

REPUBLIC OF LKENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCA NO. E022 OF 2025

JOSEPH KARANJA CHEGE (suing as the Legal Representative of the Estate of **GEORGE CHEGE**

KARANJA(Plaintiff).....**APPELLANT**

VERSUS

JOSEPH MBURU NJOROGE.....**1ST**

RESPONDENT

MALEWA RANCHING COMPANY LTD.....**2ND**

RESPONDENT

JUDGMENT:

The Appellant’s father, the late GEORGE CHEGE KARANJA, hereinafter referred to as the Deceased filed this suit first in the High Court at Nakuru which was later transferred to Nyahururu Chief Magistrate’s Court. The 1st Respondent, then the 2nd Defendant is a male adult while the 2nd Respondent is a land buying Company registered under the Companies Act (Cap 486 of the Laws of Kenya. The Deceased averred that he was a shareholder of the 2nd Respondent and was issued with 2 Share Certificates No. 924 and 1407 for 10 ordinary shares each making him the owner of a total of 20 shares. The Deceased purchased from Malewa Ranch a parcel of land in what was Nyandarua District (now Nyandarua County).

The company then proceeded to allocate the land to her members including the Deceased by way of secret ballot where he was allocated parcel Nos. 561 and 242 measuring 7 Acres each and with his family, he took possession of the same in 1972 which he has occupied since and built his home and planted trees thereon. In July 2010, the Deceased was issued with a Title Deed for NYANDARUA/KIPIPIRI/ LERESHA BLOCK 1/MALEWA RANCH 592 (which represented parcel No. 561) measuring 1.80 Hectares equivalent to approximately 4.4 Acres and NYANDARUA/KIPIPIRI/LERESHA /MALEWA RANCH 596 (representing parcel No. 242) also measuring 1.80 Hectares. The 1.80 Hectares does not therefore equal 7 Acres and therefore 6 Acres out of the 14 Acres belonging to the Deceased were now missing. This was done in order to create the land known as NYANDARUA/KIPIPIRI /LERESHA BLOCK I/MALEWA RANCH 594 measuring 6 Acres which was allocated to the 1st Respondent.

The same is still occupied by the Deceased's family as at the time of filing of the initial suit in Nakuru. This was a violation of his constitutional rights over the suit property and was so done fraudulently whose particulars are: -

- a. Creating a new map of Malewa Ranch unlawfully.
- b. Reducing the Deceased's acreage of land.
- c. Transferring the land to a third party, the 1st Respondent secretly without affording him an opportunity of being heard.

- d. Violating fiduciary duty by depriving the Deceased of his land.

The Deceased also in the alternative pleaded that he owned the parcel of land NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 by virtue of adverse possession having been on the land uninterruptedly for a period exceeding 12 years, since 1972. The Deceased accordingly sought for prayers for: -

- a. A Declaration that land parcel Nos. NYANDARUA/ KIPIPIRI / LERESHWA BLOCK I/MALEWA RANCH 596,595 and 594 were comprised in the original parcel land Nos. 561 and 242 and is the sole property of the Deceased.
- b. A Declaration that the 2nd Respondent holds Title to NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 as a trustee for the Deceased.
- c. An Order that the Respondents do transfer land parcel No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 to the Deceased and in default the Deputy Registrar of this Honourable Court be directed to execute the documents necessary to transfer the said land to the Deceased.
- d. In the alternative to the above, there be a Declaration that the Deceased has acquired the Title land parcel No. NYANDARUA/ KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 by way of adverse possession.
- e. Costs of the suit.
- f. Any further or better relied this Honourable Court may deem fit to grant.

In the statement of Defence and Counter-claim dated 11/11/2010, the 1st Respondent denied the entire claim by the Deceased. He also averred that he was a shareholder of the 2nd Respondent and was duly issued with a Share Certificate upon full payment of all the fees. He said that he balloted and was allocated parcel No. 594. He was then issued with the Title Deed to his parcel of land viz. NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 which was not created out of the Deceased's land. He denied being party to any fraud. He claims that parcel No. 594 was created on 10/9/2010. He as well denies the claim of adverse possession pleaded by the Deceased.

In the Counter-claim, the 1st Respondent admits that the Deceased had already gone to the 1st Respondent's land, erected a structure thereon and purported to assert the rights of a registered owner which according to the 1st Respondent, he is a trespasser and the 1st Respondent asked the Court to order the Deceased to remove all the structures erected thereon in the following language: -.

- a. An Order requiring the Deceased to remove any and all the structures erected upon the parcel of land known as NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/(MALEWA RANCH) / 594
- b. Costs of the suit.

In the Reply to the Defence and Defence to the Counter-claim dated 6/1/2020, the Deceased averred that parcel No. 594 was applied for on 13/1/2010 and registered on 10/9/2010 that there is also a sale agreement for the same of 28/2/2011 showing that one

Fabian Mwangi Karuri sold his share in the 2nd Respondent to the 1st Respondent in 2011 when the 1st Respondent already had the Title Deed to the land in 2010. The 1st Respondent also claimed to have made payments to the 2nd Respondent through his brother Kinyanjui Njoroge and that the Certificate of Share Capital No. 1273 was dated 15/2/1983. But that he owned the parcel of land he bought from Fabian from the year 2002. He further said that a brother to the 1st Respondent, Peter Njuguna Njoroge was at some point in time a Director of the 2nd Respondent and that the 1st Respondent does not appear in the membership Register of the 2nd Respondent and he and his brother balloted for parcel No. 605 in the 2nd Respondent's Register though they do not appear in the list of shareholders. He also avers that at the time of the allocation of the land to her members, consent of the Land Control Board, Kipipiri was mandatory. He further says that the 1st Respondent had been admonished by the 2nd Respondent and told to stop interfering with the Deceased's land and in 1983, the 2nd Respondent resolved to relocate people from their parcels of land and that no home was to be demolished. Fabian was allocated another parcel 2 kilometers away.

