

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC LANDS CIVIL SUIT NO. E009 OF 2024

BERNARD KOMU [*Suing as the Legal Representative of the Estate of M'Abuanga Thabwanga*] **PLAINTIFF**

VERSUS

NTONJIRA MWINGIRWA **1ST**
DEFENDANT

IBRAHIM KOBIA **2ND**
DEFENDANT

NICOLAS GIKUNDI KOBIA **3RD**
DEFENDANT

DENNIS MURITHI KOBIA **4TH**
DEFENDANT

LAND REGISTRAR MERU COUNTY **5TH**
DEFENDANT

THE HON. ATTORNEY GENERAL **6TH**
DEFENDANT

JUDGEMENT

1. The Plaintiff has approached the court *vide* Plaint dated 22nd May 2024; and wherein the Plaintiff has sought various/diverse reliefs. The reliefs sought are reproduced as hereunder:

- i. An order for cancellation of the certificates of registration of land parcel numbers Antubetwe/Kiuongo/9760, Antubetwe/Kiongo/14988, Antubetwe/Kiongo/15317, Antubetwe/Kiongo/17272, Antubetwe/Kiongo/17273 and the same reverts to Land parcel No. Antubetwe/Kiongo/138.*

- ii. ***A declaration that the land parcel number Antubetwe/Kiongo/138 measuring 8.74 acres is the property of the deceased M'Abuanga Thabwanga.***

- iii. ***An order of eviction of the 1st, 2nd, 3rd and 4th defendants either by themselves, their servants, employees or agents from land parcel numbers Antubetwe/Kiongo/9760, Antubetwe /Kiongo/14988, Antubetwe/Kiongo/15317, Antubetwe/Kiongo/17272, Antubetwe/Kiongo/17273 and the same reverts to Land parcel No. Antubetwe/Kiongo/138.***

- iv. ***The OCS Maua Police Station to oversee compliance with Order (C) above.***

- v. ***An order of permanent injunction be granted against the 1st, 2nd, 3rd and 4th defendants either by themselves, their servants, employees or agents from taken possession or interfering in any manner whatsoever with parcel number Antubetwe/Kiongo/138.***

- vi. ***General damages as against the 1st, 2nd, 3rd and 4th defendants for trespass over land parcel number Atubetwe/Kiongo/138.***

- vii. ***Costs and interest at court rates as against the 1st, 2nd, 3rd, and 4th defendants.***

- viii. ***Any other relief that this Honourable Court may deem fit to grant.***

2. The 1st, 2nd, 3rd and 4th Defendants [hereinafter referred to as the named Defendants] duly entered appearance and filed a statement of defense dated **11th June 2024**; and wherein the named defendants have denied the claims by the Plaintiff. Moreover, the named defendants have contended

that Plot number Antubetwe/Kiongo/138 [the original property] belonged to and was registered in the name of M'Abuanga Thabwanga [now deceased]. In addition, it has been contended that the owner of the original parcel of land wrote a letter dated **6th May 1992** addressed to the land adjudication and wherein the registered owner sought to transfer and indeed transferred a portion measuring approximately 8 acres to the 1st Defendant.

3. Moreover, the named defendants have posited that the portion of the original parcel of land which was curved out and created out of the original parcel; namely, Plot Number 138, was thereafter assigned plot number 9760. For coherence, it has been posited that the said plot 9760 was the one which was transferred to the 1st Defendant.
4. Additionally, it has been contended that the 1st Defendant thereafter sold to and in favor of the 2nd Defendant a portion of plot number 9760 and which portion upon sub-division became known as Antubwetwe/Kiongo/15317 and 14988, respectively.
5. The 5th and 6th Defendants duly entered appearance and filed a statement of defense dated the 21st of March 2025; and wherein same denied the claims by the Plaintiff. It was contended that Plot number 9760 was lawfully created out of plot number 138 following the lodgment of objection number 2528. Moreover, it has been averred that the creation of Plot number 9760 was neither objected to nor opposed by the Plaintiff or any member of the deceased family. To this end, it has been contended that the creation of Plot number 9760 was therefore lawful; above board; and followed the adjudication and demarcation process.
6. Other than the foregoing, the 5th and 6th Defendants have contended that if the Plaintiff was aggrieved by the creation of Plot number 9760, same [plaintiff] ought to have mounted an objection in accordance with the provisions of sections 25 and 26 of the Land Consolidation Act, Chapter 283 Laws of Kenya. In the absence of the requisite objection, it has been

contended that the suit beforehand is therefore premature and misconceived.

7. The subject matter came up for pretrial directions whereupon the advocates for the parties confirmed that same had filed and exchanged the requisite pleadings; list and bundle of documents, list of witnesses, and witness statements. Moreover, the advocates for the parties intimated to the court that the matter was therefore ready/ripe for hearing.
8. The Plaintiff's case is premised on the evidence of five witnesses, namely: **Richard Kiptonui Bett, Asman Hassan, Bernard Kungu, Anna Wanja Kungu, and Geoffrey Muringo Abuanga. Same testified as PW1, PW2, PW3, PW4, and PW5, respectively.**
9. It was the testimony of PW1 [Richard Kiptonui Bett] that same is the sub-county land adjudication and settlement officer Tigania East Subcounty. In addition, the witness posited that the suit property falls within his area of jurisdiction. To this end, the witness averred that same is therefore conversant with the facts of the case.
10. The witness further testified that same is privy to and aware of a report dated **29th October 2014** which was addressed to the District Lands Adjudication Officer- Igembe. Moreover, the witness averred that the report in question was in response to a letter which had been written by Mr. Muriungi Advocate. Besides, the witness averred that the letter which was being responded to *vide* the report referenced Plot numbers 138 and 9760 Antubetwe/Kiungu.
11. It was the further testimony of the witness that the letter in question was an internal communication. Furthermore, the witness testified that there was a transfer and the transfer in question was referred to and captured *vide* the letter under reference. To this end, the witness sought to tender and produce before the court a copy of letter dated **29th October 2014** as an exhibit before the court. There being no objection to the production of

letter, same was produced and admitted as exhibit P15 on behalf of the Plaintiff.

