2017, the award was in favour of the Plaintiff, and they were again advised to go for the letters, to no avail to date.

69. That she had waited up to the year December 2017 before she went to Nairobi. It was at the third settlement of the dispute that they were told to build their house, which they did. That it had been upon her return from Nairobi, and while she was in her house, that the 2nd Defendant's children invaded them and demolished the house. The matter was reported, and the 2nd Defendant's 4 children, alongside Daniel, were arrested but later released. The boys informed the chief that they had been told to demolish the house so that they could be given titles.

70. The OCS had given the boys the option of either rebuilding the house or going to court, and since they were neighbours, she asked them to build the house, which they did after one week. That the house was still on the ground. However, the children had asked that she should not get into the house because there was a case, and although her husband had gone back to the house, it had been difficult to stay there.

71. That while in Nairobi, she had seen Mr Peter Waithaka, who had requested for the file and informed her that Daniel Maina had paid for the land and that it had been James Wachira who had signed the letter for Daniel. Mr Wachira was called, and he stated that the case had not been finalised. Mr. Waithaka then sent her to another office where she found Mr. Mwangi who then asked Mr. Wachira to give them a report of the land. That she also visited the District Commissioner, who called Mr Wachira, who informed him that he was in the hospital with a leg injury. Two weeks later,

when Mr. Wachira was called, he was still in hospital but confirmed that the suit land was the Plaintiff's

72. The District Officer then wrote letters to the land office confirming that the suit land belonged to the Plaintiff. The District Officer then forwarded letters to the committee, the Chief, and the District Commissioner, and they waited for Wachira's report. Towards the end of 2021, she went to Mr Wachira's office, who retorted that he had given Daniel Njuguna a title and told her to go wherever she wanted. That subsequently, they had filed the case.

73. She maintained that Daniel never got onto the land and that she thinks that the title was in his parents' name, who had never entered the suit land. That she had conducted a search and found that the letter was in the name of Daniel who is now deceased. That she had given the Defendants a Notice.

74. That she had asked the family to take out letters of Administration ad litem. She explained that one week after they had left court, they found that the blue gums had been cut and that construction stones had been deposited on the land. She was referred to a letter dated 10th October 2016, confirming that it was a complaint letter written by the Plaintiff to the Settlement Fund Trustee, stating that the committee had also written a letter dated 10th October 2016, herein marked as PMFI 3.

75. She confirmed that a letter dated 29th June 2017, was from Wachira and that PMFI 8 was one of the letters written by the committee. That PMFI 9 was the Chief's letter, while PMFI 10 was a letter that the DC had written to the land's office.

76. She further confirmed that she was aware of the letters in the supplement documents that had been filed and reiterated that the Defendants had never lived on that land. That she did not agree with the minutes of 28th August 2012, since there was no second committee meeting on that date. She confirmed that the witness therein, one Janet was the 2nd Defendant's wife. That the committee, in those minutes, belonged to the Kongasis area and not their village.

77. Lastly, she stated that she had been searching for justice over the suit

land for a long time without success.

78. In cross-examination, she confirmed that the suit land is within Ol-Jorai Location. When she was referred to PMFI 9, she confirmed that it was a letter dated 22nd February 2018 and had the signature of the Chief of Oljorai Location. In reference to PMFI 8, she confirmed that it was a letter dated 21st February 2018, written by the committee, addressed to the chief, and signed by the District Officer. That, however, the same bore no signature of the Chief.

79. In reference to the minutes of 28th August 2012, she confirmed that the committee members therein were from Kongasis and not Kapkures although the signature appearing belonged to the chief of Oljorai location. That whereas the committee had two sittings, the case had been conducted three times, and whereas she understood what minutes meant, there were no minutes that had been produced in court.

80. She was referred to PMFI 3, and she confirmed that the same had been signed by 3 people who were the committee members. That, nonetheless, it had no signature of the District Commissioner, District Officer, or officials from the land office. When she was referred to PMFI 8, she confirmed that it lacked the District Commissioner's or the land office's signature. She, however, maintained that the committee had written the letters. She explained that when the District Commissioner received the said letter, they wrote theirs.

81. She confirmed that before her brother left, she had been living on her land in Kapkures, but they had no allotment letters. Although the land belonged to ADC, they had no documents. She also confirmed that Pf exh 1 was dated 30th April 1993 and was for plot No. 248A. She admitted that No. 910 was not depicted in the letter. That the said letter had asked the Plaintiff to go to the Surveyor to be shown the land and to pay for it.

82. She admitted that they did not have a beacon certificate and that they could not pay for the land because of the case. That ADC had just given them letters and told them to live therein. That whereas a report had been written, the same was not in court. She maintained that the suit land

belonged to ADC and that Lands and Settlement had taken over to issue titles.

83. She confirmed that the ‘’black book’’ was a register with members and was to be used to allocate land. The Settlement came in 2009 but the letters were issued in 2012. She confirmed that Daniel’s letters were dated 2012.

84. That she had lived on the suit land from the year 1994 to the year 2007 although she had not brought pictures of their house. She stated that although she had not brought the OB, they had reported the matter to the police. That, whereas they had taken pictures of their demolished house, she had not seen them in court. That whilst it was the SFT that had given out allotment letters, the Plaintiff was not issued an allotment letter because they had a case.

85. She confirmed that the letters had been issued to Daniel Maina after the case had been heard. She also confirmed that Matayo and Janet Cheruto were her neighbours, that they had been given allotment letters in 2012, after the case had been heard, and that between their names was Daniel Maina, who was also given an allotment letter.

86. She maintained that she had moved away in 2007, but the committee heard the case from 2009 to 2012. At that time, there had been no house but only a toilet. That SFT had found nothing on the ground and given the land to Daniel Maina.

87. That, nonetheless, in the year 2017, she had been allowed to build on her land, although there was no letter to that effect. That whilst there were people who had been arrested for demolishing her house, she had not produced the OB. That they had indeed agreed to rebuild her house, wherein they had executed an agreement to that effect. The house was built and demolished again after one week, but she did not go there.

88. She confirmed that Reuben Kipkebut had been a village elder from that time until recently, towards the end of the year 2024. However, she had not seen the documents showing that Reuben was an elder in the village. That since Kapkures had many land cases, Reuben, being a village elder, was

called to determine the cases. That she had not heard of cases involving him.

89. PW3, one Reuben Kipkebut, confirmed that he was a village elder living in Kapkures village and that he knew the Plaintiff who had been given land by the ADC in Kapkures. That he also knew the 1st and 2nd Defendant as well as Daniel Maina (deceased), who used to live in Kapkures and was a neighbour to the Plaintiff. That the 2nd Defendant had bought land in Kapkures. That the Plaintiff had lived on the suit land from 1999 when he was given the land wherein he had built a house therein and ploughed the same.

90. That the Plaintiff used to live on the land with Linah, but had gone to Bomet to vote during the elections. Due to the post-election violence in 2007, the Plaintiff did not come back on time, and when he finally came back, he found that the house and the toilet on his land had been demolished. It had been said that his neighbours, the 2nd Defendant herein, had demolished his house. That the Plaintiff had reported to him as an elder, after which they had gone to the Chief to report, and subsequently to the Elementaita Police post, where the police visited the scene and confirmed that the house had been demolished. Subsequently, the 2nd Defendant and his sons were ordered to rebuild the house they had demolished, which they did.

91. That, unfortunately, the house was demolished a second time and upon Linah reporting the same to him, they had again reported to the Chief who had asked for a sitting of the “Baraza” which comprised the villages' Land Committee, Village Committee and Lands office, the Police Administration Personal, the Chief and the Assistant Chief came. The 2nd Defendant and his people had been summoned to a meeting in which they were asked to build the house.

92. His testimony had been that after the Plaintiff had left to vote, John Maina put his cattle on the land and planted about 30 trees therein. That, indeed, there was a time when he had summoned the 2nd Defendant to the District Officer, who asked him why he had planted trees. That he had informed them it was his children who had planted the trees. His action was wrong

because he had not sought permission from the landowner.

93. He confirmed that it had been in the meeting, that a decision had been made to the effect that the land was the Plaintiff's. Although at the time the 2nd Defendant had claimed ownership of the land, they had decided that the owner of the land had to show them a letter from ADC, which letter the 2nd Defendant did not have. He clarified that there had been two committees, one for the village and one for the land. The village committee comprised himself as the Chairman and about 10 committee members. That the said committee, chosen by the Chief, was to look into issues affecting the welfare of the village, and they knew the owners of land parcels. The second committee comprised the Chief and Assistant Chief, and they had called the District Officer, who had signed the letter stating that the land belonged to the Plaintiff because he had a letter from ADC, had built on the suit land and had been cultivating therein, and not the 2nd Defendant.

94. That the said land was known as Kapus Phase II Oljorai, it belonged to ADC, which had given it to squatters and those who had applied for the land. He testified that whereas the Plaintiff was a squatter, the 2nd Defendant had bought the land. The witness then adopted his witness statement as his evidence in Chief.

