

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. E012 OF 2023

**SAMUEL MARITIM-----KIPKOSGEI
PLAINTIFF**

VERSUS

**THE COUNTY LAND ADJUDICATION &
SETTLEMENT OFFICER, TRANS NZOIA COUNTY--1ST
DEFENDANT**

**THE COUNTY SURVEYOR,
TRANS NZOIA COUNTY-----2ND
DEFENDANT**

**THE ATTORNEY GENERAL-----3RD
DEFENDANT**

**SAMUEL KIMUTAI CHEPKWONY-----4TH
DEFENDANT**

**JOSHUAH KIPCHIRCHIR MASWAI-----5TH
DEFENDANT**

**JANE CHEROTICH MASWAI-----6TH
DEFENDANT**

**SOLOMON MUSHILA KHAMASI-----7TH
DEFENDANT**

**JONAH KIBET KRONEI-----8TH
DEFENDANT**

**KIBONEI KARONET THOMAS-----9TH
DEFENDANT**

**YOKANA MAKIGA-----10TH
DEFENDANT**

**SAMSON KIPTANUI BIRGEN-----11TH
DEFENDANT**

JANE KEPKEMBOI LAGAT-----12TH
DEFENDANT
DAVID TUWEI TOGOM-----13TH
DEFENDANT
JOYCE JESANG SINGOEI-----14TH
DEFENDANT

JUDGMENT

1. The plaintiff approached the court through a plaint dated **6/3/2023**, later amended on **26/9/2024**. He seeks:
 - (a) **An order declaring the proposed subdivision of Land Ref. No. 6614/8 (Originally 6614/2/7), hereinafter the suit property, Trans Nzoi County, also known as Tulon Farm, is null and void for want of both his consent and a Land Control Board Consent.**
 - (b) **An order directing the 1st and 2nd defendants to carry out the subdivision and survey of L.R. No. 6614/8, Trans Nzoia County, in accordance with the area list.**
2. The plaintiff contends that he is the registered owner of the suit property measuring **608.10 acres** or thereabouts. The plaintiff averred that sometime in **2022**, he received information that there was a proposed subdivision plan by the 1st defendant, purporting to subdivide the suit property into **246.094 Ha** shares without his consent and or

- knowledge, whose effect was to allocate some beneficiaries more land and in other cases to reduce the acreages of other beneficiaries, while at the same time exaggerating allocations to public utilities.
3. The plaintiff averred that despite the proposed subdivision plan, he had never, as the proprietor of the land, executed any Land Control Board Forms or applications for any of the said subdivisions or Land Control Board Consent sought and obtained for that purpose.
 4. The plaintiff averred that he had prepared an area list for all the beneficiaries of the suit property, which he would like the subdivision plan to follow, other than the purported proposed subdivision, which he termed null, void, and subject to cancellation.
 5. The 1st, 2nd, and 3rd defendants opposed the suit through a statement of defence dated **12/10/2023**, denying that the 1st defendant was purporting to subdivide the suit property into **246.094 Ha**, without the consent or knowledge of the plaintiff, as alleged or at all.
 6. The 1st, 2nd, and 3rd defendants averred that any action and or registration undertaken by the 1st and 2nd defendants was in utmost good faith, which was in execution of statutory duties bestowed upon them,

and affirmed that at all material times, the 1st and 2nd defendants acted in accordance with the law and pursuance of their statutory mandate.

- 7.** The 4th - 14th defendants opposed the suit through a statement of defence dated **5/12/2024**, denying that the plaintiff is the registered owner of the suit property as alleged or at all. On the contrary, the 4th - 14th defendants averred that while the suit property was originally purchased by **34** partners, the practice at the time was to register land to one person in trust for himself and the other **33** partner owners.
- 8.** The 4th - 14th defendants averred that upon the purchase of the suit property, the land was shared out among the **34** partner owners according to each partner's monetary contribution towards its purchase. The 4th - 14th defendant averred that consent to transfer the suit property from the plaintiff to the 33 partners and also to subdivide the suit property into **34** portions was applied for and obtained from the Trans Nzoia Land Control Board on **15/10/1979**, and **10/3/1994**, respectively, survey fees paid, survey of the land undertaken or perfected, and an area lost generated.
- 9.** Further, the 4th - 14th defendants averred that through the presidential titling programme, the area

map was drawn as per the partner's occupation of the suit property, an area list prepared taking into account land sales, sharing of the land among family members of deceased partner owners, and ultimately, **89** titles were issued, including the plaintiff's title for parcel No. **Cherangani/ Nzoia Block 5/12**, measuring **6.475 Ha**, of which the plaintiff, who does not reside on the land, has sold off all his interest therein.