12. On cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants, the witness averred that the letter which has been produced before the court as exhibit P1 was an internal memo. In addition, the witness testified that the letter was meant for the District Land Adjudication and Settlement Officer -Igembe. Nevertheless, the witness averred that he was not aware of how the Plaintiff procured and obtained a copy of the letter dated **29th October 2014**. Moreover, the witness clarified that the letter in question was never meant to be given to the Plaintiff or any other party.
13. While still under cross-examination, the witness averred that the Plaintiff did not make any form of request/application to be availed a copy of the letter under reference.
14. The witness further testified that the proceedings before the court touch on and concern plot number 138 Antubetwe/Kiungu. Regarding document number 10 at the foot of Plaintiff's list and bundle of documents, the witness testified that the document in question is a copy of a transfer letter. In particular, the witness posited that the transfer letter was transferring land to two people including Mtonjira Mwingirwa [1st Defendant]. Furthermore, the witness testified that the person who was transferring land was M'Abuanga Mwareria. Additionally, the witness testified that the portion of Plot number 138 which was transferred to the 1st Defendant was assigned a new plot number. In particular, the witness clarified that the new plot number was 9760.
15. While still under cross examination, the witness averred that the letter dated **6th May 1992** was initially misplaced. However, the witness clarified that the letter was subsequently traced and thereafter same was acted upon. In particular, the witness averred that the transfer at the foot of the letter was duly effected.

16. It was the further testimony of the witness that in the year 1992 the area was operating under the Land Consolidation Act, Chapter 283 Laws of Kenya. To this end, the witness testified that if anyone was dissatisfied with the transfer, then the person ought to have lodged an objection to the register of existing rights. Nevertheless, the witness clarified that there was no objection that was lodged by the Plaintiff herein.
17. Moreover, it was the testimony of the witness that where no objection was lodged or where an objection was lodged but determined, the record of existing rights could be progressed further to adjudication register. In addition, the witness posited that in the absence of objection to the adjudication register, then the next stage would be land registration.
18. It was the further testimony of the witness that before the registration is undertaken, the adjudication officer is obligated to confirm that the records are in order.
19. The witness further testified that where the decision of land adjudication officer is not objected to or challenged, the decision of the adjudication officer would become final in accordance with **section 19 of the Land Consolidation Act, Chapter 283 Laws of Kenya**. In any event, the witness averred that an objection to the adjudication process must be mounted within 60 days in accordance with provisions of the law.
20. It was the further testimony of the witness that parcel number 9760 has since been sub-divided into various portions. In particular, the witness posited that the land in question was sub-divided into plot number[s] 14988 and 15317, respectively. Moreover, the witness clarified that no objection was ever received or mounted against the subdivision of plot number 9760.
21. On cross examination by learned counsel for the 5th and 6th Defendants [the Hon. Attorney General], the witness testified that the process of

gathering was concluded at Antubetwe/Kiungu area along time ago. However, the witness clarified that same cannot confirm the timelines when the gathering process was concluded.

22. Regarding the letter dated **6th May 1992**, the witness testified that the said letter was authored by Abuanga Thabwanga. Moreover, the witness testified that the letter in question was initially misplaced but same was subsequently traced and thereafter acted upon.
23. Upon being referred to document number 11 at the foot of the Plaintiff's list and bundle of documents, the witness testified that the document in question is a letter. Furthermore, the witness clarified that the letter is undated.
24. It was the further testimony of the witness that the undated letter [document number 11] does not form part of the records of the land adjudication and settlement office. For good measure, the witness averred that the letter in question [undated] is a forgery.
25. While still under cross examination, the witness averred that same is testifying before the court as the demarcation officer. To this end, the witness clarified that he is therefore conversant with the process of adjudication and demarcation. Regarding the register of existing rights for plot 138, the witness averred that the register shows that there was a transfer of 8 acres which was transferred to plot number 3532.
26. Moreover, the witness added that the transfer of 8 acres to parcel number 3532 was not a forgery. In addition, the witness testified that there was an objection to the record of existing rights which led to the transfer of 8 acres to plot number 3532. Instructively, the witness referenced objection number 2528.
27. While still under cross examination, the witness testified that the objection and transfer in question was the first transaction that affected Plot number 138. Additionally, the witness testified that there was a

second transaction that affected plot number 138. To this end, the witness referenced the transfer of 7 acres which culminated into the creation of plot number 9760. Nevertheless, the witness averred that there was no other transaction that had affected plot number 138 prior to or before the transactions underpinned by the letter dated **6th May 1992**.

28. The witness further testified that the transfer of seven acres to parcel number 9760 was shown as the second transaction. Moreover, the witness added that parcel number 9760 was created out of objection number 2528.
29. The second witness who testified on behalf of the Plaintiff was Asman Hassan. The witness testified as PW2.
30. It was the testimony of the witness that same is a surveyor by profession. Moreover, the witness posited that currently he oversees Land Adjudication in Igembe South/Central/North sub counties. In addition, the witness posited that he handles technical matters and represents the department in legal matters pertaining to lands.
31. The witness further stated that in respect of the instant matter, same received witness summons from the court. To this end, the witness averred that he was therefore obliged to attend court and to testify. Moreover, the witness testified that he has since prepared a report dated **20th June 2025** and which report the witness sought to tender and produce before the court. There being no objection, the report in question was tendered and produced as exhibit P23.
32. Additionally, the witness testified that same has made various observations at the foot of the report. In particular, the witness averred that the report in question relates to Plot number 138. Moreover, the witness posited that plot number 138 was sub-divided and same gave rise to plot number 9760. Besides, the witness testified that the subdivision of plot 138 and consequential creation of Plot 9760 was underpinned by

objection number 2528. For good measure, the witness averred that same has since tendered and availed before the court a copy of the demarcation book.

33. On cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants, the witness testified that same has availed before the court a comprehensive and elaborate report touching on plot number 138. In particular, the witness clarified that save for an error indicating plot number 135, which the witness corrected to be plot 138, the witness averred that the report is elaborate and explains the origin of plot number 9760.

34. It was the further testimony of the witness that the land in question was governed by the Land Consolidation Act. To this end, the witness testified that if any person was aggrieved by a subdivision, such a person was obligated to mount an objection. Nevertheless, the witness clarified that in respect of plot number 9760, there was no objection that was mounted to the transfer of seven acres to plot number 9760.

35. While still under cross examination, the witness testified that what was lodged in respect of plot 138 were transfers which are referenced as objections for purposes of actions by the adjudication. However, the witness clarified that there was no objection to the records of existing rights.

36. On cross examination by learned counsel for the 5th and 6th Defendants, the witness averred that the original acreage of plot 138 was 18.70 acres. However, the witness posited that the first transaction was a transfer of 8 acres to parcel/plot number 3532. Instructively, the witness referenced objection number 2528.

37. Regarding document number 11 at the foot of the Plaintiff's list and bundle of documents, the witness averred that the document is an undated letter. The witness thereafter testified that it is the said letter that informed the transfer of 8 acres to parcel number 3532.