95. When he was referred to Pf exh 1, he confirmed that the same was one of the letters that they had used to confirm that the land belonged to Plaintiff. In reference to PMFI 3, he confirmed that he had written the said letter and that the handwriting therein was his. He appeared at No. 1 as the village elder, while numbers 2 to 5 were committee members. He confirmed that they had written the letter to the District Land Officer, Naivasha, informing him that the land belonged to the Plaintiff. He produced the said letter as Pf exh 3.

96. Upon being referred to Pf exh 4, he stated that although he did not know James Wachira, he, however, understood the contents of the letter, which were false. When he was referred to Pf exh 5, he denied that he had ever seen the said letter, stating that it was not true that the land belonged to Daniel Njuguna because he had no letter.

97. His response in reference to PMFI 8 was a confirmation of his knowledge of the said letter, confirming that indeed they sat down and arbitrated over the suit property, which they found belonged to the Plaintiff. That they had written the letter to the Chief and copied it to the Deputy County Commissioner and District Land, Naivasha and that his committee members had signed the said letter, which he produced Pf exh 8.

98. Upon being referred to PMFI 9, he confirmed that the same was Chiefs letter written to the land committee Kapkures stating that the land belonged to the Plaintiff. He confirmed that he agreed with the contents of the said letter. When he was referred to PMFI 18, he confirmed that the letter was dated 14th October 2009, but he did not recognise it.

99. He testified that the land did not belong to Zipporah and Daniel Njuguna since they did not have letters, nor had they built or ploughed therein. In reference to Defendant's list of documents No. 9, he denied that he had not seen the minutes of 28th August 2024, as there was no sitting and/or meeting on that date. Furthermore, the signature therein did not belong to the Chief. That whereas Janet, who appeared as No.1 therein, had been a committee member, they had removed her. That he did not know the person named at No. 2. That whereas John Maina is the 2nd Defendant herein, he did not know Sammy. He confirmed that William belonged to Kongasis not Kapkures. That Kenneth, Elijah, and Richard Kipruto were elders of Kongasis. Those were not their elders and could not sit on a tribunal in one area.

100. That the 1st and 2nd Defendants had not fenced the land, and that there were only 30 trees on the suit land and not 2000 trees as he had just recently visited the suit land, where there were neither the 2000 trees nor a water pen, nor were the 1st and 2nd Defendants cultivating the land.

101. He thus contended that the ground report was not true and that the land should be given to the Plaintiff, who was the owner.

102. In cross-examination, he confirmed that he was a village elder having been elected as such by the Chief and villagers of Kapkures and that he had the card of a village elder although the said card did not have the date that he had been elected as a village elder. He confirmed that there had been

another committee elected before him and that Janet Koskei had been on that committee.

103. He admitted that even when he was a village elder, he said Janet was still in the committee as a member and that she had information on which land belonged to whom. He, however, did not know her signature. That whilst he did not have any document to show that they had removed those committee members, it was true that indeed they were no longer members of the committee.

104. He confirmed that the suit land had previously belonged to ADC who had given the same to the Plaintiff and that he knew Linah Chepkoech who used to live on her brother's (the Plaintiff herein) land. In reference to Pf exh 1, he confirmed that it was the same document that had given Joseph Plot No. 248A. That he had also been given land by the ADC, where the Plaintiff had been given 5 acres, which was shown to him on 14th February 1994. Thereafter, the ADC had left, and the land was under the control of the lands and settlements.

105. That the land and Settlement had given him a title after looking at his papers and visiting the ground where they gave him a discharge after paying the dues.

106. When he was referred to Defence document No. 5 hereinafter marked as DMF 1, he confirmed that the same had been from land Adjudication and Settlement in regard to land parcel No. 910 and proceeded to testify that after the Plaintiff's house had been demolished, they had settled the matter with the Chief before the matter was reported to the police and he was arrested and asked to build the house.

107. He confirmed that he had written Pf exh 3 as the village elder and that it was signed by the committee members who were on the ground. The same case applied to Pf exh 8. He maintained that although the Plaintiff was given land by the ADC, he had no evidence that he had made a payment to either the ADC or the settlement. He explained that on the two occasions, it was the Committee members and the chief who had been present at the meeting. Apart from the 2nd Defendant, there had been other people who

had also bought land in that area, whereas some people who did not plough on the land given by ADC, the Plaintiff had built and ploughed on his portion. He maintained, unlike the 2nd Defendant, that the Plaintiff was a squatter, and hence he had been given land after asking for it.

108. Kennedy Barack, a farmer and a businessman living in Kapkures testified as PW 4 to the effect that he was a committee member and knew the Plaintiff very well. That the said Plaintiff was a villager and had land where they lived. That whereas he did not know the 1st Defendant, he knew the 2nd Defendant who was Daniel Njuguna's father. He confirmed that the 2nd Defendant had land in Kapkures and was a neighbour to the Plaintiff. That the Plaintiff was given land by the government while the 2nd Defendant had bought his land.

109. He adopted his witness statement as his evidence in chief and then stated that there had been a conflict in the year 2007, wherein there was displacement of people from their land. Subsequently, the government decided to form a committee comprising 5 people, 3 women and 3 men, in every village, to verify the owners of the land before the clashes.

110. The ADC land had been issued since 1992, and he also had a parcel of land in Kapkures. The letters from ADC were issued to squatters and people who had applied to be allocated land. That the Plaintiff had applied for land and was given the same by the government, after which he took possession and began cultivating therein. That ADC had put beacons in every land comprised of 5 acres or 10 acres. That the Plaintiff had fenced, ploughed and built on the suit land and that he used to live on the land with his sister Linah.

111. However, during the post-election violence in the year 2007, the Plaintiff had gone to vote in Bomet but did not return because of the violence. That, after peace was restored, the Plaintiff and his sister returned to the suit land only to find that their house had been demolished. The Plaintiff had reported the incident, and the dispute between the Plaintiff and Daniel (deceased) was adjudicated several times before the Chief, both on the ground and in his office.

112. The 2nd Defendant did not attend the meeting at the Chief's office, and it had been found that he had encroached on Joseph's land. There had been a direction that all matters in relation to land disputes should be conducted on the ground so that neighbours could attend.

113. That on the said day, there were three cases that had been conducted and in attendance were the Assistant Chief, Wachira of lands; neighbours, the village elder and the committee. He confirmed that the Plaintiff and the 2nd Defendant were present when it had been decided that the land belonged to the Plaintiff. There were signed Minutes to that effect. There was a ''black book'' kept in the lands office, but he did not know whether Daniel had signed it.

114. When he was referred to Pf exh 1, he confirmed that he had seen the said document and that the allocation of Plot No. 248A had been given to the Plaintiff on 14th February 1994. The Surveyors had walked on the plots and filed the plot numbers by hand. However, when settlement took over, they had numbered the plots differently. He confirmed that Pf exh 3 was a letter they had signed as committee members, confirming that the Plaintiff was the owner of land parcel No. 910. That he appeared as No. 2 on the letter.

115. That he was not aware of Pf exh 4 which was a letter that had been written by Wachira. That he also did not agree with the contents therein, as the suit land did not belong to Njuguna, who neither lived in the village nor had a house there. He confirmed that the house on the suit land was the Plaintiff's. That there were people with vested interests in people's land, and that at the office, they would record people's names who were not present on the land. He also did not agree with the contents in Pf exh 5 and confirmed that Wachira had been present when they had the case on the ground.

116. That they walked (on the ground) with the people from the land's office and survey, but he did not know if Wachira had signed anything. He confirmed that they had written Pf exh 8 because of the dispute on plot No. 910 between Njuguna and the Plaintiff. It was decided that the land belonged to the Plaintiff, after which they all signed it.

117. He also confirmed that PMFI 17 had been written by the Director of Lands to the District Land Adjudication Officer in relation to discharge and transfers, to the effect that, since there had been a dispute, there was not to be a discharge and transfer until the dispute was solved. The title issued to Daniel was not legal because the dispute was still ongoing.

118. His response to PMFI 18 was that it concerned the establishment of committee members in all villages and that it had given them the mandate to conduct on-the-ground verification. That PMFI 19 was on how they were to work. PMFI 18 also confirmed that he was a committee member of Kapkures. He explained that PMFI 19 was the minutes of the delegates' meeting held on 8th October 2009 to deliberate on the means of verification. However, he was neither a delegate nor did he attend the said meeting.

119. That they were told that people should settle where they were living and that they were to confirm through the letters issued by ADC since the Settlement letters had come later. That all vacant plots were to remain as such. During the clashes, people left their plots vacant.

120. That whereas he did not know the 1st Defendant, Daniel was the 2nd Defendant’s son. It is said that Daniel obtained the letter of offer and title fraudulently, as the committee members did not verify him as the owner of the land.