He also avers that the 2nd Respondent had realized as early as 1983 that there was an issue of double allocation of the land and that the District Commissioner's assertion that the 2nd Respondent was dissolved in March 2010 was not true.

Finally, the Deceased pleads that the 1st Respondent only entered the parcel of land in contempt of Court after this suit was filed and

contrary to the orders of Lady Justice Wendoh made on 15/2/2011. On 4/1/2011, the 2nd Respondent equally filed her Defence and denied the entire claim by the Deceased. She even denied that there was sub-division of the land in 1972 and that the same was approved in 1998 and implored that the acreage to be allocated to each of the Shareholder was not determined. She confirmed that the 1st Respondent was the proprietor of NYANDARUA/KIPIPIRI/ LERESHWI BLOCK I/MALEWA RANCH 594 by virtue of him being a shareholder of the 2nd Respondent and as of right.

On 3/4/2024 Peter Njuguna Njoroge joined in as 3rd Defendant and with leave of Court, filed an Amended Defence and Counter-claim. He denied the entire claim. He claimed that parcel No. 594 belonged to one Philomena Muthoni who was now deceased and who was the mother of both the 1st Respondent and himself and the land was to be shared equally between the two. He also denied that the Deceased has ever occupied the parcel of land and therefore the claim of adverse possession is not tenable.

In his Counter-claim, the 3rd Defendant averred that the Deceased colluded with the 2nd Respondent to remove his (the 3rd Defendant's) name from her Register and transferred the suit to the Deceased without the 3rd Defendant's knowledge and Consent which was a case of fraud through a corrupt transaction. He accordingly prayed for the following orders:

- a. A Declaration that the transfer of L.R No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 to the 1st Respondent was fraudulent, illegal, corrupt, null and void.
- b. Cancellation of Title Deed number NYANDARUA/KIPIPIRI/LERESHWA BLOCK I/MALEWA RANCH 594 issued to the 3rd Defendant and entry numbers 2 and 3 in the Green Card and for re-transfer of the suit land to the joint names of the 3rd Defendant and the 1st Respondent.
- c. An Order of permanent Injunction restraining the 1st Defendant (Appellant) either by himself, his agents, employees, Dependants or any other person claiming under him whatsoever from interfering with his (the 3rd Defendant's) possession, claiming, transferring, renting, selling, disposing of, charging, alienating or in any other manner interfering and/or dealing with L.R No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 (MALEWA RANCHE/594).
- d. The Respondents herein and the Appellant be ordered to pay the costs of the Counter-claim plus interest at Court rates.

On 20/4/2023, the Appellant, the first born to George Chege Karanja (now Deceased) asked the Court to adopt his witness statement dated 14/5/2012. He testified that his Deceased father was a shareholder of the 2nd Respondent with 2 ordinary shares Certificate Nos. 924 and 1407 making him an owner of a total of 20 shares and was allocated land where the Appellant's father got parcel Nos. 561 and 242 in 1971 and took possession of the 2 parcels measuring 14 Acres, built a house thereon besides

planting trees. When the Deceased went to collect his Title in July, 2010 from the lands Office, he was only issued with 2 Title Deeds for NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 (MALEWA RANCHE/595 (formerly 561) and 596 (formerly 242) each measuring 1.80 Hectares (i.e. 4 Acres each, a total of 8 Acres) meaning that 6 Acres were missing which , the 2nd Respondent informed the Deceased had been hived off from the Appellant's father's land to create NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 (MALEWA RANCHE/ 594, 6 Acres which she allocated to the 1st Respondent without any compensation to the Deceased. All the 3 parcels NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/595, 596 and 594 belonged to the Deceased which his family has all along occupied. The allocation of the 1st Respondent the land was through fraud. He then produced the following documents: -

- a. A letter from the ODPP dated 9/7/2012 to the DCI.
- b. A letter dated 8/2/2010 from the office of the President to the 1st Respondent and the 2nd Respondent on encroachment.
- c. A letter from the 2nd Respondent to the area chief of Lereshwa location dated 8/2/2010.
- d. A letter from the District Commissioner to the District Land Registrar dated 4/3/2010.
- e. Letter of Consent to members of the 2nd Respondent in respect to L.R Nos. 3777/448, 3777/448, 3777/453 and 3777/42 dated 17/9/1982.
- f. Consent on amendment of Title Deeds dated 22/2/2011.

- g. Letter from the District Commissioner dated 28/2/2011 to the District Land Registrar.
- h. Minutes of a meeting held by the company in April, 1985.
- i. List of shareholders/members of the 2nd Respondent and their ID Nos. and signatures.
- j. Certificate of incorporation of the 2nd Respondent.
- k. Copies of Title Deeds in respect to NYANDARUA/KIPIPIRI/LERESHTWA BLOCK 1 (MALEWA RANCHE/595 and 596.
- l. Receipts of payments by the Deceased to the 2nd Respondent.
- m. Copies of membership certificate to the 2nd Respondent in favour of the Deceased.
- n. Memorandum and Articles of Association of the 2nd Respondent.
- o. Copy of Court Order dated 8/12/2010 from the High Court at Nakuru HCC No. 288 of 2010.
- p. Demand letter from the Appellant's Advocates, Njiru Boniface & Co. Advocates dated 8/2/2011.
- q. List of shareholders of the 2nd Respondent and their number of shares.
- r. Appellant's Grant of Letters of Administration in respect of George Chege Karanja's Estate issued in High Court Nakuru on 16/1/2012.
- s. Pleadings in Nyahururu Chief Magistrate's Court ELC No. 58 of 2019 between the Appellant herein as Plaintiff and the Respondents herein as 2nd and 1st Defendants respectively.

t. Pleadings of the above (now in Nakuru High Court Civil Suit No. 288 of 2010 with George Chege Karanja as Plaintiff.