- 10.** The 4th - 14th defendants averred that the plaintiff has in the past instituted two suits over the same land, namely **Kitale HCC No. 56 of 1998, Samuel Maritime -vs- Hon. Attorney General & Others**, and **Kitale HCC No. 4 of 2004 - Samuel Maritime -vs- Agricultural Finance Corporation & Others**, where in the first suit, he had sought a declaration that he was the owner of the suit property, general damages and a prohibitory injunction, which suit is still pending before the court.
- 11.** With respect to the second suit, the 4th - 14th defendants averred that a consent order was recorded that the original title for **L.R. No. 6614/8** be deposited in court, pending the hearing and determination of the suit.

- 12.** The 4th - 14th defendants averred that there was nowhere the plaintiff in the amended plaint; he denied that he didn't get his rightful acreage upon the subdivision and the titling of **L.R. No. 6614.8**. The 4th - 14th defendants averred that since the land comprised in **L.R. No. 6614/8** was subdivided upon obtaining the requisite Land Control Board Consent, and the resultant title deeds issued, it was legally impossible to have another subdivision scheme and titling, rendering the suit as overtaken by events.
- 13.** Equally, the 4th - 14th defendants averred that granting the reliefs sought to the plaintiff would adversely affect many title holders for parcels of land comprising part of the suit property, who have not been joined into this suit.
- 14.** At the hearing, **Samuel Koskei Maritim** testified as **PW1**. He relied on a witness statement dated **26/9/2024** as his evidence -in-chief. PW1 told the court that he is the registered proprietor since **1971**, of **L.R. No. 6614/8**, commonly known as Tulon Farm, which he has sold close to **450 acres** out of the **608 acres** to several purchasers, who have taken vacant possession, settled therein and are yet to obtain title deeds for their individual portions, for he was yet to have the land surveyed and

subdivided, though he has prepared an area list of all the persons entitled to the suit property.

- 15.** PW1 said that sometimes in **2022**, some of the purchasers, without his permission, consent, or authority, engaged the services of the 1st defendant to draw a proposed subdivision of the land out of which some of them allocated themselves more land than what he sold to them, and set aside some of his land for public utilities, without his consent.
- 16.** PW1 said that the proposed subdivision scheme is not in accordance with the area list that he has prepared, hence the reliefs sought so that a proper survey is done to allocate the correct shares of the land to all the beneficiaries. PW1 relied on a copy of a title deed for **L.R. No. 6614/8**, and an area list as **P. Exhibits No. (1) and (2)**.
- 17.** PW1 said that he still holds the original title deed, contrary to the assertion that it was surrendered before the court. Further, PW1 denied that the suit property has been subdivided and resultant subdivision titles issued to the defendants. PW1 denied attending any Land Control Board meeting in **1994**, on **10/3/994**, or signing any application for Land Control Board Consent to subdivide and transfer the resultant portions to the 4th - 14th defendants.

PW1 denied that he was holding the title in trust for **33** partners.

- 18.** PW1 denied knowledge or receipt of a letter dated **8/12/1995**, since he had not made any application for Land Control Board Consent at the time. PW1 said that he still has almost **150 acres** of the land, which is under the superintendence of a caretaker.
- 19.** PW1 admitted that he had filed **Kitale HCC No. 56 of 1998** over the threatened subdivision, which was still pending over the suit property. PW1 admitted that as of **1994**, **34** people were occupying the land, and included some of the claimants in the pending suit.
- 20.** Equally, PW1 admitted filing another suit against the Agricultural Finance Corporation in **2000**, but denied that a decree was issued on **25/1/2006** for the original title deed to be surrendered before the court. PW1 said that he lawfully collected the original title deed from the court **6 years** ago. PW1 said that he was not in a hurry to prosecute the pending suit.
- 21.** Asked about the Land Control Board Consent dated **17/10/1979** and **12/3/1994**, followed by a letter from the Central Authority Board, PW1 denied attending such meetings or being involved in such survey exercises. PW1 admitted that from **1979** to

the present, he has never applied to evict the occupants on his land. PW1 insisted that the occupants were purchasers of the land from him. PW1 denied that surveyors came to the land during the presidential titling programme, subdivided the land, and after which title deeds were generated, as shown in the defendants' list of documents.