121. When he was referred to Defence document No. 9, herein marked as DMFI 2, he denied being aware of the said minutes of 28th August 2012, and hence he would not know whether the same had been signed by the Chief of Oljorai. Furthermore, he did not know the people in the minutes apart from Janet Kosgei. That whereas the said Janet had a parcel of land, he did not know how she came to sit on that committee. The elders shown in the said minutes were from Kongasis, which was different from Kapkures, so they could not sit in the meeting held in Kapkures. He confirmed that he had never sat in that meeting.

122. That Daniel and the 2nd Defendant had not fenced the land, and that the trees on the said land were less than 30. He confirmed that the trees in question had been planted by the 2nd Defendant’s children. There was

neither a water pump in the suit land nor was anyone cultivating therein.

123. He denied that the government had instructed them to subdivide the parcels of land into 2 ½-acre parcels, and that the suit land had never been subdivided. That Joshua Kibowen was Linah's husband. Upon reading the minutes, he confirmed that the Plaintiff and Linah had not been given another land. That the Plaintiff had not surrendered his land. That, since they had been given a mandate to verify land that had been given to the people by the ADC, the court should return the land to the Plaintiffs, who had been suffering from leasing our parcels of land.

124. In cross-examination, he confirmed that the history of the suit land began with ADC and that the Plaintiff's land was No. 248A, which number had changed after the settlement had taken over, wherein it had become No. 910. He, however, admitted that there was no document produced to show that plot No.248A had become No. 910.

125. He confirmed that there was a committee elected to hear land disputes and that he had been elected on a date he could not remember, but after the 14th October 2009. That they were to sit with the settlement office to verify the owners of the land. That Wachira was in charge of Naivasha Settlement at the Chief's Office. There were two meetings. On the ground, everyone stood on their piece of land, holding their documents. That they had written a letter dated 21st February 2018, that is, Pf exh 8, to show what had transpired. There were no minutes of the meeting of 16th March 2016. That Mr. Wachira was to make the final determination after they had sat.

126. Upon being referred to Pf exh 4, he confirmed that Mr Wachira had written to Daniel informing him that he had offered him the land, but he did not know if the signature therein was Wachira's. In reference to PMFI 18 and 19, specifically Minute No. 3 in No. 19, he confirmed that he was familiar with this meeting. There had been a dispute earlier, but the meeting was held in 2009. The Plaintiff and Linah were displaced in 2007, after the election, when their house was demolished. As of the year 2009, the Plaintiff and Linah could not be on the land because they had been threatened. An exercise was to be conducted to establish the owners of the land.

127. In reference to DMFI 2, he confirmed that he knew Janet Kosgei, a fellow villager and a neighbour to the parties in the suit. The elders were from a different village under Oljorai and had the same chief. The meeting of 16th March 2016 was attended by the Plaintiff, who produced his documents. However, the 2nd Defendant did not have documents. The Plaintiff had produced Pf exh 1 for 248A. Thereafter, the settlement people had changed the ADC numbers, but there was no letter of change of numbers. The Plaintiff had been taken to the ground by the surveyor and shown plot No. 248A.

128. In re-examination, he maintained that the land had initially belonged to ADC who allocated it to the people who had requested land. The land belonged to the government, not Wachira, hence he had no authority to allocate land.

129. PW 5, one John Welangai, working with the Ministry of Lands Naivasha, and the Deputy Director, Lands, Adjournment and Settlement Officer based in Naivasha, confirmed that they had been sued as the 4th Defendant and that they had received summons from the court to give evidence and produce documents, hence he would only give evidence on the part of the 4th Defendant.

130. He confirmed that there had been a dispute concerning parcel No. 910 Ol Jorai II, but they had not been engaged as an office in adjudicating the dispute, and neither had he seen a letter dated the 30th April 1993 -Pf exh 1.

131. That the said letter was not in their records. Their office handles land processing, legal document preparation (e.g., a letter of offer), the discharge of charges, the transfer of documents, and settlement coordination. That they deal with the settlement land like the suit land herein. Since he started working at the Naivasha Settlement Office in June 2023, he was not in Naivasha at the time of the allocation of the suit land, although they had records in his office which showed that the land had been allocated in 2010 by the Director of land settlement – Nairobi and that they were not aware of Pf ex1.

132. He explained that before the settlement came in, there were various

allocating authorities, such as the ADC and the Office of the President (Provincial Administration), and that their offices had also been allocating land depending on the documents one had. However, they did not get records from ADC. That they had conducted a ground-verification exercise in 2009 and had started allocating land based on who was on the ground.

133. When he was referred to Pf exh 2, he confirmed that he was aware of the complaint letter received at the Nairobi Registry in 2016. That it was a claim by the Plaintiff to the effect that he had been allocated parcel No. 910 Ol jorai Phase II by ADC. He explained that when a complaint was raised, they normally visit the ground. Accordingly, they visited the ground and found that the Plaintiff was not there.

134. On being referred to Pf exh 3, he testified that the villagers and committee had confirmed that the land belonged to the Plaintiff. That, nonetheless, their officer who was there by then had done a thorough investigation and found that the same was not the position. The said officer was called James Wachira, a sub-county land settlement officer who was his predecessor.

135. He confirmed that Pf exh 4 was a letter dated 29th June 2017 that had been written by James Wachira to the land's adjudication and settlement officer, stating that the allotee was the 1st Defendant and that he had forwarded the necessary documents. That there was a letter that had allocated the land to Daniel Njuguna in the year 2010.

136. His response in reference to Pf exh 5 was that the said letter had been written by their Director in Nairobi in the year 2010. He testified that before the said letter, there had been no other letter attributing the land to the 1st Defendant. that the letter had been written on the basis of the ground verification in the year 2009 and that the verification had been by a prob committee although he did not know the members neither did he have a report on the prob committee. That it was James Wachira that had forwarded Pf exhs 5, 6 and 7 to Nairobi.

137. When he was referred to Pf exh 8, he confirmed that the dispute had been between the Plaintiff and the Defendants and that he was aware of the

said letter which was in regards to a resolution of the dispute on land parcel No. 910 Ol jorai. He read out the letter and then confirmed that it had been addressed to the Chief Ol – Jorai location and that his predecessor had been present alongside the people that had been mentioned in the letter. That they said that the plot belonged to the plaintiff and confirmed a previous meeting over the same dispute. That however, James Wachira did not sign the letter. That indeed, if there was an issue that the land had been abandoned, they had followed the procedure to repossess the same and re-allocate it. That he did not know why that decision had been made and that he could not confirm whether Wachira, his predecessor had attended the meeting since he could not see his signature.

138. Upon being referred to PMFI 9, he stated that the chief had confirmed that after the arbitration the matter had forwarded to their office. He however clarified that if the Adjudication officer had been at the meeting, there was no need to forward the letter to them. He confirmed that they did not effect any change upon receipt of the letter.

139. In reference to PMFI 10 he confirmed that he was aware of the said letter and that they had carried out their investigations. That James Wachira had written a comprehensive letter. His response on being referred to Pf exh 12 was that the chief had claimed the land had been erroneously registered to Daniel instead of the Plaintiff and that there had been an arbitration although the said letter had not been addressed to anybody. That although they were aware of the said letter, there was nothing erroneous.

140. When he was referred to PMFI 17 he confirmed that he was aware of that letter which was a policy direction affecting Ol Jorai Moi Ndabi settlement scheme and related to discharge and transfer. He read out the policy and then confirmed that they were supposed to confirm who was on the ground before they could effect a discharge of charge. He confirmed that the complaint was lodged in 2015. That they had been instructed to implement it fully therein. He produced the said letter as Pf exh 17 and then explained that it had been a policy direction in waiting and that the instant matter had come much later.

141. In reference to PMFI 18, he confirmed that he was aware of the letter concerned with the Ol Jorai Settlement Scheme Phase II. He read the same out and then confirmed that the meetings were on the election of committee members. He produced the said letter dated the 14th October 2019 as Pf exh 18.

142. On being referred to PMFI 19, he confirmed that he was aware of the said documents, namely the minutes of a meeting held on 8th October 2009, and that three officers from their office had attended the meeting being;

i. P. K. Mwangi – Deputy Director.
ii. Priscilla Nganga – Assistant Director.
iii. Tom Nyangau - District Land Adjudication Officer.
iv. Tom Nyangau (who once worked in the same office as him)

143. There were 62 delegates, and the recommendation was to cancel all previous allotment letters. He first read out the minutes, then produced the same as Pf exh 19. He testified that when they received the Plaintiff's complaint, they visited the site and conducted an investigation. The ground visit was conducted in 2018, and a report, authored by James Wachira, dated 21st March 2018, was prepared.

144. That the allocation of the suit land had been done to Daniel Njuguna, who had paid the fees, and that a verification on the ground was made in the year 2019. The land was fenced with barbed wire, and there were trees therein. There was also a water tank, and the plot had been cultivated. However, he had not been on the site, so he could not tell what was on the ground, even though he had relied on the report. He produced the said report as Pf exh 23 and then stated that he did not have the verification report for 2009.

145. His response in reference to the Defence list of documents No. 9 was to the effect that he had not seen the said document; he was therefore not aware of the report or what was on the ground.