38. It was the testimony of the witness that upon the transfer of 8 acres of land to parcel number 3532, plot number 138 remained with 8.74 acres. However, the witness clarified that there was another transaction that affected plot number 138. To this end, the witness referenced the transfer of 1.24 acres in terms of folio number 780.
39. Additionally, the witness testified that thereafter, plot number 138 remained with 7.50 acres. Be that as it may, the witness averred that a portion measuring 7 acres was subsequently transferred to parcel 9760 via objection number 2528. In this regard, the witness clarified that plot number 138 remained with 0.50 acres.
40. While still under cross examination, the witness testified that plot number 9760 was thereafter sub-divided into two [2] portions culminating into the creation of two parcels of land. Moreover, the witness posited that there was no objection raised/mounted against the subdivision of plot number 9760.
41. On re-examination by learned counsel for the Plaintiff, the witness averred that there was an initial transfer of seven acres out of parcel number 138. The witness clarified that the transfer of seven acres was underpinned by objection number 2528.
42. Furthermore, it was the testimony of the witness that the objection which underpinned the transfer of seven acres was not the same as the objection that culminated into the transfer of eight acres.
43. Regarding document number 11 at the foot of the Plaintiff's list and bundle of documents, the witness averred that the said document is the one that facilitated the transfer of 8 acres to parcel number 3532. In addition, the witness clarified that parcel 3532 was recorded in the name of M'Impiu Baimuri. Moreover, the witness added that the land in

question was later transferred to Peter Muringi through objection number 2586 of 2010.

44. The 3rd witness who testified on behalf of the Plaintiff was Bernard Kungu. The witness testified as PW3.
45. It was the testimony of the witness that same is the Plaintiff. Furthermore, the witness averred that same has since been issued with a grant of letters of administration in respect of the estate of M'Abuanga [the deceased]. To this end, the witness averred that same is therefore familiar and conversant with the facts of the case.
46. Additionally, the witness testified that same has recorded a witness statement dated **22nd May 2024** and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement under reference was thereafter adopted and constituted as the evidence in chief of the witness.
47. The witness further adverted to a list and bundle of documents dated **22nd May 2024**, containing 22 documents and which documents the witness sought to tender and produce before the court as exhibits. Nevertheless, an objection was taken to the production of document number 11 of the List and bundle of documents, culminating into the delivery of a ruling by the court. Notably, the objection to the production of document number 11 was overruled.
48. It suffices to state that the documents at the list of documents dated **22nd May 2024** were thereafter tendered and produced before the court as exhibits P1-P22 [inclusive of Exhibit P13 which had been produced by PW1].
49. Furthermore, the witness referenced the plaint dated **22nd May 2024** and the Verifying Affidavit of even date and thereafter sought to adopt and

rely on the contents thereof. In addition, the witness sought the reliefs spoken to at the foot of the Plaint.

50. On cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendant, the witness averred that same is a son of M'Abuanga. Moreover, the witness posited that M'Abuanga passed on in 1985.
51. While still under cross examination, the witness testified that M'Abuanga [now deceased] had six sons and thirteen daughters. In addition, the witness averred that all the 6 sons of the deceased are still alive. Furthermore, the witness testified that same has since been issued with grant of letters of administration. To this end, the witness referenced exhibit P22.
52. It was the further testimony of the witness that the other beneficiaries of the estate of the deceased authorized him to file the case beforehand. Nevertheless, it was the testimony of the witness that same has not filed the authority by the other beneficiaries.
53. The witness further testified that the suit before the court is challenging the transfer of land to the 1st defendant. In particular, the witness averred that he is challenging the transfer based on exhibit P10. However, the witness conceded that same did not file any objection to challenge the transfer of land to and in favor of the 1st Defendant.
54. While still under cross examination, the witness testified that same is not aware of whether any objection was ever filed. In addition, the witness confirmed that he was present in court when the land adjudication officer clarified that no objection was ever filed/mounted.
55. It was the further testimony of the witness that same took up the issue touching on and concerning the transfer to the 1st Defendant in the year 2014. In particular, the witness posited that he took up the issue in 2014 when he [witness] was evicted from the land.

56. Additionally, the witness testified that he proceeded to and filed a suit namely case number 566 of 2014. Moreover, the witness contended that it is not true that the 1st case was being filed after 22 years. Nevertheless, the witness admitted that he has not filed any other suit touching on the question of the suit property safe for the instant matter.
57. It was the further testimony of the witness that the suit before the court has been filed for/on behalf of various beneficiaries of the estate of the deceased. In particular, the witness clarified that he has sought reliefs on behalf of Geoffrey Muringu as well as the 1st Defendant. In addition, the witness averred that same has filed a suit so that the suit property together with the resultant subdivision[s] can be reverted to the estate of the deceased and thereafter be subject to succession.
58. It was the further testimony of the witness that same heard the testimony of the land adjudication officer [PW1]. In particular, the witness testified that he heard the testimony that no objection was mounted against the transfer of parcel number 9760 to the 1st Defendant.
59. Moreover, it was the testimony of the witness that the transfer to and in favor of the 1st Defendant was indeed not objected to.
60. Regarding exhibit P18, the witness averred that the said document relates to the transfer of Plot 9760 to the 1st Defendant. Nevertheless, the witness acknowledged/admitted that the 2nd, 3rd, and 4th Defendants are purchasers.
61. On cross examination by learned counsel for the 5th and 6th Defendants [the Hon. Attorney General], the witness averred that exhibit number 10 confirms that a portion of land measuring 8 acres was indeed transferred from plot number 138. In addition, the witness clarified that the transfer of 8 acres left plot number 138 with 8.74 acres.

62. Regarding the records of existing rights in respect of plot 138, the witness averred that the transfer of 8 acres has indeed been captured at the foot of the record of existing rights. Moreover, the witness acknowledged that the record shows that the acreage of plot number 138 as of now is 0.85 hectares.
63. While still under cross examination, the witness testified that same is aware that no objection was raised to the transfer of Plot number 9760. In addition, the witness clarified that same inspected the register at the time of adjudication. Nevertheless, the witness stated that despite inspecting the register, same did not raise any objection.
64. On re-examination, the witness averred that plot 138 measured 8.74 acres. The witness clarified that this is the acreage that same is seeking to recover.
65. Additionally, it was the testimony of the witness that same is aware that a portion of plot 138 was transferred to M'Imoro. In addition, the witness posited that M'Imoro was thereafter issued with a parcel number.
66. While still under re-examination, the witness testified that exhibit P11 confirms that eight acres was indeed transferred to the 1st Defendant. Moreover, the witness admitted that the balance of plot 138 on ground measures 0.50 acres.
67. Additionally, it was the testimony of the witness that the 2nd, 3rd, and 4th Defendants are purchasers. Furthermore, the witness added that it is the 2nd, 3rd, and 4th Defendants who are using the parcels of land in question. For good measure, the witness clarified that the said 2nd, 3rd, and 4th Defendants have been using the land since 2014.
68. The 4th witness who testified on behalf of the Plaintiff is Anne Wanja Kungu. The witness testified as PW4.