22. PW1 said that almost **89** people were occupying the suit property. PW1 denied that his only remaining share of the land is **6.3 Ha**. He insisted that most of his land had been illegally taken away. PW1 admitted that although he used to be a member of the Cherangani Land Control Board from **1974 to 1978**, he was not privy to the alleged two Land Control Board meetings over the subdivision of the suit property.

23. Samuel Chemutai Chepkwony testified as **DW1**. He relied on a witness statement dated **5/12/2024** as his evidence in chief and an authority dated **18/11/2024** to testify on behalf of the 4th - 14th defendants. DW1 told the court that the land, comprised of **L.R. No. 6614/8**, was originally purchased by **34** partners and registered in the name of the plaintiff to hold in trust for himself and the rest.

- 24.** DW1 said that thereafter, the land was shared out among the **34** partners according to the monetary contribution towards the purchase by each partner. DW1 said that the consents to subdivide and transfer the **34** portions from the name of the plaintiff were applied for and obtained from the Trans Nzoia Land Control Board on **15/10/1979** and **10/4/1994**, respectively, after which survey fees were paid, the survey of the land was perfected, and an area list was generated.
- 25.** DW1 said that during the presidential titling programme, a survey map and area list were generated as per the partners' occupation, taking into account land sales, sharing of land among the family members of the deceased, and ultimately, **89** title deeds were issued to the beneficiaries.
- 26.** DW1 said that out of the **89** titles, one **was Title No. Cherangani/Nzoia Block 5/12** measuring **6.475 Ha** belonging to the plaintiff, who, though he does not reside on the land, had disposed of all his interests therein. DW1 said that after the subdivision and issuance of the title, the original title does not exist, and therefore, the reliefs sought by the plaintiff are legally untenable, having been overtaken by events.

- 27.** DW1 confirmed that the plaintiff had previously filed **Kitale HCC No. 56 of 1998** and **No. 4 of 2004**, which are still pending. DW1 said that in the 2nd suit, a consent order had been recorded for the plaintiff to surrender the original title deed before the court pending hearing and determination of the suit.
- 28.** DW1 relied on the Land Control Board Consent dated **10/3/1994**, area list, Land Control Board Consent dated **10/2/1994**, to which the plaintiff was privy, letter dated **8/12/1995**, survey fees receipts dated **23/3/1994**, **31/3/1994**, and **2/7/1995**, survey reports, Registry Index Map, copies of titles, letter dated **4/3/1979**, pending in **HCC No 4 of 2000**, decree issued on **20/1/2006**, letter dated **25/2/2015**, on surrender of title to court, as **D. Exhibits No. (1), (2), (3), (4), 5(a), (b), (c), (6), (7), 8(a - l), (9), (10), (11), (12), and (13)**, respectively.
- 29.** DW1 said that the plaintiff was a sitting member of the Land Control Board when the Land Control Board Consent was issued in **1994**. DW1 said that all the titles for the resultant parcel of land were procedurally and legally issued after following the requisite procedures in the issuance of Land Control Board Consents, subdivisions, transfers, and

registration with the consent, knowledge, and approval of the plaintiff.

- 30.** Though the 1st - 3rd defendants were aware of the hearing date, they did not attend the hearing, nor did they attend court to present their testimony.
- 31.** The 4th - 14th defendants rely on written submissions dated **26/1/2026**, isolating five issues for the court's determination. It is submitted that, in law, registration of land in the name of one person does not preclude the existence of a trust and that the evidence tendered before the court clearly shows there was a resultant or constructive trust, since the land was registered in the name of the plaintiff to hold in trust for the **34** partners. Reliance is placed on **Kanyi -vs- Muthiora [1984] eKLR KLR 712** and **Isaack M'Inanga Kiebia -vs- Isaaya Theuri M'Lintari & Another [2018] eKLR.**
- 32.** On subdividing the 4th - 14th defendants submit that the subdivision of the mother title was lawfully done under **Cap 302**, whereafter surveys were conducted, an area list prepared, and possession taken pursuant to the approved subdivisions, making the subdivisions complete and legally effected. Reliance is placed on **Willy K. Mutai Kitilit -vs- Michael Kibet [2018] eKLR.**