146. In cross-examination, he confirmed that three entities had been involved in the allocation of the land: the ADC, the Office of the President, and the Settlement Adjudication, but they did not share records of the land they

were allocating. That whereas Pf exh 1 was a letter of allotment issued by the ADC, they did not have the same. He confirmed that Ol Jorai had been specified and assigned numbers, and that whichever entity was allocating land had relied on the parcel number issued. That, however, whilst Pf exh 1 had made reference to No. 248A, the land parcel they were talking about was No. 910. That he had nothing to show that there had been changes in the land parcel numbers.

147. When he was referred to Pf exh 17, he confirmed that it was a policy direction to the effect that land with a dispute must be accompanied by a ground report. He confirmed that the allotment to Njuguna had been accompanied by a ground report confirming his presence on the ground. Regarding PMFI 18, he clarified that he was not based in Naivasha when the letter was written. An issue arose in 2009 regarding who was an allottee and entitled to a title, and the said letter referred to the persons appointed as committee members.

148. Upon being referred to Pf exh 23, he confirmed that the grounds status report had referred to a report done in 2009, as well as to a committee constituted to hear the complaints. He read paragraph 2 on page 2 of the report and confirmed that James Wachira, the author, had been in charge and had stated that some of the minutes from the area chief, Assistant chief, and others were strange and foreign, bent on individual interests.

149. That Wachira had confirmed having visited the ground and that the said letter had not been challenged. He confirmed that the said letter had been the basis of the issuance of the discharge and the title. The letter of allotment, which required payment within one year, was issued in 2010. He confirmed that the dispute over the suit land occurred in 2009. That the letter was never cancelled by their officer. He testified that the Plaintiff had no letter of offer.

150. Upon being referred to Pf exhs 2, 3, and 8, he denied that the said documents had been authored by their office and that the signatures therein were not those of any of their officers. In reference to Pf exhs 23, 9, 10, 11, and 12, he stated that no other documents had been served on their office

by the area chief, county commissioner, or a Representative of the county commissioner. That indeed, the said documents were the ones that Mr. Wachira had referred to as foreign.

151. When he was referred to Pf exh 19, Minute No. 3 Item 3, where it had indicated that, “Follow ADC Map as basis for allocation”, he confirmed that Pf exh 1 had the number ‘248A’. He, however, explained that if the Plaintiff had been allocated plot No 248A, ADC had its own way of giving numbers, which was not the same as the settlement, wherein they did proper planning and survey that had given rise to a RIM, which had been the basis of issuing a title deed. He confirmed that the parcels of land issued by the ADC had their titles issued by the ADC's office. That, nonetheless, they had no document stating that parcel No. 248A was the same as parcel No. 910. That none of the documents had a parcel No. ‘248A’ currently No. 910.

152. He clarified that the Provincial Administration was specific to the Provincial Commissioner, not the District Commissioner, the District Officer, the Assistant Chief, or the Chief, despite them being under the Provincial Commissioner. That, in any event, even if the people had sat down and listened to the disputes, the final determinant would be the Land Adjudication Office.

153. In re-examination, he maintained that there were three bodies that had been allocating the land and that letters had been addressed to the allotee. He confirmed that the particular land the Plaintiff was describing had been handled by ADC, but they had no document unless it had been kept in Nairobi. However, they knew the land that they had taken over.

154. He confirmed that the ADC and their office had different numbering and that they could not confirm whether Plot No. ‘248A’ was 910. He, however, stated that whereas the numbering could be different, the ground could not shift. He maintained that a report by Mr Wachira had been the basis for the issuance of the title to the Defendant. That whilst he did not have a report of the prob committee, the same had been for the issuance of a letter of offer. He insisted that the issuance of the title was based on the ground report.

155. When he was referred to Pf exh 23, he confirmed that the same was a

letter by Wachira, for whom a title was to be issued. That, nonetheless, it was not Mr Wachira who had allocated the land but the Director of Adjudication of land and settlement in Nairobi.

156. PW 6, one Mark Kipkenei Cherotich, the Chief Ol-jorai Location, testified that he had been the chief since 2012 and that he knew all the parties herein, including Daniel (Deceased). That he was also aware of parcel No. 910 Ol – jorai Settlement Scheme Phase II. When he was referred to Pf exh. 8 he confirmed that there was a dispute between the Plaintiff and Defendant and that their resolution after arbitration was that the parcel of land No. 910 belonged to the Plaintiff. That the 1st registration was not proper. He confirmed that the District Land Adjudication office was also involved through the presence of Mr. Wachira.

157. He confirmed that he had written PMFI 9 after the complainant and some other people had gone to inquire about the progress of the Plaintiff's registration as the owner of the land. That he had informed them that he had forwarded the resolution to the land's office. He produced the said letter as Pf exh 9 and then testified that although the minutes were with the Settlement Officer Naivasha, he had just followed up with the letter.

158. He confirmed having written PMFI 12, in which he explained that the matter had been arbitrated in 2009, and the verdict was that the land belonged to the Plaintiff. In reference to the minutes of 28th August 2012, Df document No. 9, he explained that normally, when there was a dispute, people went to their office to arbitrate. That on the said day, all parties had gone to his office to arbitrate. That after the arbitration, the two had come to an agreement in the presence of John and the elders that Plot No. 910 be shared equally between the Plaintiff and the 2nd Defendant.

159. At the time, there was vacant land, which the committee had also decided should be recommended to the Plaintiff and Joshua Kibowen, the brother of the Plaintiff's wife. The third aspect was that, in case the parcel of land had been identified, the Plaintiff was to surrender the plot to Daniel. Although the parties had agreed to the resolution, they did not follow through. That subsequently, no alternative plot was given to the Plaintiff.

160. He confirmed that he had written the minutes and knew where the land parcel was situated. That the said land had some trees and a temporary structure erected by the Plaintiff. However, the trees therein, which were approximately 100, were planted by Njuguna in the year 2000. There was a barbed wire fence around the suit land at the time that he was writing the report, which had been put up by Njuguna. There was also a water pan therein at the said time, although he was not aware whether the same was still there at the moment.

161. He testified that at that time, Daniel had cultivated the plot. By consent, he produced the letter dated 21st March 2019 as Pf exh 12, and then explained that, in his two letters, he had stated that the land belonged to the Plaintiff and that he was still holding that position.

162. In cross-examination, he was referred to Pf exh 8 and denied having written the said letter, stating that it did not have any minutes or resolution of 16th March 2016 attached. That in the absence of the said minutes or resolution, he would still insist that Mr Wachira signed them.

163. When he was referred to Pf exh 9, he confirmed that he had authored the said letter, but he did not have a copy of the minutes or resolution. That in the said letter, he had implied that the land belonged to Joseph. He confirmed that he had prepared the minutes of the year 2012 and that at the time, Daniel Njuguna was on the ground, had fenced the property, planted trees, there was water pan and that he had cultivated the whole plot. He reiterated that the parties had agreed to divide the land into 2 ½-acre parcels. He confirmed that the land and adjudication office were the ones allocating land, but had not been present during the meeting.

164. In reference to Pf exh 23 he confirmed that the same was the status when he had visited the land in the year 2012. However, the letter was written in 2018. He confirmed that in his and Mr. Wachira's report, there had been no mention of the temporal structure. When he was referred to Pf exhs 19 and 18, he confirmed that by the year 2019, he was not the chief of Ol-jorai hence he did not participate in the meeting that had been held in that year.

165. He confirmed that a committee had been constituted in 2009. That he did not write Pf exh 8, although he was aware of the meeting held on 16th March 2016. He explained that, as civil servants, they worked under instructions. In 2009, the ADC tasked a committee, which had been disbanded after completing its mission and was hence redundant.

166. He confirmed that there was an arbitration committee, but the other committees were just called to give evidence. That whereas the said committee had been redundant as of the year 2016, it could still be called upon to arbitrate on matters. He confirmed that on 16th March 2016, all the 5 committee members had been present and that the suit land was in Kongasis Sub-location in Kapkures village.

167. His evidence was that after the year 2010, there had been an outcry on the allocation of land. He maintained that the Committees had been formed in 2009 and letters of offer had been issued in 2010 pursuant to the committee's decisions. That thereafter, another committee had been formed. That if there was no letter to that effect, Mr. Nyangau could be called to testify on the same.

168. In re-examination, he was referred to Pf exh 23, and he confirmed that he had not seen the said document before and had not visited the ground in 2009. That he had not seen any resolution or report for the year 2009, but only knew that the letter of offer had been issued to Njuguna in that year. When he was referred to Pf exh 8, he confirmed that it was a resolution of the dispute dated 21st February 2018 and that the land adjudication officer had been present. His response in reference to Pf exh. 23 was a confirmation that Mr Wachira had stated that Pf exh 8 had been strange and foreign to him. He also confirmed that the settlement officer was the secretary and kept the black book. The purpose of the committee was to arbitrate on issues as they cropped up.