69. It was the testimony of the witness that same is a teacher by profession. In addition, the witness averred that she is the wife of the PW3. Moreover, the witness affirmed that same has since recorded and filed a witness statement dated **22nd May 2024** and which witness statement the witness sought to adopt and rely on as her evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
70. On cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants, the witness averred that the original parcel of land prior to subdivision was plot number 138. Furthermore, the witness testified that her husband [PW3] did not lodge any objection during the adjudication process.
71. While still under cross examination, the witness testified that the 2nd, 3rd, and 4th Defendants are purchasers for value. In addition, the witness clarified that the 2nd, 3rd, and 4th Defendants purchased land from the 1st Defendant. Besides, the witness posited that by the time 2nd Defendant bought land from 1st Defendant, the land was still under adjudication.
72. It was the further testimony of the witness that PW3 has a record relating to the gathering process. However, the witness testified that her husband [PW3] did not object to the transfer of land to and in favor of the 2nd Defendant.
73. While still under cross examination, the witness testified that the 1st to the 4th Defendants are the ones in occupation of the disputed plot.
74. On re-examination by learned counsel for the Plaintiff, the witness confirmed that 2nd to 4th Defendants bought portions of land. However, the witness clarified that same did not witness/see a copy of the sale agreement.

75. Additionally, the witness testified that the land in question was under the adjudication process by the time the 2nd Defendant bought same from the 1st Defendant. In particular, the witness clarified that the land was purchased sometime in August 2011.
76. The last witness who testified on behalf of the Plaintiff was Geoffrey Muringu. Same testified as PW5.
77. It was the testimony of the witness that same is familiar and conversant with the fact of this matter. Furthermore, the witness averred that same has since recorded and filed a witness statement dated **22nd May 2024** and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement under reference was thereafter adopted and constituted the evidence in chief of the witness.
78. On cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants, the witness averred that the suit before the court has been brought by the Plaintiff on behalf of the estate of M'Abuanga. Moreover, the witness clarified that the suit has been brought on behalf of the entire family.
79. While still under cross examination, the witness testified that the entire family on whose behalf the suit has been brought includes the 1st Defendant. Additionally, the witness testified that he has signed an authority and that the authority was filed before the court.
80. It was the further testimony of the witness that no objection was lodged to the transfer of plot number 9760 to the 1st Defendant. Moreover, the witness added that no objection was done because the transfer was done after the death of M'Abuanga.

81. While still on cross examination, the witness averred that M'Abuanga died in 1995 yet the transfer in question was undertaken in 2014. Moreover, the witness posited that same got to know of the transfer in 2014.
82. On re-examination, the witness testified that the suit has been filed by the Plaintiff on behalf of the family of the deceased. Furthermore, the witness added that same executed/signed an authority before the probate/succession court.
83. On further re-examination, the witness testified that he is aware that an objection was lodged against the transfer of land in favor of the 2nd Defendant. In particular, the witness posited that the objection was lodged in the year 2014.
84. With the foregoing testimony, the Plaintiff's case was closed.
85. The 1st, 2nd, 3rd, and 4th Defendants' case is anchored on the evidence of two [2] witnesses, *namely*; M'Njira Mwiringwa and Ibrahim Kobia. Same testified as DW1 and DW2, respectively.
86. It was the testimony of the witness [DW1] that same is the 1st Defendant in respect of the instant matter. To this end, the witness averred that same is familiar and conversant with facts of the case. Moreover, the witness averred that same has since recorded and filed a witness statement dated **17th February 2025** and which witness statement the witness sought to adopt and rely on as his evidence in chief. Notably, the witness statement under reference was duly adopted and constituted as evidence in chief of the witness.
87. The witness also referenced a list and bundle of documents dated **17th February 2025**; containing five documents and which documents the witness sought to tender and produce before the court as exhibits. There being no objection to the production of documents, same were

tendered and produced before the court as exhibits D1 to D5, respectively.

88. Furthermore, the witness highlighted the statement of defense dated **11th June 2024**; and which statement of defense the witness sought to adopt and rely on. Besides, the witness implored the court to dismiss the claim.
89. On cross examination by learned counsel for the Plaintiff, the witness testified that he is a retired civil servant. Moreover, the witness posited that during his working life, he worked with the ministry of planning; ministry of lands; and Sheria House, where he [witness] was the head Department of Statistics.
90. Regarding the contents of paragraph 5 of the statement of defense, the witness averred that the contents thereof are correct. Moreover, the witness clarified that same has tendered and produced before the court a copy of the transfer documents which was made in 1992. To this end, the witness referenced exhibit D1.
91. While still under cross examination, the witness averred that exhibit D1 does not bear a stamp to show/confirm that same was ever received at the lands office. Nevertheless, the witness clarified that the document before court is a copy.
92. It was the further testimony of the witness that the transfer document [Exhibit D1] ought to have been received at the lands office. However, the witness averred that the document before the court is not clear and hence, he is unable to confirm/deny whether it was received at the lands office.

93. Upon being referred to exhibit P11, the witness testified that the document was indeed received at the lands office. Furthermore, the witness added that the transfer in question was implemented.
94. Regarding the contents of paragraph 6 of the Statement of Defense, the witness averred that the contents thereof are correct. In particular, the witness testified that he sold a portion of plot 9760 to the 2nd Defendant.
95. Regarding document number 18 [exhibit P18], the witness averred that same is an objection proceedings. In particular, the witness stated that the objection in question was determined.
96. Regarding document number 2 [exhibit P2] the witness averred that plot number 138 measured 8.7 acres. Moreover, the witness clarified that what was transferred to him was 7.5 acres.
97. It was the further testimony of the witness that plot number 9760 was lawfully transferred unto him. Moreover, the witness acknowledged that he sold and transferred a portion of plot number 9760 to the 2nd Defendant.
98. On re-examination by learned counsel for the 1st, 2nd and 3rd Defendant, the witness averred that exhibit D2 is a copy of the transfer document underpinning the creation of plot number 9760. In addition, the witness confirmed that the transfer document was/is genuine.
99. Regarding the size of plot 9760 the witness averred that the documents before the court show that same measures 7.5. Moreover, the witness confirmed that plot number 9760 was curved out of plot number 138.
100. The 2nd witness who testified on behalf of 1st, 2nd, 3rd and 4th Defendants was Ibrahim Kobia. The witness testified as DW2.