- 33.** On the effect of the presidential titling programme, the 4th - 14th defendants submit that the programme regularized the existing occupation and subdivision pattern, and later individual titles were issued following government verification, survey, and mapping, making the resultant titles indefeasible under **Section 26(1)** of the Land Registration Act.
- 34.** On *locus standi*, the 4th - 14th defendants submit that, given the plaintiff admits that he is not in occupation of the suit property, he divested himself of ownership of the mother title, the plaintiff lacks *locus standi* to seek the orders affecting the land. Reliance is placed on **Alfred Njau & Others -vs- City Council of Nairobi [1983] eKLR.**
- 35.** On abuse of the court process, the 4th - 14th defendants term the suit in view of the pending unprosecuted two suits by the plaintiff and the irregular manner of obtaining the original title from the court contrary to an existing order, while at the same time seeking similar reliefs as in the former suits, an abuse of the court process. Reliance is placed on **Muchanga Investments Ltd -vs- Safaris Unlimited (Africa) Ltd [2009] eKLR.**
- 36.** The 4th - 14th defendants submit that the plaintiff is seeking the reliefs sought to unsettle existing validly

obtained title deeds, dispossess innocent occupants, and reward a party who exited the land long ago. Reliance is placed on **Wambugu vs Njuguna [1983] KLR 172**, that equity does not aid the indolent nor permit unjust enrichment.

- 37.** The 4th - 14th defendants submit that the court is being asked to grant relief or orders in vain, which are incapable of implementation. The 4th - 14th defendants term the plaintiff's suit legally untenable, the plaintiffs' factual dishonesty, and of equitably unconscionable behaviour after complaining of a legally, lawfully, undertaken, completed, and implemented subdivision.
- 38.** The court has carefully gone through the pleadings, evidence tendered, and written submissions. The issues calling for my determination are:
- (1) *If the plaintiff has locus standi to bring the suit.***
 - (2) *If the suit is an abuse of the court process.***
 - (3) *If the plaintiff has disclosed a valid or bona fide cause of action against the defendants.***
 - (4) *If the plaintiff has succeeded in proving the alleged cause of action against the 1st - 3rd defendants.***

(5) If the plaintiff has proved any cause of action against the 4th - 14th defendants to be entitled to the reliefs sought.

(6) What is the order as to costs?

39. *Locus standi* refers to the capacity to be heard in a given forum or court. In **Mumo Matemu -vs- Trusted Society of Human Rights Alliance & Another Civil Appeal No. 290 of 2012**, the court upheld the right of every person to enter the court unrestrained and to be availed the instruments of justice. In this suit, it is not disputed that the plaintiff was the initial registered owner of the mother title, said to have been held in trust. The plaintiff avers that the suit property should be subdivided to enable the lawful beneficiaries to acquire title. He pleads that the process undertaken, to be so as per the proposed subdivision by the 1st, 2nd, and 3rd defendants, has not been communicated to, approved, or done through his participation.

40. A cause of action refers to acts on the part that give rise to a cause of complaint to the plaintiff. See **D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another, [1982] KLR 1**. The 4th - 14th defendants plead that the mother title ceased to exist after two Land Control Board

consents were issued in **1979** and **1994**, with full participation of knowledge and approval of the plaintiff, hence he lacks capacity to bring the suit based on a non-existent mother title, which has undergone subdivisions, transfers, and registration of new titles in favour of **89** occupants of the land.

- 41.** Both parties appear to plead trust. The courts have the power to imply, or impose a trust in title to land ownership as an overriding interest to which a title is subject under **Section 28h** of the Land Registration Act. The intention of the parties to create a trust must be clearly determined before a trust can be implied or imposed. See **Peter Ndungu Njenga - vs- Sophie Watiri Ndungu [2000] eKLR.**
- 42.** In **Kiprono -vs- Kiprono (Civil Appeal 100 of 2020) [2026] KECA 331 (KLR) (27 February 2026) (Judgment),** at issue was whether the appellant held the **5** acres in trust and had refused to recognize the interest of the respondent, constituting a breach of trust. The court held that once the intention to create trust is clearly established, equity supplies the doctrine by which the beneficial interest is given legal effect. The court said that trusts arise either expressly, where the parties have clearly identified the trust property, its purpose, and its

beneficiaries, or by operation of the law, in this case, **Section 2** of the Trustee Act, which defines a trust and a trustee, as held in **Twalib Hatayan & Another -vs- Said Saggar Ahmed Al-Heidy & Others [2015] KECA 713 KLR.**