169. Richard Kipsaina Kipkelion, while testifying as PW7, stated that he was seeing Pf exh 2 for the first time in court. That, whereas both his name and identification card (ID) were reflected in the document, and whereas the signature therein looked like his, he did not sign it as he was not in the said

meeting, and neither was he a committee member of Ol-Jorai.

170. In cross-examination, he maintained that the ID number was his, but the signature is not his since he did not attend this meeting.

171. PW 8, one Kenneth Toroitich, testified was a village elder in Oljorai and that the current chief of Oljorai is called Mark. When he was referred to Pf Exh. 2, he denied having seen the said letter. He confirmed that although his name appeared therein as No. 4 and the identity card (ID) was his, the signature was not his, nor was the handwriting, since he did not attend the meeting. He contended that the said handwriting was Chief Mark's.

172. Parit Sururu, the Assistant Chief in Kongasis, testified as PW 9 that he had been an Assistant Chief for more than 10 years. That he knew the parties herein and that the 2nd Defendant had a parcel of land which was adjacent to the Plaintiff's land. That he knew the 2nd Defendant as Waweru, and that his wife, Janet, who is the Plaintiff's sister, also had a parcel of land nearby.

173. He adopted his Witness Statement as his evidence in chief and testified that the land had initially belonged to ADC and that the entire land measured about 24,000 acres. The workers and squatters took possession of the land between 1992 and 1994. That in trying to settle all those people in the land, ADC had nominated a surveyor called Ajode who had subdivided part of the land into 5 acres and 10 acres and that the people, including the Plaintiff herein, were issued with allotment letters.

174. That Plaintiff's allotment letter had been issued on 30th April 1993 in regard to the suit land after which the Plaintiff had taken possession and was living on the land. That he became aware of the dispute between the Plaintiff and the 2nd Defendant in 2016. That the 2nd Defendant's son had laid a claim to the land. That accordingly, they had gone with 5 elders to settle the dispute on the ground. That was the NGAO (National Government Administration Office), comprising Chiefs, District Officers, Settlement Officers, the 5 elders, and the villagers who lived near the land. They had held a meeting to solve the dispute, where they wanted to confirm who the owner of the land was.

175. Before the last allotment in 2005, there was a settlement officer called Mweru who issued letters to outsiders instead of local people. As a result, there had been an uproar from the squatters, wherein 5 elders from every village were chosen to conduct the verifications. That on the said day, they had made a determination that the land belonged to the Plaintiff, who lived on the land and was a squatter. On the suit land, there was a small structure/house and some trees, but the land was not cultivated. That Daniel Njuguna (deceased), who was the 2nd Defendant's son, did not live on the suit land but had an adjacent plot near the Plaintiff's land. That Janet, Daniel and the 2nd Defendant had 3 plots of land nearby.

176. When he was referred to PMFI 13, he confirmed that he had written the said letter dated 11th June 2020, summoning Daniel Njuguna, Kelvin Maina, Joseph Maina, and Daniel Maina, the 2nd Defendant's children, although Daniel was now deceased. That he had summoned them because there had been a complaint from Linah, the Plaintiff's sister, that they had demolished the structure. However, they did not honour the summons, hence he had referred Linah to the OCS Elementaita. Accordingly, they had been summoned, they responded and built the house which stands on the land to date. He produced the said letter (Summons) as Pf exh.13

177. He testified that there were about 15 trees on the land, and the house was still intact. That, nonetheless, he did not know if somebody was living therein. That they had written the proceedings of the dispute in the ''Black Book'' and that they used to sign the same after the meeting. The said ''black book,'' he pointed out, was in the land's office. That whereas everybody had been given land, the suit land belonged to the Plaintiff even if the Defendants had titles. That he had not seen the dam (water pan) but there were about 15 trees only.

178. In cross-examination, he confirmed that he was an Assistant Chief of Kongoasis Sub-Location and that his chief was of Oljorai location. The land had initially belonged to ADC, and there were ADC workers and squatters who had settled on it. In 1992 – 1994, the ADC tried to allocate land to the squatters, that is, the people who had entered the land without any

documents. That the Plaintiff had been allocated the land vide a letter of allotment, Pf exh 1 herein.

179. In reference to the said Pf exh 1, he testified that the land was not surveyed and that the allotment letter had no plot No. typed, but the same was a handwritten number. However, some allotment letters had numbers according to how the land had been surveyed. He confirmed that ADC had 24,000 acres of land but did not give it all to the squatters and their workers. That when ADC left, the Settlement Fund Trustee (SFT) took over and that the records of ADC had been given to the SFT which had proper records currently.

180. That he did not participate during the survey process neither did he participate in the change of plot No.248'A'. He confirmed that the SFT gave letters of offer to the squatters and the people who had been in occupation of the ADC Land. he confirmed that Mwirui had given the allotment letters from SFT in the year 2005. That motherless, there had been an uproar hence the said letters had been nullified. That thereafter, there had been a sitting to identify the owners and that is when he learnt that the Plaintiff did not get an allotment letter. That on the other hand, Daniel Njguna got an allotment letter.

181. That the ''black book'' had been in the custody of the settlement officer who was to follow the law, listen to all complaint and give the letter of offer. That there were squatters and workers of ADC who had children who were adults and that person who had a boma and was living on the land was allowed to get an allotment. He confirmed that a family could get more than one parcel of land if their children were adults. That whereas that was not the only land that had issues when they were called, on that day, the dispute had been in regard to the suit land. That at the time, there were about 15 trees. That nonetheless, he had not seen a dam om the land. He confirmed that Wachira had gone to the ground in the year 2016 and heard the dispute.

182. When he was referred to Pf xh.23. (Ground Report), he confirmed that the same was dated 21st March 2018 in regard to plot No.910 Oljorai Phase II. He

however refuted that plot did not have the development herein mentioned. He confirmed that they used to use one book that was kept by Mr. Wachira. Upon being referred to Pf exh.20 (a-c), he confirmed that the same was the house that had been demolished. That the Plaintiff used to live in the aforementioned house even when they had sat down for dispute resolution in the year 2016. That in the year 2007, the Plaintiff had run away. He maintained that when they were hearing the dispute, the house was on the ground. He confirmed that he was also given land by ADC and thereafter issued with an allotment letter.

183. In re-examination, he was referred to Pf exh.23 wherein he confirmed that the report had been written by Mr. Wachira. He however clarified that the trees on the land were far, the fence was not barbed wire and that all the development that had been written there were not true. That Mr. Njuguna was not on the ground. He explained that to be given an allotment letter, one had to have built on the land and be a local of the area. That in the year 2016, they had gone to the ground, where if they found a person with an allotment letter but who was not the rightful person, they would revoke the same. That subsequently, Mr. Wachira by himself had no right to give the allotment letter, since they were the ones who were making recommendations on who was to be issued with an allotment letter.

The Plaintiff thus closed his case.

184. The Defence case opened with the testimony Zipporah Wangeci Njuguna, the 1st Defendant who testified as DW1 to the effect that she knew the 2nd Defendant who had given her the authority to represent him in the instant case through a sworn Authority dated 17th July 2024 which she produced as Df exh.3.

185. That she was the wife of Daniel Njuguna Maina (deceased) and that they had been issued with a Grant ad litem in Case No. E418/2023 in Nakuru CMC dated 21st December 2023, which she produced as Df xh. 4. That the said grant ad litem had been issued to her and the 2nd Defendant herein. That she was in court in relation to Plot No. 910 Ol-jorai, which belonged to Daniel Njuguna (deceased), her husband, vide an offer letter which had been

issued to them by the SFT in the year 2010.

186. When she was referred to DMFI 1, she confirmed that the same was the letter of offer dated 16th August 2010, which they had been given. That the same had been addressed to Daniel Njuguna in regard to plot No. 910 Oljorai Phase II, measuring 2.02 hectares, for which they were supposed to pay a sum of Kshs.12,755.52/=. She produced the said Letter of Offer as Df exh 1(a) and then confirmed that they had paid the said amount and had been issued with a receipt dated 28th March 2012 for Kshs.14.200/= because of the interest that had accrued. That, indeed, the said receipt showed that the payment was in relation to land No. 910, Oljorai Phase II Scheme. She produced the receipt as Df exh 1(b).

187. She proceeded to testify that, after they had made payment, they had accepted the offer vide their letter dated 28th June 2017, which shows the land they had accepted as No. 910 Oljorai Phase II. The deceased had signed the letter of acceptance. The Settlement Fund Trustee received the letter, which had been signed by James M. Wachira. She produced the Letter of Acceptance as Df exh. 5.

188. That, thereafter, they had received a letter from the Sub-County Land Adjudication and Settlement Office, dated 29th June 2017, requesting a discharge of the charge, which she produced as Df exh 6. The letter was in relation to Plot No. 910, Oljorai Phase II, and confirmed that Kshs. 14,200/= had been paid on 28th March 2012. The aforementioned letter had also stated that the discharge of charge was to be given in favour of the allottee. Accordingly, they were given the discharge of charge, which was taken to the settlement office in Nairobi, so that they could be issued with a title, and the title was issued in the name of Daniel Njuguna on 29th November 2022 in relation to land parcel No. Naivasha/Oljorai Phase II/910. That they had also conducted a search on 29th November 2023 to confirm that the land was still in Daniel's name. She produced the title and search as Df Exhs.7 (a-b).