101. It was the testimony of the witness that same is the 2nd Defendant. To this end, the witness posited that same is therefore conversant with facts of the case. In addition, the witness affirmed that same has since recorded and filed a witness statement dated **17th February 2025** and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
102. Furthermore, the witness averred that same has also filed a list and bundle of documents sated **17th February 2025**, containing five documents. The witness thereafter sought to produce the documents as exhibits before the court. Nevertheless, it turned out that the documents under reference were the very documents which were produced before the court by D1 and were marked as exhibits D1 to D5 respectively.
103. On cross examination by counsel for the 5th and 6th Defendants [the Hon. Attorney General], the witness averred that he bought his plot from the 1st Defendant. In addition, the witness clarified that he bought his plot around the year 2014. Moreover, the witness added that he was thereafter issued with a plot number.
104. While still under cross examination, the witness testified that the plot which he bought measured six acres. Besides, the witness posited that plot in question has since been sub-divided into three portions.
105. On further cross examination, the witness testified that he has since been issued with a certificate of title in respect of his parcel of land. In any event, the witness averred that he has no complaint against the land registrar.
106. On cross examination by learned counsel for the plaintiff, the witness testified that same has since recorded a witness statement. Moreover, the witness averred that the contents of the witness statement are correct.

107. Additionally, it was the testimony of the witness that *vide* his witness statement, same has indicated that the 1st Defendant was given land in 1992 by his father. Furthermore, the witness averred that it is the 1st Defendant who sold unto him the land.
108. Regarding the size of land that was sold unto him by the 1st Defendant, the witness averred that same purchased/bought six acres from the 1st Defendant. Furthermore, the witness testified that same bought/purchased two portions of land.
109. It was the further testimony of the witness that the portions of land which he bought were given numbers. To this end, the witness referenced plot numbers 15317 and 14988, respectively.
110. Regarding the 3rd and 4th Defendants, the witness testified that same are his sons. In addition, it was the testimony of the witness that it is him who subdivided his land and transferred portions to the 3rd and 4th Defendants.
111. As concerns the usage of his parcels of land, the witness averred that he is the one who is using his parcel of land; while the 3rd and 4th Defendants are also using their parcels of land. Moreover, the witness posited that the Plaintiff is also using a portion of land but which portion is separated by his [witness] land by a road of access.
112. On re-examination, the witness testified that same bought/purchased a total of 6 acres from the 1st Defendant. In addition, the witness averred that what he bought from the 1st Defendant has since been given three separate numbers.
113. Regarding the subdivision of plot number 9760, the witness averred that the said plot was subdivided by the 1st Defendant and not himself.

114. On further re-examination, the witness testified that he obtained his plot during the adjudication process. Moreover, the witness posited that no one objected to the transfer of the plots unto him.
115. Regarding the person using the plots in question, the witness affirmed that the 3rd and 4th Defendants are using their plots and he [witness] is also using his plot.
116. With the foregoing testimony, the 1st, 2nd, 3rd, and 4th Defendants' case was closed.
117. Though the 5th and 6th Defendants duly entered appearance and filed a statement of defense dated 21st March 2025, same however, did not call any witness. Suffice it to state that the case for the 5th and 6th Defendants was closed without any evidence being tendered.
118. Following the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and issued directions pertaining to the filing and exchange of written submissions. Moreover, the court also circumscribed the timelines for the filing and exchanging written submissions.
119. The Plaintiff filed written submissions dated 3rd November 2025; and wherein the Plaintiff has highlighted six [6] key issues, namely: whether the 1st Defendant lawfully acquired a portion of the initial parcel number Antubetwe/Kiungu/138; whether the 1st Defendant transferred a valid title to the 2nd Defendant; whether there was a sale of land to the 2nd Defendant and whether the 2nd Defendant is a Bonafide purchaser for title; whether the Plaintiff has proved fraud as against the Defendants; and whether the suit herein is meritorious.
120. The 1st, 2nd, 3rd, and 4th Defendants filed written submissions dated **20th November 2025** and wherein same has highlighted three [3] key

issues, namely: Whether the Plaintiff has the requisite locus standi to bring the suit on behalf of the dependents of M'Abuanga [Deceased]; whether the plaintiff failed to exhaust the internal solving mechanisms as laid out under the law; and whether the suit is meritorious.

121. The Honorable Attorney General on behalf of the 5th and 6th Defendants filed written submissions dated **17th November 2025** and wherein same has highlighted two [2] key issues. The issues canvassed by the Hon. Attorney General are: whether the Plaintiff has proved fraud against the 5th Defendant; and who is to pay cost of the suit.

122. Having reviewed the pleadings filed by/on behalf of the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions on record, four [4] key issues do arise/crystallize for determination. The issues that crystallize are: Whether the Plaintiff's case discloses any reasonable cause of action or otherwise; Whether the Plaintiff has proved/established his claim to the requisite standard or otherwise; Whether the 2nd, 3rd, and 4th Defendants are Bonafide purchasers for value without notice of any defect in the title of their predecessors; and what reliefs [if any] ought to be granted.

123. Regarding the first issue, namely; whether the Plaintiff's case discloses any reasonable cause of action or otherwise, it is important to recall and reiterate that the transactions that are complained of and which impacted upon plot number Antubetwe/Kiungo/138 [the original parcel of land] took place during the adjudication process. Moreover, it is common ground and indeed evidence abound that the original parcel of land was affected by the provisions of the **Land Consolidation Act, Chapter 283 Laws of Kenya**.

124. Moreover, it is not lost on me that the subdivision which gave rise to plot number 9760 took place during the adjudication process. For good measure, PW2 tendered and produced before the court evidence that Plot number 9760 was birthed by objection number 2528 [see exhibit P23].

125. To the extent that plot number 9760 was birthed or created by the objection proceedings, it is common ground that anyone, the Plaintiff not

excepted, was obliged to file an objection to its creation or better still to mount an appeal to the minister in accordance with provisions of **Section 8 of the Land Consolidation Act**, whichever was applicable.

126. Nevertheless, the Plaintiff herein [PW3] testified before the court and confirmed that same did not lodge/mount any objection against the creation of Plot number 9760. In addition, the Plaintiff is on record confirming that same indeed inspected the adjudication register but nevertheless, he never lodged any objection.