On cross-examination by the Mr Kago for the 2nd Respondent, the Appellant said his father had 2 shares in the 2nd Respondent. He took possession of the 3 parcels of land in 1972 with 1 house. He said that the 3rd Defendant was brother to the 1st Respondent and that the latter's mothers' parcel of land was far away from the suit property and also that the 1st Respondent got the Title Deed to NYANDARUA/ KIPIPIRI/LERESHWA BLOCK 1 (MALEWA RANCH/594 before he bought it from one Fabian.

On cross-examination from Mr. Mathea for the 1st Respondent, the Appellant said he could not tell whether Fabian who was still alive was a member of the 2nd Respondent and that he was not aware whether Fabian was paid the full purchase price.

On cross-examination by the 3rd Defendant, the witness said that they were in another property but then moved later.

On re-examination by Ms. Ndegwa, the witness said that the 1st Respondent was barred by the Court from interfering with the said land.

The 2nd witness, Zachary Kariuki, asked the Court to adopt his statement dated 8/8/2013 and filed in Court on 12/8/2013. He testified that his father, George Chege was a shareholder of the 2nd Respondent with 2 shares. He repeated the evidence of his brother, the Appellant.

He further said that the parcels of land allocated to his father by the 2nd Respondent fell under category C which was largely rocky.

On cross-examination by Mr Kago, he said that he was born on the suit land and both his parents including George Chege Karanja were buried on the said land. There are therefore homes, graves and trees on the suit land.

He also said that the 1st Respondent could not be a member of the 2nd Respondent, be given the land and then buy the same land from Fabian and that he could also not get a Title Deed before buying the same land.

The 1st Respondent did not also have a Share Certificate to the 2nd Respondent. Mr Kariuki said that he did not have a document to show that his father was issued NYANDARUA/KIPIPIRI/LERESHTWA BLOCK 1 MALEWA RANCH/594 and that the Register shows that NYANDARUA/KIPIPIRI/LERESHTWA BLOCK 1MALEWA RANCH/594 was cancelled and given to the 1st Respondent and that he came to know of the existence of NYANDARUA/KIPIPIRI/LERESHTWA BLOCK MALEWA RANCH/594 after the issuance of a Title Deed to the 1st Respondent.

On cross-examination by the 3rd Defendant, the witness said that he was brought up on the suit land and even went to school in the area.

On re-examination by Ms. Ndegwa, the witness said that there had been wrangles on the issue of Directors and that the 3rd Defendant has never taken possession of the suit land.

PW3 Hannah Wanjiku Manjare adopted her statement of 8/8/2013. He said that the 1st Respondent did not have the right to get into the Deceased's land since the former was not a shareholder of the 2nd Respondent. She said she was also a member of the 2nd Respondent together with the late George Chege Karanja and that they were settled together on the land in 1972 as neighbours, about 10 minutes' walk and that the Deceased constructed on the suit land in 1972. Her portion which she took was from her late husband, Francis Manjare is NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/ 1169. She further admitted that the 1st Respondent's mother was known to her and was too a member of the 2nd Respondent and whose children came from Western Kenya where they were living before the 2007 - 2008 post-violence elections and started claiming George's land in 2008. She said she knew Fabian but could not tell whether he sold his land to the 1st Respondent.

When further cross-examined by Mr. Kago, the 2nd Respondent this witness said she was the treasurer of the 2nd Respondent (at the time she was testifying in Court). She said the 2nd Respondent did not give land to non-members. A non-member can only purchase land from a member but cannot be allocated one. She said she didn't know how many shares Fabian had.

On cross-examination by Mr. Mathea, Hannah said she knew Raphael Chege Njaga, Chairman of the 2nd Respondent and that she did not know if Fabian's family members had come to complain about their father's land - 594.

On cross-examination by the 3rd Defendant, she said that people were allowed to exchange parcels of land.

On re-examination by Mr Chege, Hannah said that Wanjeri was the father to the Deceased who got new land in 1984 and who was allowed to exchange his land and that George's land was not adjacent to Fabian's.

After the close of the Appellant's case DW1, Raphael Chege Njaga took to the Witness box and adopted his statement of 2019/2023. He said he was chairman of the 2nd Respondent who had been involved with the Ranch fighting for members' rights since 2020. He referred to his witness statement and adopted it as his evidence in chief.

On cross-examination by Mr Chege, he said that the 2 Surveys on the land were conducted with one in 1984 which was not completed and the other one in 1998. The land was to yield 1043 parcels. An agreement between the company and the surveyor followed. But only 1042 parcels were sub-divided. Each member had to get at least 3 Acres. All parcels totaled 1192. He said that the extra 32 parcels ate into the members' lands. He said that the Deceased had parcel Nos. 561 and 242 after balloting and that after the sub-division, an extra parcel No. 594 was created from

the 2. The same was given to Fabian Karuri. But at the time of compiling the register he gave his name as Mwangi Karuri only. Fabian was not there. His actual parcel was No. 605, in a different area. There were no Title Deeds by 2010 between 2008 and 2010 the 1st Respondent brought gangs to remove the Deceased from his land and even destroyed his house. The Deceased was arrested in the process and died in the hands of the police. The 1st Respondent then fenced off the land. All this was done with the collusion of the area chief in conjunction with the officials of the Ranch. He added that the 1st Respondent did not acquire the land legally. He got the land from the Government of Kenya and not the 2nd Respondent which was the owner of the land and that the sale agreement of 2011 was not genuine because even by then the Title Deed had already been issued to him. Fabian's land is still intact. It is 605 and no one has settled there.