189. That after they were given the letter of offer, they had taken possession of the land, ploughed, fenced, dug a dam and planted trees therein in the

year 2012. There was a dispute over the land between the Plaintiff and Daniel, as the Plaintiff had laid claim to it. Although there was a sitting to resolve the matter, no resolution was reached. That she had an agreement dated 28th August 2012, namely DMFI.2, wherein the parties sought to negotiate. That from the said agreement, the parties had proposed to divide the land twice, but the Plaintiff did not agree. Since the agreement had not been honoured, Daniel did not proceed to subdivide the land. The Chief of Oljorai was a witness to the agreement. Furthermore, in the agreement, the parties had agreed that there was barbed wire, 2000 trees had been planted, a water dam, and the land had been cultivated, and that all the developments had been carried out by Daniel Njuguna Maina. She produced the said agreement as Df exh 2.

190. She testified that the settlement officer Mr. Wachira had gone to the land before they were given the title, after which he prepared the report. When she was referred to Pf exh 23, she confirmed that the report showed that Wachira had gone to the ground and that the developments shown in the report reflected the status of the land. That they got the title to their land based on the ground report. It took a long time to get the title deed because there had been a dispute on the land, which had subsequently been resolved by the settlement office.

191. She produced Daniel's death Certificate, her ID and that of the 2nd Defendant as Df exhs 8 (a-c) and then stated that she was seeking justice for Daniel and his children. She sought the prayers outlined in their Defence stating that there was nobody utilizing the land currently because of an injunction, but they were the ones who had previously been utilizing the same.

192. In cross-examination, she confirmed that she was Daniel Njuguna's wife and that they had been sued on his behalf. She confirmed that the 2nd Defendant was well and present in court, but had asked her to defend the case on the owner's behalf. In the year 2010, they visited the land parcel, but it was unoccupied, and there was no house there. That although she was currently living at Kianjoya with the 2nd Defendant, she knew where the suit

land was. She confirmed that the 2nd Defendant had another land in Oljorai and that Daniel Njuguna Maina also had another land near the suit land. She confirmed that the 2nd Defendant, one Janet Maina, was a sister of the Plaintiff's wife. That Janet's parcel of land was also in Oljorai, but not close to the suit land. She confirmed that the aforementioned 3 parcels of land were bought, but she did not know whether they had been allocated.

193. Upon finding that the suit land was unoccupied, they applied for the same and were given an offer letter. That whereas she neither had the letter seeking allocation nor remembers how they sought it, they had sought it from the settlement office. That they were shown the land by a settlement officer, Wachira, and a surveyor. She confirmed that she was given letters ad litem, but she does not remember any citation to take the ad litem.

194. She confirmed that she was issued the letter of offer in 2010 by the settlement office, but did not know that the Plaintiff had also been given an allotment letter by the ADC, since she had never seen it. she confirmed that the land had a dispute and that there was an attempt to resolve it although she did not know how because she was not dealing with the land /dispute or attend any land dispute meetings.

195. That she did not know whether a verification team had visited, since Daniel Njuguna (deceased) used to attend those meetings. That she would not know if he had gone to the meetings with anybody, but according to the documents, the 2nd defendant used to attend the meetings. That she was aware that the Plaintiff had been given the land in the year 1993, but did not know if his allotment had been cancelled/nullified. She admitted that the allotment letters were issued by two different offices. That the allotment was valid for one year within which they were to pay. The receipt shows they paid in 2012, while the letter of acceptance was written in 2017, which was not within one year.

196. That she had heard about the verification exercise and that the suit land had been verified. The office of settlement, survey, DO, Chief, and 5 elders from each village had conducted the verification exercise, but she did not know the findings. When she was referred to Df exh 2, she confirmed that

there had been an attempt to resolve the dispute and that, according to the documents, whereas she had not been there, Daniel was present at the time of the agreement for the land to be subdivided into two.

197. In further reference to Df exh 2, she confirmed that the same was the foundation of their title and that she had utilized the suit land by cultivating. That neither she nor the deceased had built on the suit land. That, however, Daniel had planted 2000 trees therein and built a dam that was still there to date for which the court could visit the scene to verify. She confirmed that there were about 6 Elders, but she was not calling any witnesses. She confirmed that the letters of offer and acceptance had been given by Mr Wachira in accordance with his visit to the land/ground and his seeing/witnessing. That she was not aware that Daniel and his brothers had been summoned and taken to the police station on the allegation that they had demolished the Plaintiff's house. Whilst there was a house on the land, she did not know who had built the same, nor was she aware that Daniel and his brothers had been directed to build the house after they had demolished it. That whereas she had been in court as the Plaintiff's witnesses testified that the land belonged to the Plaintiff, according to the documents left in her custody, the land belongs to Daniel.

198. In re-examination, she was referred to Df exh 1; she confirmed that the letter stated they pay within 1 year. In reference to Df exh 1(a), she confirmed that they had paid after 1 year and that the letter stated that, in default of payment within 1 year, they would pay interest; hence, they had paid the said interest. There was no notification that the offer had been cancelled. That indeed, when they were issued with Df exh. 5, they had not been notified of the cancellation of their letter of offer. She maintained that she was not aware of the Plaintiff's letter of allotment. That there were two different offices, and the Plot Nos. were different. That Mr. Wachira did not favour them but did his work according to the law and what had been found on the ground.

At the close of the Defence case, parties were directed to file written submissions, which I shall proceed to summarise as herein under.

Plaintiff's Submissions.

199. The Plaintiff vide his submissions dated 10th December 2025 summarized the factual background of the matter and then framed one issue for determination, to wit: whether the Plaintiff or the Defendants are the owners of the suit land.

200. The Plaintiff's submissions, dated 10th December 2025, frame the case as a battle between a legitimate, first-in-time allottee in actual possession versus a subsequent, fraudulent registration. The Plaintiff argues that the Defendants' title is a legal nullity that cannot be protected by the Constitution.

201. The Plaintiff submits that his root of title is the ADC Allotment Letter of 30th April 1993 (Pf Exh 1) and since the Defendants' offer letter is dated 2010, the Plaintiff argues that the land was already alienated and unavailable for re-allocation.

202. He submitted that no legal procedure had ever been initiated to cancel his 1993 allotment, rendering any subsequent allocation of the same parcel to a third party legally impossible. He relied on the principle that possession was nine-tenths of the law and provided evidence of having built a house and cultivated the land since 1994.

203. He pointed to the Defendant's admission that the Deceased never resided on or built a house on the suit land, submitting that the 2nd Defendant was a neighbour who exploited his proximity to the land to facilitate a fraudulent registration for his son (the Deceased) while the Plaintiff was away.

204. The Plaintiff challenged the Defendants' evidence and procedure, contending that the 2nd Defendant (the father) refused to testify and instead provided an irregular and illegal letter of authority to DW1. Citing the case in **Criminal Appeal No. 106 of 1993 (Sachdeva & Potter JJ)**, (sic) the Plaintiff urged that for the court to draw an adverse inference, the 2nd Defendant stayed away because his testimony would have exposed the lack of due process.

205. He submitted that the Ground Report, Df Exh 2 that had been used to process the title was proven false by the Area Chief and local elders, who testified that it was not intended to confer ownership but was merely for arbitration.

206. He thus anchored his case on the provisions of Article 40(1) of the Constitution, contending that the Defendants had unlawfully acquired title to the suit land and were hence not protected by the Constitution. He also placed reliance on the Supreme Court's decision in **Dina Management Ltd v County Government of Mombasa & 5 others [2023] eKLR** to submit that the Defendants did not have any root of the title.

207. He hinged his reliance in the case of **Ardhi Highways Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR** to submit that the Plaintiff as the legal owner of the suit land with a valid allotment letter and in possession, could not be dispossessed of interest in the property by a fraudster in light of the fact that the Defendants' documents were fraudulent.

208. That, in accordance with the decision in **Daudi Kiptugen v Commissioner of Lands & 4 others [2015] eKLR**, the suit land herein belonged to the public and government and that there was a procedure that was to be followed for the land parcel to be allocated to deserving persons. Further reliance was placed in the cases of **Funzi Island Development Ltd & 2 others v County Council of Kwale & 2 Others [2014] eKLR, Republic v Land Registrar & Another exparte Daniel Ricci [2013] eKLR** and **Nakuru ELC No. 347 of 2014; Lettati Ole Kool v Legoria Ole Naimodu & another** (sic).

209. He submitted that Pf Exh 17, the 2015 letter from the Director of Land Adjudication, was a smoking gun which explicitly warned that discharges and transfers being issued in Ol-Jorai were without ground confirmation. He argues that the Defendants' 2022 title was issued in direct defiance of this directive and the 2009 Delegates' Minutes herein produced as Pf Exh 19, which mandated that allocation follow the original ADC map.