127. Before venturing forward to interrogate the issue beforehand, it is important to reproduce the key aspect of PW3's evidence. While under cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants, PW3 stated thus:

“I do confirm that I am challenging the transfer based on exhibit P10. I did not file any objection myself to challenge the transfer. I am not aware whether any objection was ever filed. I also confirm that I heard the evidence of land adjudication officer saying that no objection was ever filed. I reiterate that there was no objection.”

128. What flows from the foregoing except is to the effect that the plaintiff herein did not mount any objection to impugned the creation of Plot number 9760. Notably, the land consolidation act contains in -built statutory mechanisms for addressing any grievances touching on and concerning the validity of any transaction of land affected by the said Act. Moreover, there is no gainsaying that any objection must be mounted within the stipulated [read, statutory] timelines.

129. Fast forward, PW3 [the Plaintiff] is on record confirming that he had occasion to inspect the register of plot number 9760 during the adjudication. However, the Plaintiff concedes that despite having inspected the register, same did not lodge any objection.

130. For clarity and coherence, it suffices to reproduce the pertinent evidence of PW3 while under cross examination by the Honorable Attorney General.

131. The witness stated thus;

“There was no objection to the transfer. I inspected the register at the time of the adjudication. I did not raise any objection to the register.”

132. Furthermore, PW3 stated as hereunder;

“I now say that I raised an objection to the register. I now wish to say that I did not file any objection.”

133. Despite the apparent contradiction[s] and inconsistencies that emanate from the excerpts [supra], what is clear is that the Plaintiff confirms having inspected the adjudication records. In addition, it is also evident that even though the Plaintiff inspected the adjudication records, same did file/mount any objection.

134. I wish to remind myself that where no objection is mounted or taken against transactions affecting land under the Land Consolidation Act, the record of existing rights is deemed complete. Moreover, the land adjudication officer is obligated to confirm the record as final in accordance of provisions of section 18 of the Land Consolidation Act.

135. Additionally, it is important to underscore that once the records of existing rights are confirmed as complete and the adjudication register is prepared, the land adjudication officer is called upon to publish/disseminate the adjudication records in accordance with the law and any person affected by the adjudication record is at liberty to lodge/mount an objection albeit within sixty days from the date of publication. Where no objection is lodged, then the adjudication record is deemed final and is therefore escalated upwards for purposes of registration and issuance of certificate of titles.

136. The foregoing position is underpinned by the provisions of sections 26 and 27 of the Land Consolidation Act, Chapter 283 Laws of Kenya.

137. For the sake of brevity, the provisions [supra] are reproduced as hereunder:

“26. Objection to Adjudication Register

(1) Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by section 21 of this Act.

(2) If the Adjudication Officer considers that such rectification would incur unreasonable expense, delay or inconvenience, he may award such compensation in lieu of rectification as he may deem appropriate.

(3) No appeal shall lie against any decision by the Adjudication Officer to dismiss an objection or order rectification or to award compensation in lieu of rectification, as the case may be, but the Minister or any person to whom compensation has been awarded and who is dissatisfied with the amount awarded by the Adjudication Officer may apply to a subordinate court

held by a Resident Magistrate for its revision in such manner as may be prescribed.

(4) Any compensation awarded by the Adjudication Officer under this section, together with such costs as the Court may award, shall be paid by the Minister.

27. Adjudication Register to be final

After the expiration of sixty days from the date of the certificate mentioned in section 25, or on the determination of all objections in accordance with section 26, of this Act, whichever shall be the later, the Adjudication Register shall be final.”

138. My understanding of provisions 26 and 27 of the Land Consolidation Act [supra] drives me to the conclusion that where a person is affected by the adjudication record, does inspect [s] the register, but fails to lodge the objection, then such a person cannot *ex post facto* be heard to complain about the validity of the record. In my humble view, the plaintiff herein cannot now seek to revisit the validity of the records which he inspected and [sic] deemed valid, by failing to mount [sic] an Objection.

139. Back to the issue for consideration. Taking into the account the acknowledgement by the Plaintiff that he inspected the adjudication records and coupled with the tenor of section 27 of the Land Consolidation Act, the question that does arise is whether the facts, or set of fact[s], being relied upon by the Plaintiff do espouse a reasonable cause of action or otherwise.

140. I beg to state that what constitutes a reasonable cause of action must be assessed based on the facts or community of facts being propagated by the claimant as against the state of the law. It is only where the facts espouse an infringement [violation] that is known to law, that a claimant can be said to have a reasonable cause of action. The cause of

action [if any] must be one known to and recognized by law and not otherwise.

141. Put differently, where the facts or community of facts being espoused are contrary to law, then the claimant cannot be heard to approach a court of law seeking to canvass and propagate [sic] the facts that are antithetical to law.

142. In respect of the instant case, the provisions of the law are such that the Applicant's grievances [if any] ought to have been canvassed in line with the established statutory mechanisms. The Plaintiff failed to do so. The failure or neglect in question has negated the Plaintiff's claim and by extension the cause of action.

143. Without belaboring the point, I am afraid that the Plaintiff's suit looked at against the provisions of section 26 and 27 of the Land Consolidation Act does not disclose a reasonable cause of action. To this end, the Plaintiff's suit is dead in the water.

144. What constitutes a reasonable cause of action was underscored by the Court of Appeal in the case of *Kigwor Company Limited v Samedy Trading Company Limited* [2021] KECA 810 (KLR)

“36. In the Court of Appeal case of Attorney General & another v Andrew Maina Githinji & Another [2016] eKLR Justice Waki held that: -

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of Drummond Jackson vs. Britain Medical Association (1970) 2 WLR 688 at pg 616. In an earlier case, Read vs. Brown (1889), 22 QBD 128, Lord Esher, M.R. had defined it as: -

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

Lord Diplock, for his part in Letang vs. Cooper [1964] 2 All ER 929 at 934 rendered the following definition: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”

145. Additionally, in the case of ***Diana Katumbi Kiio v Reuben Musyoki Muli [2018] KECA 860 (KLR)***, the Court of Appeal highlighted the import and tenure of a cause of action.

146. The court stated thus;

“A cause of action’ is:

“... every fact which is material to be proved to entitle a party to succeed and every fact which the defendant would have a right to traverse.” per Aldous LJ in Ord vs Upton [2000] 1 All ER 193.

Lord Esher, M.R. in the case of Read vs Brown (1888), 22 QBD 128, defined it as: -

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court”. while Lord Diplock in Letang vs. Cooper [1964] 2 All ER 929 at pg 934 opined: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”

147. *In a nutshell*, my answer to issue number one is to the effect that the Plaintiff’s suit looked at as against the provisions of Land Consolidation Act, Chapter 283 Laws of Kenya, does not disclose any reasonable cause of action.