When cross-examined by Mr Mathea, Mr. Njaga said he filed a statement on 19/7/2019 in person but later did another one when he got counsel. He said that the company took the issue of the irregular sub-divisions to Court with the 1st Respondent as one of the Defendants and that NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/594 was irregularly and illegally yielded from a member. He said that in Nyahururu ELC No. 19 of 2020, the 2nd Respondent was not a party and therefore the Decision therein could not bind her, the 2nd Respondent.

On cross-examination by Mr. Njuguna, the chairman said that he was so elected in 2017 and that his name was not in the Register

since he came in for a Deceased person and that he was not in office when the Title to 594 was issued and could therefore not tell how the same was issued.

On re-examination by Mr Kago, Mr. Njaga said that his father was a member of the 2nd Respondent and that the 2nd Respondent was also not a party in case No. 38 of 2018 nor was the suit property a subject of the case. He further said there were several other cases in Court involving members who were wronged by the sub-division of their parcels of land. He says also that there was no evidence of payment of stamp duty by the 1st Respondent in respect to parcel No. 594.

After the close of the 2nd Respondent's case, Joseph Njoroge, the 1st Respondent testified by adopting his statement of 14/9/2010 by saying that he was a shareholder of the 2nd Respondent and that he took out a share certificate in the name of his brother, Kinyanjui Njoroge since he was working away from home and he wanted to participate in the affairs of the 2nd Respondent company on the latter's behalf. He says that he paid all the fees the company required of him and that he was subsequently issued with a Title Deed for land parcel No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/ 594 on 10/9/2010. He finally said that it is the Deceased who trespassed on his land, erected a temporary structure and cultivated on the land. He then produced the following documents to strengthen his case:

1. Copy of a letter from the Assistant Chief, Lereshwa sub-location addressed to the Deceased and the 1st Respondent dated 7/2/2019.
2. Copy of share certificate issued by the 2nd Respondent to one Fabian Mwangi Karuri.
3. Copy of an extract of the RIM for the area covering the suit property.
4. Copy of the Title Deed for NYANDARUA/ KIPIPIRI/ LERESHWA BLOCK 1 MALEWA RANCH/594.

On cross-examination by Mr Chege, Mr. Njoroge said that he got the land from Fabian Mwangi Karuri who is now Deceased. He bought it in 2010. The agreement was reduced in writing on 28/9/2011 and he was issued with a Title Deed on 10/9/2010. He said he did not attend the Land Control Board, did not pay Stamp Duty which Fabian told him that he had paid. He says he had no receipts. He was just given a share certificate in the name of Fabian. He also said he did not pay any transfer fees. And that the land was vacant when he bought it. One side had stones. The land is 4.8 Acres. He said he knew nothing about the demolitions testified on. He complained to the police over Chege cutting down his trees and the latter was arrested and charged. He died 3 or 4 years later. He further said he did not have any document to show that Fabian ever owned parcel No. 594 nor a witness from Fabian's family since the one he was to call, James Ndichu Maina was now Deceased and without showing evidence he equally said that Wachuka who was also to testify is equally Deceased. He said that

PW3 was a member of his church and is Treasurer of the 2nd Respondent and that DW1 was the chairman of the 2nd Respondent.

When cross-examined by Mr Kago, Mr. Njoroge said that he was coerced to sign an understanding that the suit land was to be shared between him and the 3rd Defendant but he has never reported this anywhere. The land did not belong to their mother. He said the original share certificate and Title Deed for the suit land were at home. The share certificate does not have parcel No. 594 and that Fabian did not give him the ballot paper for the same. He also admitted he did not have evidence of having paid Fabian money. He did admit he did not go to the Land Control Board and he had no transfer documents.

In answer to questions from Mr. Njuguna, Njoroge said that his mother did not have land at Malewa Ranching. She was not a shareholder. No. 605 belonged to Zacharia Njoroge which ended up with Joseph and Peter Njoroge and he could not tell how the Title ended up in Fabian's name. He also said his mother lived with him at Kamehia Trading Center.

In answer to re-examination by his counsel Mr Mathea, the witness said he could not understand how the Title Deed came a year before he entered into the sale agreement with Fabian, but that he collected the Title after clearing the balance in 2012 and that he did not know where the Title had been all this time. Number 605 is the family land.

Finally, Peter Njuguna Njoroge, the 3rd Defendant testified he relied on his witness statement dated 3/4/2024 where he said that his mother, Philomena Muthoni was in possession of the suit land until her demise whose date he did not give. He and the 1st Respondent were to share the suit land equally and they entered into an agreement to that effect on 8/3/2022. When he reported to the DCIO that there was collusion to have the Title of the land registered in the name of the 1st Respondent, the latter asked him to wait until this suit is concluded. He said that the Registration of the land in the name of the 1st Respondent was through collusion, illegality, fraud and/or through a corrupt scheme. He therefore prayed that the Title be cancelled and the same rectified to read his name and that of the 1st Respondent. He also produced the following documents.

1. Extract of members' register for the 2nd Respondent for NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH /594.
2. Copy of Title Deed for L.R No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/594
3. Copy of Green Card for L.R No. NYANDARUA/ KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH /594.
4. Agreement dated 8/3/2022 between the 1st Respondent and the 3rd Defendant.
5. Copy of O.B. No. 13/26/9/22.