210. In conclusion, the Plaintiff argued that he had proved his case on a

balance of probabilities. He submits that his 1993 allotment, coupled with 30 years of recognised occupation and the support of the local administration (NGAO), outweighed a title deed "manufactured" through administrative shortcuts and false ground reports.

1st and 2nd Defendant's Submissions.

211. In their Submissions dated, the 19th January 2026, the 1st and 2nd Defendants framed two (2) issues for determination as follows:
    i. Whether the Plaintiff had proved his ownership of the Suit Property to the required standard.
    ii. Whether the deceased is the legal and rightful owner of the suit property.
212. The Defendants then presented their defense of the principle of indefeasibility of title, arguing that the Plaintiff's claim was built on a legal vacuum of unperfected interests and procedural inconsistencies. That the Plaintiff had failed to meet the evidentiary threshold to displace a registered owner:
213. They argued that there was a total lack of nexus between Plot No. 248A allocated by the ADC, and the registered Plot No. 910 allocated by the SFT. That, without a survey report or Registry Index Map (RIM), the Plaintiff was a legal stranger to the suit property.
214. They highlighted that the plot number on the Plaintiff's allotment letter herein produced as Pf exh 1 was handwritten while the rest was typed—an inconsistency they argue suggests forgery or unauthorized alteration.
215. Relying on the Supreme Court decision in **Torino Enterprises Limited v Attorney General [2023] KESC 79 (KLR)** they submitted that an allotment letter was a mere invitation to treat. Since the Plaintiff admitted to having no proof of payment to the ADC, the offer never crystallized into a property right.
216. The Defendants then proceeded to dismiss the Plaintiff's reliance on local committees as legally impotent, submitting that the alleged 2009 committee was a non-event because no formal mandate or findings were

produced. That the only professional inquiry was conducted by Settlement Officer James Wachira, who dismissed the Plaintiff's local resolutions as strange, foreign, and bent on individual interest. They pointed out that the Plaintiff's own witness, the current Settlement Officer (PW5), confirmed that the Land Office's official investigation had rejected his (Plaintiff's) claim.

217. They asserted that the title held by Daniel Njuguna (Deceased) was absolute under Section 26 (1) of the Land Registration Act. Citing the **Funzi Development Case** (supra), they submitted that the Deceased followed all statutory steps: offer, payment (including interest), and registration.

218. They also relied on the decision in **Vijay Morjaria v Nansing Madhusingh Darbar [2000] eKLR** to submit that fraud must be pleaded with requisite particularity and proved to a standard higher than the balance of probabilities.

219. Citing the decision in **Kuria Kiarie & 2 Others v Sammy Magera [2018] eKLR** they argued that the Plaintiff failed to establish any link between the Deceased and a corrupt scheme. Consequently, the statutory protection of the title remained unshaken.

220. In conclusion, the Defendants submitted that the Plaintiff's case was an elaborate collection of facts that failed the test of law. They argue the Plaintiff's claim is based on an informal, undocumented, and unperfected offer, which could not defeat a duly registered, validly processed title. They thus prayed for the dismissal of the Plaintiff's suit with costs and for Judgment in their favor as prayed in their Counterclaim.

Determination.

221. I have duly considered the evidence adduced before the court by both the Plaintiff and the 1st Defendant, the submissions, the authorities cited, as well as the applicable law. Briefly, the Plaintiff (PW1) and his sister (PW2) testified that the land, originally designated as Plot No. 248A, was allocated to him by the Agricultural Development Corporation (ADC) on 30th April 1993 as was evidenced by Pf exh 1, where PW1 took possession in 1994, cleared the bush, and built a house. He and PW2 farmed the land until 1998, when he left to look for work in Bomet, and PW2 remained on the land with her

family until 2007, when she went to Bomet vote, but the eruption of the Post-Election Violence (PEV) forced them to stay away from the land.

222. PW4 and PW9 explained that when the Settlement Fund Trustee (SFT) took over from ADC, Plot 248A was re-mapped and re-numbered as Plot 910. A "Black Book" (an official register of genuine squatters) was maintained by land officials to verify these original occupants.

223. The Plaintiff alleges that the title issued to Daniel Njuguna Maina (Deceased) on 29th November 2022 was obtained through a fraudulent process involving a land officer, Mr. James Wachira who was a predecessor to PW5, who (PW5) produced a Ground Status Report by Mr. Wachira (Pf Exh 23) which claimed the Deceased had extensively developed the land by fencing, planting 2,000 trees, and digging a water pan/dam. However, PW6 (Chief), PW9 (Assistant Chief), and PW3 (Elder) all testified that these development claims were false—stating that whereas there was no dam, there were only about 15–30 trees, and that the Deceased never lived on the land.

224. The witnesses testified that while Mr. Wachira was present at ground arbitrations that favored the Plaintiff in 2016 and 2018, he later authored a report calling those local resolutions foreign and strange, effectively bypassing the community's verification, to facilitate the Deceased’s title.

225. The Plaintiff produced Pf Exh 17, a policy directive stating that no discharge or transfer was to occur on disputed plots in Ol-Jorai arguing that the 4th Defendant (Land Office) had ignored this directive and issued a title while the dispute was active.

226. The Plaintiff’s claim was strongly supported by the National Government Administrative Officers who were on the ground and had confirmed that multiple arbitrations in 2009, 2016, and 2018 had consistently found that the land belonged to the Plaintiff.

227. PW3 and PW9 testified that the 2nd Defendant’s children had demolished the Plaintiff’s house while they were away, following which vide summons by the Assistant Chief and intervention by the OCS Elementaita, the Defendants were forced to rebuild the house for the Plaintiff—an act the

Plaintiff argues was a clear admission of his superior right to the land.

228. PW7 and PW8, whose names appeared as committee members on documents favoring the Defendants, testified in court that their signatures were forged and they never attended the meetings the Defendants rely on. The Plaintiff contended that the Title Deed held by the Defendants was "manufactured" and "secretive and asked the court to declare him the legal owner of LR No. 910 and thereafter cancel the Title Deed issued to Daniel Njuguna Maina (deceased) on the grounds of fraud and illegality, and issue a permanent injunction against the Defendants.

229. The Defendants' case, on the other hand, presented primarily through Zipporah Wangeci Njuguna (DW1), the widow of the deceased Daniel Njuguna Maina, was that their ownership was founded on a valid legal process overseen by the Settlement Fund Trustee (SFT). DW1 produced a Letter of Offer dated 16th August 2010 as Df exh 1(a) for Plot No. 910, stating that although the offer required payment within one year, they had paid Kshs. 14,200/= (including accrued interest) on 28th March 2012 as seen in Df Exh 1(b). That they had formally accepted the offer in 2017, as evidenced by Df Exh 5.

230. Following the "Discharge of Charge" in 2017, a formal Title Deed was issued in the name of Daniel Njuguna Maina on 29th November 2022, herein produced as Df Exh 7(a) as the ultimate proof of ownership.

231. The Defendants' claim was that, upon receiving the Letter of Offer in 2010, they took active physical possession of the land, where the deceased had fenced it with barbed wire, built a water dam, and planted approximately 2,000 trees starting in 2012. Their evidence had been that they had cultivated the land consistently until the court issued an injunction. They relied heavily on the report of the Settlement Officer, Mr. Wachira herein produced as Pf Exh 23, which confirmed these developments were present on the ground and attributed to the deceased.

232. They also introduced an agreement dated 28th August 2012, herein produced as Df Exh 2 as evidence of an attempted settlement between the Plaintiff and the deceased, stating that a meeting had been held involving

the Chief of Ol-Jorai, where it was proposed that the land be divided equally (2.5 acres each) between the Plaintiff and the Deceased. However, because the Plaintiff failed to honour the agreement or accept the subdivision, the Deceased proceeded to process the full title for the entire 2.02 hectares.

233. DW1 maintained that she was never aware of the Plaintiff's 1993 ADC allotment letter, noting that ADC and SFT were different offices with different numbering systems. She also denied any knowledge of the deceased or his brothers being arrested or forced by police to rebuild a house for the Plaintiff, stating that she was unaware of who built the structure currently on the land.

234. She contended that Mr. Wachira acted according to the law and that the title was issued by the Director of Land Adjudication in Nairobi, not local officers.

235. From the above summation, what comes out for determination are the following issues;

i. Whether the Defendants' Title was Obtained via Fraud, Misrepresentation, or Illegality.
ii. Whether the Plaintiff's ADC Allotment Letter of 1993 is Valid and Subsisting.
iii. Whether there is a Verifiable Nexus between Plot No. 248A and Plot No. 910
iv. Who has Superior Possessory Rights?
v. Whether the 1st and 2nd Defendants' Counterclaim has Merit

236. Section 26 (1) of the Land Registration Act of 2012 which provides as follows:-

> "*The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions*

contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;-

a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or

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

237. It was held in the case of **Republic vs Senior Registrar of Titles Ex-parte Brookside Court Limited (2012) eKLR,** that statutorily, the sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the Land Registration Act. The court is also aware of the attribute of Section 26(1) (a) and (b) of the Land Registration Act, which provides that a Title to land shall not be absolute and indefeasible because it can be impeached where it is shown to have been obtained through fraud, misrepresentation, illegally, un-procedurally or through a corrupt scheme.

