

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NTANDARUA

ELCA NO E001 OF 2025

PETER MBUGUA NJUGUNA.....APPELLANT

VERSUS

OL-KALOU FARMERS CO-OPERATIVE SOCIETY....RESPONDENT

JUDGMENT

(Being an Appeal from the Judgment of Hon Nthuku delivered on 16th January, 2025 at Ol-kalou PM'S Court)

This Appeal emanates from the Principal Magistrate's Court at Olkalou ELC No. E006 of 2024, the Appellant together with Jeremiah Kariuki and Raphael Charagu filed a suit against the Respondent seeking orders that they were the legal owners of L.R. No. NYANDARUA/OL-KALOU CENTRAL/7624, measuring 0.043 Hectares and prayed that the Title Deed for the same in the name of the 1st Defendant be cancelled and that the action of the Defendants be deemed to amount to trespassing on the suit land.

He also sought the eviction of the 5th Defendant, Njuguna Mbugua. The 1st Defendant filed a counter-claim and a Defence wherein in the Counter-claim he claimed ownership of the suit land. The 2nd, 3rd, 4th, 7th and 8th Defendants (inclusive) filed a Defence denying the allegations raised in the Plaint and sought for the dismissal of the suit with costs.

The 5th Defendant filed a Defence in person claiming that no security number should be evicted from the suit land. The 6th Defendant filed her Defence denying the contents of the Plaint.

In the evidence adduced by himself on behalf of his Co-plaintiffs, the 1st Plaintiff said that he bought a parcel of land NYANDARUA/OL-KALOU CENTRAL/912 from the 6th Defendant and paid Kshs. 1.3 million out of Kshs. 1.5 million. But he realized his plot was registered in the names of the 1st Defendant yet the same had been pointed out to him on the ground by the officials of the 6th Defendant. He bought the land through the 7th Defendant who had been given powers by the Society to sell the land. The officials of the 6th Defendant were the Directors of the 7th Defendant. He has never occupied the land due to the disagreements between the officials of the society. He said they bought the land in 2018.

The 6th Defendant could not transact for lack of a K.R.A Pin. The 2nd, 3rd, 4th and 8th Defendants signed the Land Control Board Consent and transfer forms. Title No. 7624 came from the mother Title 912. He produced the following documents to buttress his case.

1. Sale agreement dated 12/10/2018
2. Sale agreement of 16/1/2019.
3. Receipt dated 10/10/2018.
4. Sketch map.
5. Copies of Bank Receipts.
6. Other Bank Receipts.
7. Certificate of incorporation of the 7th Defendant.

After the close of the Plaintiff's case, the 1st Defendant testified that he purchased the disputed parcel of land from the 6th Defendant after conducting a search and having been shown the Green Card which confirmed that the land was registered in the name of the Society and that the mother Title was 912.

He was also shown the Society's minutes authorizing the Society to sell the land. He was also shown the Mutation from 912 to 7624. He then paid the purchase price through Equity Bank in 2019. He later went to the land Control Board and obtained the consent to transfer

the land to himself. He was later issued with the Title. He said he bought the land at Kshs. 1.5 million. The land, 50x100 feet fronts the main road. It borders lane No. 201. Besides Kshs. 10,000/- which he paid in cash, the entire purchase price was paid by depositing the money with Equity Bank. The then officials of the 7th Defendant were Joseph, the 5rd Defendant, 3rd Defendant and Francis Mwangi. the chairman, secretary and treasurer of the 7th Defendant signed the transfer forms and the Application for consent.

The 3rd Defendant said he together with the 2nd, 4th and 5th Defendants were the Directors of the 7th Defendant and also officials of the 6th Defendant therefore he was testifying on their behalf as well as for himself. The 7th Defendant was formed in 2018. Parcel No. 912 belonged to a Ms. Cecilia and it was sub-divided out of which parcel No. 7624 arose before it was sold to the Plaintiff. They received the purchase money through the 7th Defendant because the Accounts of the 6th Defendant were dormant. The Plaintiff paid the society Kshs. 1.3 million for the purchase of the suit land through the 7th Defendant. They showed the land to the Plaintiff and even drew sketches to him.

The Plaintiff did pay the entire purchase price before they signed the transfer forms in his favour. They later realized the land had been transferred to somebody else. He said the 7th Defendant sold the land as an agent of the 6th Defendant. He said the 5th Defendant was not a member of the Society. Not all the members of the 6th Defendant were shareholders of the 7th Defendant which had only 60 members against the 350 members of the 6th Defendant.

The 5th Defendant member No. 284 said the Society was not in agreement with the way the officials sold the Society's properties. Patrick Maina on behalf of the 6th Defendant, the current secretary blamed the previous officials for selling land and even placed a caution against parcel No. 912 to avoid any transaction involving it. But the same was not registered. He said that most of the members were not aware of the formation of the 7th Defendant and the proceeds of sale were never received in the 6th Defendant's Accounts - save the sale proceeds from the 1st Defendant after the latter purchased parcel number 7624. He said he was not sure the Plaintiff was a member of the 6th Defendant Society but that the latter's father was and that at no time were the Society's Accounts dormant. He confirmed that the 1st Defendant had paid the entire

purchase price for the suit land. The witness said that he was not a member of the Society when the 1st Defendant was buying the suit land but a nominee of his mother who was a member and that he knows the 1st Defendant had bought parcel No. 76321, but the Society decided to give him 7624 because 7624 was already occupied.