In answer to cross-examination by Mr. Chege, the witness said he was born on 12/11/1963 and that therefore he was 9 years in

1972. They then as a family came to live in NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/605 which belonged to their mother. It is now in the name of Fabian. They exchanged their parcels of land since the Green Card reads Fabian Karuri Mwangi with effect from 10/9/2011. He said he did not have the exchange agreement nor documents to show that his mother owned NYANDARUA/ KIPIPIRI/ LERESHWA BLOCK 1 MALEWA RANCH/605. The register shows that the land belonged to Fabian. He added that his mother lived on the suit land from 2008 till her death but was temporarily moved by the Appellant in 2016 when she got unwell and that his brother, the 1st Respondent has never lived on the suit land. He added that the Appellant's father had not build a house on the suit land and that he built one in 2011.

The 1st Respondent does not also live there but at Kamehia. He testified that all the development on the suit land were by the 3rd Defendant's mother. The Register shows he and his brother were given NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/605 which was exchanged with NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/594 and that NYANDARUA/ KIPIPIRI/ LERESHWA BLOCK 1 MALEWA RANCH/605 belongs to Fabian where he cannot go.

In cross-examination by Mr Kago, Peter Njoroge admitted that the 2 of them had not filed any succession cause for their deceased mother because she had no Estate when she died and that she was not in the Register of members. Her share was No. 59 and he

did not have her share certificate. He also said he did not have proof that his mother owned parcel No. 605 and that he has lived on the suit land since 2008 and the exchange happened in 2009. He later changed and said the exchange took place in 2007.

On cross-examination from Mr Mathea, this witness said that he had no documents to show that land parcel No. 605 belonged to Fabian nor any documents to show that it belonged to his mother. He admitted he was a Director of the 2nd Respondent between 2012 and 2017. He said that in the register, 593 belonged to him, 594 to Fabian and 605 to Peter and Joseph Njoroge. He said he did not have any documents to show a swap.

After the close of the 2nd defendant's case and in effect the entire case, parties were asked to file their submissions after which the Learned Trial Magistrate delivered the following Judgment: -

“ I do not find that fraud on the part of the 1st Defendant (2nd Respondent) has been proved. No fraud was pleaded on the part of the 2nd Defendant (1st Respondent)on the face of it..... the 2nd Defendant (1st Respondent) is the registered and absolute owner of the land. this title can only be challenged on fraud. The Proprietor is required to be shown to have been aware and part of the fraud giving rise to issue of the Title to him.....”

The Court further went on to find that plot No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/594 did not belong to the 1st Respondent and 3rd Defendants mother or

Philomena Muthoni nor did NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1 MALEWA RANCH/605 and that the 3rd Defendant did not have locus to file a suit after he did file the same on behalf of his late mother Philomena Muthoni but without letters of administration. The Court went ahead to hold that the Appellant's case could not stay nor that in the Counter-claim by the 3rd Defendant and summarized the Judgment dated and delivered on 27/8/2025 as follows: -

- a. The suit is dismissed.
- b. The 3rd Defendants Counter-claim is also not proved and it too is dismissed.
- c. Each party shall bear their own costs given the circumstances of the case.

Having felt aggrieved by this Judgment, the Appellant filed this Appeal for the following Orders contained in his Memorandum of Appeal dated 1/11/2010:

- a) The appeal be allowed with costs.
- b) The judgment and decree of the trial court dated 27th August 2025 be set aside.
- c) A declaration does issue that Title No. NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1/MALEWA RANCH/594 was unlawfully and irregularly acquired by the 2nd Respondent.

d) An order does issue cancelling the 2nd Respondent's Title and restoring the same to the Appellant or as the court may deem fit.

e) Costs of the Appeal and of the proceedings in the trial court be awarded to the Appellant.

The same was grounded on the following:

1. The learned trial Magistrate erred in law and fact in holding that the 2nd Respondent was the indefeasible owner of land parcel No. NYANDARUA/KIPIPIRI/ LERESHWA BLOCK 1/MALEWA RANCH/594 without properly considering that the circumstances under which the Title was obtained were unclear, irregular and pointed to unlawful acquisition contrary to Section 26(1) (b) of the Land Registration Act, 2012.
2. The learned trial Magistrate failed to appreciate and give due weight to the evidence that the 2nd Respondent's Title was issued before execution of the alleged sale agreement between him and Fabian, and without any evidence of Land Control Board consent, transfer instruments or payment of stamp duty, rendering the transaction illegal and void in line with the Court of Appeal Decision in NJARAMBA & 3 OTHERS -VS- KAMAU (CIVIL APPEAL NO. 37 OF 2018) [2024] KECA 1847 (KLR).

3. The learned trial Magistrate misdirected herself by dismissing the Appellant's claim on the basis that fraud was not specifically pleaded against the 2nd Respondent, yet the evidence adduced clearly raised questions of illegality and procedural impropriety, which independently vitiate Title under Section 26(1)(b) and ought to have been considered in line with the Decision in ODD JOBS VS MUBIA [1970] E.A 476.
4. The learned trial Magistrate erred in law and fact in holding that the Appellant had not established beneficial ownership or trust over the suit property, despite documentary evidence showing that the Appellant's father was an original shareholder and had been allocated land whose acreage was unlawfully diminished to the benefit of the 2nd Respondent.
5. The learned trial Magistrate failed to properly evaluate the documents and testimony of the 1st Respondent's chairman and other witnesses, who confirmed that parcel No. 594 was created irregularly and directly registered in the 2nd Respondent's name without due process.
6. The learned trial Magistrate erred in law in disregarding the principle laid down in MUNYU MAINA V HIRAM GATHIHA MAINA [2013] eKLR, that where a registered proprietor's root of Title is challenged, the proprietor must demonstrate the legality of how he acquired the

land and failed to hold that the 2nd Respondent did not discharge this burden.