148. Turning to the second issue, namely: whether the Plaintiff has proved/established his claim to the requisite standard or otherwise. The Plaintiff approached the court contending that the creation of parcel number 9760 belonging to and registered in the name of 1st Defendant was procured/obtained irregularly; fraudulently; illegally; and in collusion with the land office. Furthermore, the Plaintiff has ventured

forward and supplied the particulars of fraud as against the 1st to the 6th Defendants.

149. The crux/substratum of the Plaintiff's case is to the effect that the subdivision of plot number Antubetwe/Kiungu/138 [the original parcel] culminating into plot number 9760 was irregular and unlawful. However, evidence abound that plot number 138 was affected by objection number 2528 which led to the subdivision thereof and transfer of seven acres to plot number 9760. For good measure, PW2 tendered and produced before the court exhibit P23.

150. Moreover, PW1 and PW2 are on record confirming that the transfer of seven acres out of plot number 138 was lawfully done and same was underpinned by the transfer letter authored by the owner of plot number 138. To this end, PW1 referenced exhibit P10, namely; transfer letter dated 6th May 1992.

151. In particular, PW1 is on record stating as hereunder while under cross examination by the Honorable Attorney General;

“Referred to the existing records of rights for parcel number 138 and the witness says that there was a transfer of 8 acres to parcel number 3532. The transfer of 8 acres to parcel number 3532 was not a forgery. I do confirm that there was an objection to the record of existing rights leading to the transfer of eight acres to plot number 3532. The objection number was 2528. I do confirm that the said objection and transfer were the first transaction.”

152. The Witness [PW1] ventured forward and stated thus;

“The second transaction was in respect of seven acres transferred to parcel number 9760. I do wish to state that there was no prior transaction that had affected the transfer before the letter dated 6th May 1992. The transfer of seven acres to parcel number 9760 was shown as the second transaction. I repeat that by the time of writing the letter dated 6th May 1992, no previous transaction had been undertaken. The objection number was/is 2528.”

153. On his part, PW2 [Asman Hassan] tendered and produced before the court a record/report showing the manner in which plot number 138 was sub-divided and the objections that affected same. In particular, and while under cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants, same stated thus;

“The transactions that I have enumerated at the foot of my report [exhibit P23] were above board.”

154. It is important to recall that this [PW1 and PW2] were witnesses who were called by the Plaintiff. Consequently, their testimony therefore binds the Plaintiff.

155. In my understanding, PW1 and PW2 are confirming that the transfer of seven acres out of plot number 138 was underpinned by objection number 2528. Moreover, the two witnesses are also confirming that the records underpinning the transfer were undertaken above board.

156. I must say that other than the evidence of PW1 and PW2, there is no other evidence to impeach and impugned the records of existing rights; the demarcation book; and the report [exhibit P23] which were placed before the court.

157. Additionally, I am also reminded of the presumption of regularity and legality of the actions of public and state officers. Though rebuttable, a court of law is enjoined to proceed on the basis that the acts or actions of public and state officers which are undertaken in the course of their duties were regularly and lawfully undertaken.

158. In the case of ***Chief Land Registrar & 5 others v Koech & 3 others (Civil Appeal 51 & 58 of 2016 (Consolidated)) [2018] KECA 27 (KLR) (6 December 2018) (Judgment)***, the Court of

Appeal discussed the scope of presumption of regularity of the acts/actions of public or state officers. The court stated thus;

“96.....There is a presumption that all acts done by a public official has lawfully been done and that all procedures have been duly followed. The onus is on the 1st and 4th respondents to prove otherwise. They have failed to do this. A bare allegation that a lawful procedure was not followed is not proof of the allegation. It was open to the 1st to 4th respondents to make an application before the trial court to compel the Commissioner of Lands to produce the original instrument of surrender, the memorial and the endorsement thereon. The 1st to 4th respondents failed to do so.”

159. From the evidence on record and coupled with the presumption of regularity [supra], it is now appropriate to descend to the contention that the creation of plot number 9760 was fraudulent. It is imperative to highlight that the plea of fraud requires to be pleaded and particularized. In addition, the claimant is obligated to tender and place before the court plausible; cogent; compelling; and credible evidence.

160. Additionally, it is common ground that proof of fraud cannot be based on inference, speculation, and conjecture. The evidence must be solid and credible. Moreover, the standard of proof is higher than on a balance of probabilities but below beyond reasonable doubt. Simply put, the standard of proof is the intermediate one. The one that lies between the two set standards.

161. The manner of pleading, particularizing, and thereafter proving fraud was underscored by the court of appeal in the case of ***Kuria Kiarie & 2 others v Sammy Magera [2018] KECA 467 (KLR)***.

162. The Court stated as hereunder;

“25. The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows;-

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

163. Recently, the Court of Appeal re-visited the standard applicable in matters concerning fraud in the case of ***Doshi v Chemutut & 7 others (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment)*** and the Court stated thus:

“41..... In the often-cited decision of this Court in the case of Vijay Morjaria v Nansingh Madhusingh Dabar & Another [2000] eKLR, Tunoi, JA. stated that: “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be

fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

164. Flowing from the foregoing analysis, I am not persuaded that the Plaintiff has proven/established the plea of fraud to the requisite standard. Moreover, it is not lost on me that the suit beforehand which impleads fraud was filed more ten years from the time when it is contended that the impugned actions were discovered.

165. The next issue that warrants consideration is: whether the 2nd, 3rd, and 4th Defendants are Bonafide purchasers for value without notice of any defect in the title of their predecessors. The 2nd Defendant testified before the court as DW2. The witness posited that same purchased a portion of plot number 9760 from the 1st Defendant.

166. Additionally, it was the testimony of DW2 that the portion of land which was purchased from the 1st Defendant was subsequently excised/curved out of the said plot and thereafter same was given separate/new numbers. To this end, the witness referenced plot numbers 14988 and 15317 respectively.

167. According to DW2, same is a purchaser of a portion of what was hitherto plot number 9760. Moreover, the witness averred that at the point in time plot number 9760 bore the name of the 1st Defendant.

168. The fact that the 2nd Defendant is a purchaser of a portion of plot 9760 and which portions were thereafter subdivided and transferred to 3rd and 4th Defendants is confirmed/corroborated by PW3 and PW4, respectively.

169. It was the testimony of PW3 that the 2nd, 3rd, and 4th Defendants are purchasers. For coherence, PW3 stated thus while under cross examination by learned counsel for the 1st, 2nd, 3rd, and 4th Defendants;

“The 2nd, 3rd, and 4th Defendants are purchasers.”