He later testified that he became an official of the society in November 2019 but he couldn't tell where the money for cancellation came from. 7621 was sold to David Kamau but since it had the Secretary's name, Kamau was given 7624.

This is the evidence adduced by the parties to the suit after which the Trial Magistrate retired to write her Judgment

The Trial Magistrate while deciding that the Plaintiff should get a refund of his money Kshs. 1.5 million and that the 1st Defendant had proved his ownership of No. NYANDARUA/OL-KALOU CENTRAL/ 7624 to the exclusion of all other people including the 5th Defendant who should vacate the suit land as agreed that the 7th Defendant had not been properly incorporated since only 9 members of the 6th Defendant Society in attendance in the meeting that resolved to form the 7th Defendant and therefore the Society should have activated

its dormant Account and applied for a PIN Certificate instead of incorporating a body to transact for her. The Court further held that although it is clear the Plaintiff bought land belonging to the 6th Defendant the people who purported to sell the same to him did not have capacity to do so. They misrepresented themselves to be the lands' registered owners. They did so as owners and not as officials of the Society. In their individual capacities. The Court held that there was no fraud attributable to the Defendants and none was pleaded in the Plaint and therefore there was no ground laid for the cancellation of the Title Deed which is in the name of the 2nd Defendant. She further held that the Plaintiff cannot be left to suffer for the actions of the people who unfairly benefitted from his money. The actions of other Defendants cannot bind the Society because the actions were not indicated to have been on the society's behalf.

In his Memorandum of Appeal against the 6th Defendant, which is poorly done, the Appellant (previously the Plaintiff) prays for Judgment against the Respondent with costs on the following Grounds: -

1. THAT our family has been members of the society share number 284 since its formation in the year 1968. This

therefore, the family need to be treated fairly by a society that they have served for over fifty years. The newly elected officials must co-operate with members.

2. THAT the matter brought forward by the plaintiffs including me as the defendant was withdrawn by the Honourable court including all activities done by the Heiferz company. This included the subdivision of our land which was affecting our houses. The matter therefore be heard a fresh so that it takes into consideration destruction of properties.
3. THAT unlike the allegations brought before these Honourable court indicating that we are in the process of putting up a business house, this be noted as false information. We built our house on 17th August, 2014 at a cost of 1.1 million shillings including a permanent toilet, which is built by stones from the ground. The premises also has electricity connections and for over ten years, we have been lived without being threatened by Authorities from the society. We therefore ask, to be given the first priority instead of indulging strangers who are not members of the society, and to avoid the destruction of properties (see exhibit 1)

4. THAT being a long serving member of the society, we have never been called to a meeting depicting an agreement to sell a plot, yet we have had our own houses. There was neither a meeting to agree on who to sell a plot, to whom it would be sold to or the price thereof. The minutes presented before this Honourable court were signed by the Chairman Heferz Company and were rejected by the Court. Thus, no agreement or minutes have been brought forward to show that there was agreement for sale as members.

5. THAT if the honourable court finds that the newly elected officials sold the plot legally and our money is kept safe then they should not destroy our properties, since we have very many empty lands which can be given out. Your Honor, members were threatened that they had debts that amounted to sell a plot. Our intention was to sell a plot at a cost of Kshs. 2.5 million. We are yet to understand why the newly elected officials sold at Kshs. 1.5 million, while affecting members houses. Where is the rest of the money and the whole amount? So that we get compensated, or we agree to sell one of our empty lands. Otherwise, the officials be investigated as to

whether they are hiding some money together with the buyer. The reason why they did not allow members to buy was that their deal was to be known and can't accept.

6. THAT your honor we got surprised to know that the newly elected officials sold a plot in 2018 we came to know when we were brought before this honorable court as defenders. Additionally, none of our members attended any meeting or gave any authority to sell. This is so because by that time, the *shamba* was not subdivided and therefore we couldn't know where to sell and at what amount. Since 2018, the title deed was only processed in 2023 (see evidence 2). This again was done without informing the members to agree on the same. Your honour, the subdivision was done later by the chairman of Heferz company with an intention of selling a plot where members had already developed, and this Honourable court has dismissed

7. THAT there are no minutes signed by members which allows that a plot to be sold where we have built our homes, and that indicates authority to destroy and demolish our houses

8. THAT the new elected officials be investigated as to where and how they have spent the society's money before we allow the land transaction to go ahead so that we agree to subdivide our land correctly without affecting members and if need be to sell, we sell where there is empty land.
9. THAT being a member, they should consider that the amount that will be destroyed is equal to amount sold, therefore, as a Kenyan and a shareholder my money also needs to be protected.
10. THAT the buying process was kept a secret until there was a case before these Honorable court and the new officials have been forging minutes to support their deal.
11. THAT until today we as members don't understand who sold and who has our money because after reelecting our officials, we are still surprised to see that the chairman of the society is still Julius who is the chairman of the heifer's company while the matter is still pending at Nyahururu law court to (see evidence 3).

In this Appeal the Appellant omitted the other Defendants (in the lower Court) who seem to have been capable for his woes and concentrated on suing the society which did not receive any

money from him. He was only made to believe that the money was received on behalf of the Respondent which was not the case and cannot therefore succeed against the Respondent, an innocent party This Appeal is therefore disallowed. I make no Orders as to costs.

Judgment read and delivered at Nyandarua this 4th Day of March 2026.

**MUGO KAMAU
JUDGE**

In the Presence of: -
Court Assistant: Samson.
Appellant present in person.
For Respondent.....Ms Muthoni.