7. The learned trial Magistrate erred in dismissing the Appellant's suit outright, instead of granting appropriate remedies such as cancellation of the impugned Title and thereby sanitized an unlawfully obtained Title.
8. The learned trial Magistrate erred in law and fact by relying on previous court Decisions in which the Appellant was not a party and wrongly applied the doctrine of *Res Judicata* in the case before her to defeat the Appellant's claim thereby occasioning a travesty of justice.
9. The learned trial Magistrate erred in law and fact in holding that only Fabian or his family members could complain over alleged sale of the suit property notwithstanding the fact that the Appellant had demonstrated sufficient interest in the transaction thereby laying legal basis for doing so.
10. The learned trial Magistrate failed to take into consideration the fact that Fabian had only one land parcel known as L.R NO. NYANDARUA/ KIPIPIRI/ LELESHWA BLOCK 1 (MALEWA RANCH)/605 within the 1st Respondent's farm and thereby proceeded to uphold the alleged sale and transfer of the suit property to the 2nd Respondent against the doctrine of "*Nemo dat quod non habet*".

As a first appeal, this Court is obligated to re-evaluate, reassess, and re-analyze the evidence from the lower court to arrive at its own independent conclusion on both facts and law. This is a substantive role that involves reviewing the entire record to ensure the verdict is justified.

On Adverse possession, the lower Court did not have jurisdiction to determine whether the same had been proved. If the Deceased wanted to proceed and prove it then he should have asked the Court not to transfer the suit to the lower Court

I have gone through the evidence adduced in Court as well as the parties, evidence adduced in Court as well as the parties' submissions.

In **Equity Bank Limited v West Link MBO Ltd** Civil Application (Appeal) No. 78 of 2011, it was held that:

“..... Courts of law exist to administer justice and in doing so, they must of necessity balance between the competing rights and interests of different parties but within the confines of the law, to ensure the ends of justice are met. Inherent power is the authority possessed by a court implicitly without it being derived from the constitution or statute.....”

The trial Magistrate said in her Judgment that she did not find fraud on the part of the 1st Defendant (2nd Respondent) and that is why she dismissed the Appellants claim. I will start with the first observation in the Plaint dated 1/11/2020. The Appellant pleaded

in paragraphs 10.11 and 12 that the action of the 1st Defendant (2nd Respondent herein) in hiving off his land without his Consent so as to create a parcel of land to the 2nd Defendant (1st Respondent herein) was fraudulent and a violation of his constitutional right to possess his property. He then particularized fraud of the said 2nd Respondent as: -

- a. Creating a new map of Malewa Ranch without notifying the Appellant.
- b. Reducing the acreage of the land belonging to the Appellant.
- c. Transferring land under the occupation of the Appellant and his family to the 1st Respondent secretly without affording him an opportunity of being heard.
- d. Violating her fiduciary duty to the Appellant.

A certificate of Title is conclusive evidence of ownership and is prima facie evidence that the registered proprietor is the owner. **Section 24** of the **Land Registration Act 2012**, gives the registered proprietor absolute rights over land, it provides:

Subject to this Act—

(a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) The registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all

implied or expressed agreements, liabilities or incidents of the lease

In the case of **Esther Ndegi Njiru & Another =vs= Leonard Gatei [2014] eKLR** it was held:

“the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which a person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme”.

Section 26 (1) of the Land Registration Act 2012 is in the following terms:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except -

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party;
or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”.

What is the meaning of fraud?

In law, fraud is the intentional deception, misrepresentation, or concealment of material facts, made for personal gain or to cause loss to another party. It involves using dishonest methods to induce someone to act, resulting in damage or illegal benefit, and can lead to both civil liability and criminal charges.

There are 3 main types of fraud: -

- 1. Fraud by False Representation:** Using untrue words or conduct (e.g., selling a broken car as "perfect") to mislead.
- 2. Fraud by Failing to Disclose:** Dishonestly withholding information that one is legally required to disclose.
- 3. Fraud by Abuse of Position:** Misusing a position of trust—such as an accountant or trustee—to make a gain or cause loss.

There are 3 other categories of Fraud

(a) Corruption

(b) Wrongful use of influence/position to obtain personal benefit contrary to duty/right of another person. i.e. Bribery, kickbacks, illegal gratuity, collusion etc. -

(c) Asset misappropriation - the act of misappropriation of entities, assets or turning it to a wrong purpose to a personal gain i.e. embezzlement, deception by employee etc.

According to **SERVICES & RESOURCES LEGAL DICTIONARY,**

Fraud is the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right. A party who has lost something due to fraud is entitled to

damages against the party acting fraudulently. Inherent in fraud is an unjust advantage over another which injures that person or entity. Constructive fraud can be proved by a showing of breach of legal. Since fraud is intended to employ dishonesty to deprive another of money, property or a right, it can also be a crime for which the fraudulent person(s) can be charged, tried and convicted. Borderline overreaching or taking advantage of another's naiveté involving smaller amounts is often overlooked by law enforcement, which suggests the victim seek a "civil remedy" (i.e., sue).

A registered proprietor only enjoys the statutory protection of Title as long as he/she can show that the Title was acquired procedurally. In **Munyu Maina..Vs..Hiram Gathiha Maina, Civil Appeal No.239 of 2009**, the Appeal Court held that:-

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

According to Sections 24, 25 and 26 of the Land Registration Act of 2012, Title is sacrosanct and Title shall not be subject to challenge except: -

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party.
- or
- b. Where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme.