170. On her part, PW4 is on record stating as hereunder;

“I am aware that the 2nd to the 4th Defendants are purchasers for value from the 1st Defendant. I do confirm that the 2nd Defendant is the father of the 3rd and 4th Defendants. I do confirm that by the time the 2nd Defendant purchased the land, same was still under adjudication.”

171. While under re-examination, PW4 stated thus;

“The land was under adjudication at the time the 2nd Defendant bought same. The land was purchased sometimes after the 3rd August 2011.”

172. The totality of evidence on record demonstrate that the 2nd Defendant indeed bought land from the 1st Defendant. Additionally, it is common ground that by the time the 2nd Defendant was buying land from the 1st Defendant, plot number 9760 was in the name of the 1st Defendant.

173. Furthermore, evidence abound that upon the purchase of land by the 2nd Defendant, the requisite objections were mounted and thereafter acted upon by the land adjudication department. This much is evident from exhibit P23.

174. The question that does arise is whether the 2nd, 3rd, and 4th Defendant can partake of and benefit from the doctrine of Bonafide purchase of value? To start with, there is no evidence that the 2nd, 3rd, and 4th Defendants were privy to and knowledgeable of any defect affecting the 1st Defendant’s title.

175. Secondly, no evidence has been tendered to demonstrate that the 1st Defendant did not acquire any lawful title to and in respect of plot number 9760. On the contrary, evidence abound that the 1st Defendant's title to plot number 9760 was lawfully created and birthed by the adjudication process [see the evidence of PW1 and PW2].

176. In my considered view, the 2nd, 3rd, and 4th Defendants have met and satisfied the elements/ingredients underpinning the doctrine of Bonafide purchaser for value. In this regard, I hereby return a finding that the named defendants are indeed Bonafide purchasers of value without any notice of defect in the title of their predecessor.

177. The elements/ingredients that underpin the plea of Bonafide purchaser for value were highlighted and emphasised in the case of *Dina Management Ltd v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)* (Constitutional and Human Rights) (21 April 2023) (Judgment), where the Supreme Court stated thus;

“90. The Black’s Law Dictionary 9th Edition defines a bona fide purchaser as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

91. The Court of Appeal in Uganda in Katende v Haridar & Company Ltd [2008] 2 EA 173, defined a bona fide purchaser for value as follows: “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:

- 1. he holds a certificate of title;***
- 2. he purchased the property in good faith;***
- 3. he had no knowledge of the fraud;***
- 4. he purchased for valuable consideration;***
- 5. the vendors had apparent valid title;***
- 6. he purchased without notice of any fraud; and***

7. he was not party to the fraud.”

92. On the same issue, the Court of Appeal in Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005 [2015] eKLR stated as follows:“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

178. Regarding the reliefs [if any], I wish to state that the Plaintiff had sought a plethora of remedies. In particular, the Plaintiff sought an order cancelling the certificate of titles in respect of inter alia Antubetwe/Kiungu/9760; 14988; 15317; 17272; and 17273, respectively. For coherence, the basis upon which cancellation was sought was to the effect that the impugned titles were procured by fraud. However, while discussing issue number two [2], I have found and held that the Plaintiff has neither established nor proved plea of fraud. Moreover, the totality of evidence tendered on behalf of Plaintiff negated the Plaintiff’s claim.

179. The other relief that has been sought touches on and concerns a declaration that plot number Antubetwe/Kiungu/138 measures 8.74 acres. However, there is no gainsaying that the Plaintiff’s own witness [PW2] tendered evidence that after the various objections, plot number Antubetwe/Kiungu/138 only measures 0.50 acres. To this end, the declaration sought is clearly misconceived.

180. The plaintiff has equally sought an order of eviction against the 1st to 4th Defendants. I beg to state that the 2nd, 3rd, and 4th Defendants are lawful holders of titles in respect of LR Numbers Antubetwe/Kiungu/14988; 15317;17272; and 17273, respectively.

181. In this regard, the said defendants are bestowed with the requisite statutory rights and privileges as pertains to their titles. **[See sections 24 and 25 of the LRA, 2012]. [See also the holding in the Case of Moya Drift Farm Limited versus Theuri [1973] EA; Mohanson [K] Limited**

versus The Registrar of Titles [2017] eklr; and Embakas Propertis Limited versus Commissioner of Lands and Others [2019] eklr, respectively].

182. Finally, the Plaintiff sought for an order of permanent injunction to restrain the 1st to 4th Defendants from [sic] interfering with LR. Number Antubetwe/Kiungu/138. Nevertheless, evidence abound that the 1st to 4th Defendants are not on the named plot. Notably, plot number 138 measuring 0.50 acres is admittedly under the occupation of the Plaintiff.

183. I am afraid that an order of permanent injunction cannot issue and or be granted against 1st to 4th Defendants in respect of parcels of land that lawfully belongs to and are registered in their names. Such an order if granted would be tantamounted to negating the titles which are lawfully held by the named defendants and in particular the 2nd, 3rd, and 4th Defendants.

184. In the case of **Nguruman Limited versus Jan Bonde Nielsen and Another [2014] Eklr**, the Court observed that it is a strong thing to restrain the Owner of Land of what is registered in his/ her, unless there exists exceptional circumstance[s] to that effect.

185. Regarding costs, it is common ground that costs follow the event. The event means the outcome of the suit/proceedings. In this regard, it means that if the Plaintiff were to succeed, then same would be entitled to costs. On the contrary, if the Plaintiff fails, then same must bear costs of the suit. [See the provisions of section 27 of the Civil Procedure Act]. [See also the exposition of the Law in the case of **Farah Awad Gullet versus CMC Motors Group Limited [2018] Eklr**]

FINAL DISPOSITION.

186. Flowing from the analysis enumerated in the body of the Judgement, it must become crystal clear that the Plaintiff's suit is bereft

and devoid of merits. In this regard, the Plaintiff's suit is a sure candidate for dismissal.

187. In the upshot and for the reasons alluded to; the final orders that commend themselves to the court are as hereunder:

- i. The Plaintiff suit be and is hereby dismissed.**
- ii. Costs of the suit be and are hereby awarded to the Defendants.**
- iii. Costs in terms of clause [ii]above shall be agreed upon; and in default be taxed in the conventional manner.**

188. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF
JANUARY 2026**

**OGUTTU MBOYA, FCIArb, CPM [MTI-EA].
JUDGE**

In the presence of:

Court Assistant Hussein

Mr. Tyson Mwendwa for the Plaintiff

Mr. Ken Muriuki for the 1st, 2nd, 3rd, and 4th Defendant

Ms. Miranda [Senior Litigation Counsel] for the 5th and 6th Defendants