- 43.** The court cited **Kariuki -vs- Kariuki [1983] KLR 225,** that the Land Control Act was not designed to be an instrument of dishonesty in the hands of a party who would invoke it to deny the rights he himself voluntarily recorded and disclosed.
- 44.** The defendants term the plaintiff lacking capacity to institute the suit on account of changes to the mother title, making it non-existent in view of the event of Land Control Board consent in **1979** and **1994**, out of which they obtained the resultant titles.
- 45.** The law of the Limitation of Actions Act is intended as held in **Gathoni -vs- Kenya Co-operative Creameries Ltd (1982) KLR 104,** to protect defendants against unreasonable delay in bringing suits. A statute-barred claim precludes the court from granting orders or relief, as held in **Iga -vs- Makerere University [1972] EA,** that under **Section 26** of the Limitation of Actions Act, time for a claim based on fraud does not begin to run until the plaintiff discovers the fraud or illegality. See

Justus Tureti Obara -vs- Peter Koipeitai Nengiso [2014] eKLR.

- 46.** A claim based on breach of fiduciary trust is exempted from limitation. I find that the plaintiff has the capacity to seek to establish how the suit property is being alienated without his consent, authority, or knowledge in view of the fiduciary capacity he held in favour of the intended beneficiaries.
- 47.** Abuse of court process was discussed really in **Kemboi -vs- Chekwony & Others Civil Appl. E089 of 2025 [2026] KECA 398 [KLR] (5th March 2026) (Ruling)**. The court held that it has inherent jurisdiction to protect itself from abuse or see that its process is not abused. Quoting *Black's Law Dictionary, 6th Edition*, abuse is defined as everything contrary to good order established by usage, that is, a complete departure from reasonable use, and is done when one makes an excessive or improper use of a thing or employs such a thing in a manner contrary to the natural legal rules for the use.
- 48.** Example of abuse as cited by the court are the improper use of judicial process in litigation, inter alia, instituting multiplicity of actions on the same subject against the same opponent, on the same

issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action; instituting different actions between the same parties simultaneously in different courts even though on different grounds, using similar processes in respect of the same right; forum shopping and lastly, where two actions are commenced, the second one asking for a relief which may have been obtained in the first action. Abuse of judicial process, therefore, refers to a proceeding that is wanting in *bona fides* and is frivolous, vexatious, and oppressive.

49. In this suit, the 4th - 14th defendants have tendered exhibits to show that the plaintiff has two other pending suits before this court, which he has not prosecuted and which sought the same or similar reliefs. The plaintiff has admitted that the two previous suits are still pending, and he is not in a hurry to prosecute them.

50. In **Board of Trustees, National Social Security v Keiyo Teachers Co-operative Savings and Credit Society & 6 others (Civil Appeal E076 of 2020) [2026] KECA 327 (KLR) (27 February 2026) (Judgment)**, the court observed that if a fact is admitted during the proceedings or in pleadings, it

is considered as settled and the court can rely on it without further evidence.

- 51.** In this suit, the plaintiff has admitted that there are other pending suits, one of which he was ordered to deposit the original title deed, which he did from the evidence tendered, but has now turned around, waiving the same before the very same court which confiscated it. Paragraph **10** of the amended plaint states that there are no pending suits over the subject matter. The verifying affidavit, therefore, and the amended plaint, appear to be of a dishonest litigant out to mislead the court and swear a false affidavit contrary to the Civil Procedure Rules, and the Oaths & Statutory Declaration Act.
- 52.** False swearing is provided for under **Section 114** of the Penal Code. Perjury is covered by **Section 108(a)** of the Penal Code. It refers to false testimony touching on any matter which is material to any question then pending in that proceeding. The suit by the plaintiff, therefore, offends **Section 6** of the Civil Procedure Act.
- 53.** In **Halima Haji Sarah -vs- Multiple Haurliers (E.A) Limited & another [2022] KEELC 912 (KLR)**, the court said that the duty of disclosure of material facts is critical. The court cited the **Co-**

operative Merchant Bank Ltd -vs- George Wekesa Civil Appeal No. 54 of 1999, and Yaya Towers Ltd -vs- Trade Bank Ltd Civil Appeal No. 35 of 2000, on striking out of suits which are an abuse of the court process. I find the plaintiff's suit an abuse of the court process.

54. As to whether the plaintiff has proved any cause of action against the 1st - 3rd defendants, in **Kitale HCC No. 56 of 1998**, at paragraph **6**, the plaintiff had alleged entry by the Land Registrar on the suit property and the 1st defendant in **1994** to subdivide it without his consent. At paragraph **8**, the plaintiff admitted issuance of titles in **1997/1998**. In **Kitale HCC No. 4 of 2000**, the decree dated **25/1/2006** shows that the suit was withdrawn and an order made for the original title deed to be deposited with the court, pending hearing and determination of **Kitale HCC No. 56 of 1998**.