Section 80 Subsection (2) of the Land Registration Act, 2012 provides as follows: -

“(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default”

It came out on evidence in Court that L.R No. 594 was hived off L.R No. 595 and 596 belonging to the Appellant. The same was done after the parcels of land had been allocated to the Appellant. The 2nd Respondent did hive off a parcel of land, 6 Acres out of the Appellant’s parcels Nos. 595 and 596 to create 594 which was given to the 1st Respondent and this was done without the knowledge nor the Consent of the Appellant. It is important to note that this was done when 2 brothers to the 1st Respondent by the

names of John Njoroge and Peter Njuguna Njoroge were serving as officials of the 2nd Respondent as Directors. The land was transferred to the 1st Respondent without Consent of the Land Control Board. The 2nd Respondent was supposed to obtain Consent of the Land Control Board before transferring the land to the 1st Respondent. Failure to do this and present documents to the Lands office for transfer without Consent was unlawful. Also, as Raphael Chege Njaga, Chairman of the 2nd Respondent told the Court, increase of the parcels of land in the 2nd Respondent's land by 32 Parcels ate into the members' parcels of land. He further said that the Deceased had parcels 561 and 242 after balloting and that after the sub-division an extra parcel No. 594 was created from the 2. Parcel No. 594 was given to Fabian Karuri who gave different names at different times, of course to disguise himself. He further said that all this was done by the area chief. And the same was done in conjunction with the then officials of the Ranching Company (the 2nd Respondent) in order to give people land irregularly. The Chairman said that the 1st Respondent did not acquire the land (parcel number 594) lawfully. And that he was given the land by Government officials who were not the owners of the land nor did the Government of Kenya have anything to do with the 2nd Respondent. All this is fraud and irregularity.

Having shown that the 2nd Respondent acted fraudulently in transferring the suit land to the 1st Respondent, the Question then is, did the 1st Respondent have knowledge of what was happening

such as omission, fraud or mistake in consequence of which the rectification ought to be effected, or did he cause such omission, fraud or mistake or did he substantially contribute to the same by any act, neglect or default?

It is clear that the 1st Respondent's role in the registration of the land to himself and hiving off the suit land from the Appellant's parcel Nos. 595 and 596 was real and manifest. He said that he went to the company and asked to be given the suit land without being a shareholder of the said company and on omission, he failed to apply for consent of the Land Control Board which was mandatory this being agricultural land. Failure to pay Stamp Duty and other requisite fee for the transfer was furtherance of substantial contribution of fraud.

Whereas the Civil Procedure Rules makes it mandatory that particulars of fraud, misrepresentation, breach of trust, willful default or undue influence shall be provided in every pleading, it is not so for illegality or corrupt scheme. The 1st Respondent told the Court that he had the suit land transferred to him without obtaining Consent of the Land Control Board, without payment of Stamp Duty and he could not show any receipt either of the payment of Title Deed or for any other requirement, he was not a member of the 2nd Respondent in which case he was not entitled to any parcel of land and also he never balloted for the parcel No. 594, how then did he acquire L.R No. NYANDARUA

/KIPIPIRI/LERESHWANA BLOCK 1 MALEWA RANCH/ 594?. I therefore do not agree with the Trial Magistrate when she implies that since the Appellant did not particularize fraud on the part of the 1st Respondent then he is not entitled to his prayers. Fraud is not the only reason that a Title can be impeached. Illegality, unprocedural practice and/or corrupt scheme such as failure to obtain Consent of the Land Control Board (shortcuts), failure to pay Stamp Duty or any other fee (an illegality) or such an unprocedural manner of being allocated land through nepotism by 2 officials of the 2nd Respondent suffice. This is enough to impeach a Title Deed. Besides, in a very interesting twist of events the 3rd Defendant, Peter Njuguna Njoroge, a brother to the 1st Respondent testified that the land was supposed to be registered in the name of his Deceased mother, Philomena Muthoni and ought to have been shared between him (the 3rd Defendant) and the 1st Respondent. He says that the land was registered in the name of the 1st Respondent illegally. He even proceeded to give particulars of fraud attributed to the 1st Respondent such as obtaining a Title Deed for L.R No. NYANDARUA/ KIPIPIRI/LERESHWANA BLOCK 1 MALEWA RANCH/594 by way of fraud and through a corrupt scheme and collusion with the 2nd Respondent. This is so curious bearing in mind that the 3rd Defendant is a brother to the 1st Respondent. I will not say much.

I now want to come to a very important issue. The Trial Magistrate was asked by all the 4 parties before her in the suit to declare the ownership of L.R No. NYANDARUA /KIPIPIRI / LERESHWANA BLOCK 1

MALEWA RANCH/594, in the Plaintiff dated 1/11/2020, the 1st Respondent's Counter-claim dated 11/11/2010 and the 3rd Defendant's Amended Defence and Counter-claim dated 3/4/2024. She did not do so. In **Nyamira ELC Constitutional Petition No. 02 of 2021, James Onyanha & 3 others -vs- Lilian Kerubo I** had the occasion to address such an issue:

“.....If I leave the instant matter without declaring the ownership of WEST MUGIRANGO/ BOMANONO /1540 and WEST MUGIRANGO/ BOMANONO /1702, 1703,1704 and 1705 the parties will be left in more confusion than they were in before they decided to seek for justice. I must therefore decide who between the Petitioners on the one hand and the First Respondent on the other owns the Suit land. Evidence has come out clearly as to the ownership of the suit property. Although there is no prayer for the finding that the suit land herein belongs to either the Petitioners or the 1st Respondent, the pleadings by both parties are awash this claim. There is overwhelming cry in the respective evidence of either party to have the suit land declared his. The written submissions also dwell on nothing less..... Had the