238. In this case, the Plaintiff herein had challenged the title issued to the deceased Daniel Njuguna Maina and has therefore sued both the 1st and the 2nd Defendants who are his legal representatives, stating that the title to the suit land had been obtained illegally and therefore he should be declared the legal owner of LR No. plot 910 Ol Jorai Settlement scheme measuring approximately 2.02 hectares, and the title issued to Daniel Njuguna Maina be cancelled.

239. The 1st Defendant put up a defence of the principle of indefeasibility of title, arguing that the Plaintiff's claim is built on a "legal vacuum" of unperfected interests and procedural inconsistencies.

240. **In R.G Patel vs Lalji Makanji 1957 E.A 314,** the Court of Appeal stated as follows:

"Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required".

241. The Court of Appeal in the case of **Jacob Wekesa Bokoko Balongo vs.**

Kincho Olokio Adeya & another [2020] eKLR held as follows:

> *"The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant's title to the suit land was indefeasible... In the persuasive case of Fahiye & 2 others – v- Omar & 4 others [2014] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (0S), it was correctly pointed out that: "The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of Champaklal Ramji Shah & 3 Anors –v- AG & Anor, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required."*

242. The historical background of the deceased's title had been that the Plaintiff had been allocated a parcel of land No. 248A, measuring approximately 5 acres at the Ol-jorai ADC Settlement Scheme by the Agricultural Development Corporation (ADC) on 30th April 1993. The letter of allocation read as follows:

> *''By copy of this letter, I am informing the estate manager to show you the said portion of land. However, I have to inform*

you that the plot has not yet been surveyed and may not be ready very soon.

You will shortly be informed of the mode of payment. You can go ahead and take possession of the said parcel of land after it has been surveyed.''

243. The Plaintiff's evidence had been that after he was shown the parcel of land and the beacons by a surveyor called Terer on 14th February 1994, he had cleared the bush and put up a temporary house therein, where they took possession and occupation with his sister, PW 2, and they started farming on the suit land

244. Since the Plaintiff was the first person to be legally allocated the land, and put in possession of the same, awaiting further instructions on the payment, this had created a vested equitable interest to the effect that the land was no longer available for the 2010 allocation to the Deceased since there had been no evidence that the allocation to the Plaintiff was ever formally cancelled.

245. The transfer of land from the Agricultural Development Corporation (ADC) to the Settlement Fund Trustee (SFT) is a specific administrative and legal process used in Kenya to convert large-scale government-owned farms into settlement schemes for squatters, workers, or landless citizens, and therefore, when the government decides to settle people on this land, the ADC must "divest" its interest.

246. Before the SFT takes over, the ADC or Provincial Administration often performs an "ad hoc" subdivision to manage squatters; therefore, allotment numbers are often handwritten on allotment letters and based on rough maps. Once the SFT takes over, the land is no longer managed as a commercial farm but as a "Settlement Scheme." The SFT's role is to purchase the land (often via government funding) and subdivide it for individual settlers. This then explains how the 1993 ADC allotment letter interacted with the 2010 SFT letter of offer regarding the Ol Jorai Settlement Scheme, specifically how Plot No. 248A originated, and the fact that the SFT failed to reconcile the new Plot 910 with the old ADC Plot 248A during the

implementation phase.

247. The Plaintiff’s evidence was that the identifier 'Plot No. 248A' was a provisional administrative designation issued by the ADC and Provincial Administration during the pre-settlement phase, and this evidence was corroborated by the testimony of PW3, PW4 and PW9. These identifiers, which were based on actual ground occupation as herein evidenced, were intended to be reconciled with formal Registry Index Map (RIM) numbers upon the SFT’s takeover. The failure of the 4th Defendant to provide a 'Nexus Table' or reconciliation report did not invalidate the Plaintiff's prior existing right, but rather pointed to a procedural lapse in the settlement process and because the Plaintiff had been a verified occupant on the suit land, the issuance of a title to a third party (the Deceased) was therefore a breach of trust.

248. I find that when the land moved from the Agricultural Development Corporation (ADC) to the Settlement Fund Trustee (SFT), the SFT had a mandatory duty to reconcile prior records. As admitted by PW5 (Settlement Officer), the SFT office in Naivasha failed to cross-reference the 1993 ADC Allotment Letters with the new Physical Development Plan (PDP) because, as he put it ‘*’they did not get records from ADC. That they had conducted a ground-verification exercise in 2009 and had started allocating land based on who was on the ground’’*. Because the Settlement Fund Trustee (SFT) had ignored a subsisting allocation, the land was not legally "available" for a fresh offer to the Deceased in 2010.

249. The Plaintiff poked holes in Mr. Wachira’s Ground report, which formed the basis of the issuance of the title to the deceased, by calling evidence to the effect that while they had been kept away from the suit land due to the Post election violence, his house had been broken and the iron roof carried away wherein the 2nd Defendant, who was his neigbhour and the father of the deceased, kept for him his poles. Upon his return, he found that the 2nd Defendant’s children had planted trees on his land. The 2nd Defendant had initially asked him to pay for the trees, but had changed his mind, stating that they were neighbours. The second time their house had been destroyed

was in the presence of his sister PW2, who was inside the house when the 2nd Defendant's children demolished it, but were made to build another one in 2018, which house was still on the ground.

250. That, whereas the SFT process required a ground verification before a title was issued, the report by Mr. Wachira which was produced as Pf Exh 23 claimed the Deceased had constructed a dam and planted 2,000 trees on the land. This report was opposed vehemently by PW6 (Chief), PW9 (Assistant Chief), and PW3 (Elder), the actual custodians on the ground, who had testified that these developments were non-existent. The SFT, having relied on a factually false report to process the "Discharge of Charge" and the subsequent Title, I find that the resulting Title was obtained through fraud and misrepresentation.

251. There was evidence adduced that following the changeover from the ADC to SFT, and what happened during the post-election violence, there had been many land disputes in Ol-Jorai, such that vide a letter dated 21st January 2015, from the Director of Land Adjudication, there had been a stop put on the issuance of titles in Ol-Jorai until all disputes were resolved and ground status confirmed. The issuance of a title to the deceased in November 2022 was, therefore, I find, in direct defiance of this official administrative stay and therefore illegal and ultra vires, that it could not be protected by Section 26 of the Land Registration Act.

252. The SFT office ignored the existing ADC records and the Plaintiff's actual physical occupation, thereby creating a procedural vacuum that allowed the Defendants to obtain title through misrepresentation. Their subsequent implementation was therefore flawed because it rewarded ''paper applicants'' over actual occupants whose continuous occupation since 1994 was corroborated by the community, and overrode the Defendants' 2022 title.

253. The Defendants rely on the trite law that a title deed is the end of the road. However, for a title to be valid, the administrative chain must be unbroken. The Supreme Court's reasoning was that where the registered proprietor's root title was under challenge, it was not enough to dangle the

instrument of title as proof of ownership; the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance. In **Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment)**, the court held as follows:

> *"Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...*
>
> *Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired...."*

254. Having found that the root of the deceased, Daniel Njuguna Maina's title was fraudulent, Section 80 (1) of the Land Registration Act provides that:-

> *"Subject to sub Section (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake."*

255. From the above provisions, it is clear that the court has the power to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made, or omitted by fraud or mistake. There having been sufficient evidence adduced, as earlier stated, in support of the Plaintiffs' claim to impugn Daniel Njuguna Maina's (deceased) title, I find that the original title must be restored to the Plaintiff in line with the maxim f*raus omnia corrumpit* (Fraud unravels everything).

256. That being the case, I find that whereas the Defendants' counterclaim is not merited and is dismissed, the Plaintiff has proved his case on a balance

of probabilities, and is entitled to the prayers sought in the Plaint. I thus enter judgment for him against the Defendants in the following terms:

i. A declaration is hereby issued that the Plaintiff is the legal owner of LR Naivasha/Ol Jorai phase II/910 measuring approximately 2.02 hectares.
ii. An order is hereby issued directing the Land Registrar, Naivasha, to rectify the register within 30 days of this judgment by cancelling the title deed to LR No. Naivasha/Ol Jorai phase II/910 measuring approximately 2.02 hectares, which was issued and registered in the name of Daniel Njuguna Maina (deceased) on 29th November 2022 and instead register it in the name of Joseph Kiprono Koech, the Plaintiff herein.
iii. Costs of this suit and Counterclaim are awarded to the Plaintiff.

Dated and delivered via Microsoft Teams at Naivasha, this 5th day of March 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT– JUDGE