55. In this suit, the plaintiff deliberately and dishonestly, in paragraph **4**, says that he discovered the proposed subdivision plan in **2022**, being done without his consent, knowledge, and approval. This is a complete departure from what he had pleaded in **1998**, that about **1994**, and the issuance of the resultant title deeds. Estoppel by confession is a legal doctrine that

prevents a person from asserting or denying something that contradicts what he had previously stated.

- 56.** In **Josephat Njuguna Karugu -vs- Margaret Nduta Ngugi & Others [2021] KEELC 3403 [KLR]**, the court cited **William G. Murathe -vs- Gakuru Gathimba [1998] eKLR**, that equitable estoppel is generally words or conduct which cause another to believe a certain state of thing exists. Therefore, the plaintiff pleaded that he became aware of the subdivisions, transfers, and titles in **1994, 1997, and 1998**. He cannot turn around in **2023** to assert that he made the discovery of the illegalities or fraud by the 1st - 3rd defendant, in conjunction with the 4th - 14th defendants, in **2022**.
- 57.** The 1st - 3rd defendant at paragraph **6** of the defence dated **13/10/2023** termed the plaintiff's suit statute-barred, scandalous, frivolous, untenable, and mischievous. All the exhibits produced by the defendants show that the Land Control Board, subdivision, survey, transfers, and registration of titles occurred in **1979, 1994, 1997, 1998, and 2017**. In all the applications for Land Control Board Consent, subdivisions, and transfers, the footprints of the plaintiff are evident. Fraud or illegality must be

specifically pleaded and proved on a balance higher than in ordinary suits. See **Arthi Highway Developers Ltd -vs- West End Butchery Ltd & Others [2015] eKLR**, and **Vijay Morjaria -vs- Madhusingh Darbar & another [2000] KECA 14 (KLR)**.

- 58.** The plaintiff does not give particulars of fraud, illegality, and irregularities on the part of the 1st - 3rd defendants. The documents produced as exhibits by the defendants were not subjected to any forensic document examination to show that they were forgeries of the plaintiff's signatures.
- 59.** The plaintiff's own evidence was not supported by any expert evidence that the documents used by the 1st - 3rd defendant to generate the title deeds were forgeries, irregular, and unprocedural. There is no evidence that, other than the pending suits since **1998**, the plaintiff lodged a complaint against specific officers of the 1st, 2nd, and 3rd defendants who abused their statutory powers to unjustly and irregularly issue Land Control Board Consents, survey, subdivide, issue, and register titles to his land, without his consent, authority, or approval.
- 60.** The plaintiff did not call those beneficiaries to the suit land who have been denied their *bona fide* acreages,

nor point to those among the 4th - 14th defendants who have taken the land that they were entitled to. Further, there is no evidence that the plaintiff shared his area list with the 1st and 2nd defendants, who ignored, overlooked, and or disregarded it. The plaintiff did not produce before the court any letters of complaint by beneficiaries who have been denied land in the suit property by the 1st - 14th defendants.

- 61.** Lastly, the plaintiff did not produce a copy of the record and search certificates to counter the evidence by the defendants that **L.R. No. 6614/8** is non-existent, such that the court, in granting the reliefs sought, would be acting in vain.
- 62.** In view of the previous pleadings by the plaintiff, the claims, if any, against the defendant based on fraudulent subdivisions and transfers of title are caught by limitation under **Section 4(3)** of the Limitation of Actions Act **Cap 22**, since by **1979, 1994, 1997, and 1998** the plaintiff was aware or privy to the transaction. To file the claim for recovery of the land in **2023** offends **Sections 7 and 26** of the Limitation of Actions Act. See **Wandaka & Others -vs- Mwangi Civil Appeal No. 36 of 2019 [2025] KECA 83 [KLR] (24th January, 2025) (Judgment)**.

- 63.** The upshot is that I find the suit incompetent, frivolous, vexatious, time-barred, and an abuse of the court process. It is dismissed with costs.
- 64.** Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **18th** day of **March 2026**.

In the presence of:

Court Assistant - Dennis

Arunga for the plaintiff present

Kiarie for the 4th - 14th defendants present

1st - 3rd defendants absent



HON. C.K. NZILI
JUDGE, ELC KITALE.