Petitioners not pleaded the 1st prayer, that of injunction I would have had no business going into the substance of the matter. This is because the prayers of certiorari and prohibition only involve the legality and the process of a lower court, Tribunal or a Quasi-Judicial Authority and/or the process followed to determine the issues, but now the Petitioners have asked me to find that there should be a prerogative order of injunction issued against the Respondents barring them from trespassing, interfering with and/or revoking the Petitioners' Titles viz. WEST MUGIRANGO/ BOMANONO/ 1702, 1703,1704 and 1705 respectively. To do so or otherwise, this calls for the examination of the evidence adduced in court"

It is very clear from the evidence tendered in Court and particularly that of the Appellant which tallies with the account of the 2nd Respondent's witness, Raphael Chege Njaga that the Appellant was allocated 2 parcels of land being parcel Nos. 561 and 242. The same were presented for Registration as L.R No NYANDARUA /KIPIPIRI / LERESHWA BLOCK 1 MALEWA RANCH/594 and 596 measuring 7 Acres each. It is out of these 2 that the 1st Respondent's parcel No. 594 was carved out albeit illegally and unlawfully. This was a breach of the Appellant's rights of

ownership of land under Article 40 of the Constitution of Kenya, 2010 which right must be protected and no statute can be enacted to infringe on such rights. Article 40 is so well guarded by the Constitution of Kenya to the extent that even Parliament cannot derogate or deviate from it.

Mr. Njaga said that at one time between 2008 and 2010 there was an episode of new people who were not members of the 2nd Respondent being allocated land. This was immediately after the 2007 General elections as a result of which there was violence in several parts of the Country and there was influx of internally displaced persons to Nyandarua County (then District) and the 1st Respondent happened to be one of those people. Njaga proceeds to say that there was double allocation of land, of course disenfranchising and subjugating the old and founder members of the company. This must be how the 1st Respondent came in and was allocated parcel No. NYANDARUA / KIPIPIRI /LERESHWA BLOCK 1 MALEWA RANCH/594 with the help and collusion of his 2 brothers who were Directors of the company.

I must say with a lot of discomfort and embarrassment on behalf of our society that it is very immoral for people who have founded a land buying company from the scratch, contributed money to buy land to later be deprived off their rights by latter entrants and who when they join the company, want to downscale the parcels of land so that they can thin in. This is the situation herein.

The Appellant has produced several receipts to show that his father had paid not only membership fee but also for the purchase of the 2 parcels of land totaling 14 Acres. He has produced a copy of share certificate No. 14077, a list/register of shareholders where the 1st Respondent's name is missing. The 1st Respondent did not produce his share certificate or receipts to show that he was entitled to any benefits accruing from the membership of the 2nd Respondent.

Mr. Njaga testified that the 1st Respondent was assisted by the then Provincial Administration in conjunction with the officials of the 2nd Respondent and that the Green Card shows he was given the land directly by the Government of Kenya. The role of the latter in the affairs of the company is highly questionable and dubious. This was a private Company where the Government had no shares nor any say. Its role is therefore unlawful and anybody using the influence of the Government to get land did so at his own peril.

To show further the corrupt schemes of the 1st Respondent, he claims to have been given the parcel of land as a member and soon after he forgets and changes the narrative and says that he bought the land from one Fabian Mwangi Karuri who it has been shown had L.R. No. NYANDARUA /KIPIPIRI / LERESHTWA BLOCK 1 MALEWA RANCH/ 605 and not 594. Further, he got a Title Deed one year before he bought the land. I believe this confusion results from attempts at preparation of backdated documents. *Njia ya muongo fupi*. Need I say more.

Accordingly, I set aside the Judgment of the Honourable M.W. Njuguna, Senior Resident Magistrate in the Chief Magistrate's Court, Nyahururu ELC Case No. 58 of 2019 dated and delivered on 27/8/2025 and order as follows:

- a. This Appeal is hereby allowed.
- b. The Judgment and Decree dated 27/8/2025 is hereby set aside.
- c. A Declaration be and is hereby issued to the effect that Title No. NYANDARUA /KIPIPIRI /LERESHTWA BLOCK 1 MALEWA RANCH/594 was unlawfully and irregularly acquired and registered in the name of the 1st Respondent.
- d. An order do and is hereby issued directing the Land Registrar, Nyandarua to cancel the name of the 1st Respondent, Joseph Mburu Njoroge in Title No. NYANDARUA /KIPIPIRI /LERESHTWA BLOCK 1 MALEWA RANCH/594.
- e. An order do and is hereby issued directing the Land Registrar, Nyandarua to rectify Title No. NYANDARUA /KIPIPIRI / LERESHTWA BLOCK 1 MALEWA RANCH/594 to read the name of the Appellant, Joseph Karanja Chege in place of the 1st Respondent, Joseph Mburu Njoroge for him (Joseph Karanja Chege) to hold on behalf of and in trust for the Estate of George Chege Karanja.
- f. I award the costs of this Appeal, of the suit in the lower Court as well as the Respondents' Counter-claim to the Appellant against the Respondents.

g. I will also award the costs of the 3rd Defendant's Counter-Claim in the lower Court to the Appellant against the 3rd Defendant.

Judgment read and delivered at Nyandarua this 24th Day of March 2026.

**MUGO KAMAU
JUDGE**

In the Presence of: -
Court Assistant: Samson.

For the AppellantMr. Gakuhi Chege.

For the 1st Respondent.....Ms. Wahome.

For the 2nd Respondent.....Mr. Kago.