



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT IN NAROK

ELC CASE NO. E013 OF 2021

HON. MOITALEL OLE KENTA.....

PLAINTIFF

VERSUS

MARASWA OLE NJAPIT.....1ST

DEFENDANT

NDERI OLE NAMPASO.....2ND

DEFENDANT

NDERITU MICHAEL KIMENDERO.....3RD

DEFENDANT

DISTRICT LAND REGISTRAR, NAROK.....4TH

DEFENDANT

DISTRICT SURVEYOR, NAROK.....5TH

DEFENDANT

HON. ATTORNEY GENERAL.....6TH

DEFENDANT

JUDGMENT

1. The Plaintiff herein **Hon Moitalel Ole Kenta**, brought this suit against the Defendants herein vide a Plaint dated **2nd July 2021**, and sought for judgment against the said Defendants, jointly and severally for;

- i) A declaration that the Defendants intention to subdivide the Plaintiff's parcel of land Known as Cis Mara/Oldonyo Rasha/169, as per the Mutation Form herein is illegal, null and void ab initio and the Mutation Form be nullified;***
- ii) A declaration that the title number Cis Mara/Oldonyo Rasha /1339, was fraudulently registered and the same be nullified and cancelled;***
- iii) A permanent Injunction restraining the Defendants either by themselves, their agents' servants and/or employees from subdividing, registering any subdivision, selling, transferring and/ or from any other manner of interfering with the Plaintiff's parcel of land known as Cis Mara/Oldonyo Rasha/169;***
- iv) Costs of the suit with interest;***
- v) Any other relief this court may deem proper to grant.***

2. In his claim, the Plaintiff averred that he is the lawful registered and beneficial owner of land parcel **No. Cis Mara/Oldonyo Rasha/169**, which was created upon lawful and successful subdivision of the Mother title **Cis Mara/Oldonyo Rasha/1**, measuring **1403.0Ha**, and the

said subdivision created **321 parcels** of land. The said subdivision was approved in **1997** and the resultant subdivisions were registered in **1998**.

3. Further, that after the said subdivision and registration, land parcel No **Cis Mara/ Oldonyo Rasha/1** was closed, and new parcels of land were registered and titles issued to individual members. Subsequently, the Plaintiff purchased his land parcel **No 169** in **2002**, and upon purchasing the same, he fenced it as per the beacons affixed by a licenced Land Surveyor, and the said parcel of land has remained so for **17 years**.
4. The Plaintiff also claimed that the title deed for his parcel of land was issued in **2004**, and since then, there has never been any adverse claim whatsoever. However, in **June 2021**, he learnt of **illegal registration** of titles purported to be subdivision of his parcel of land.
5. It was his claim that after conducting due diligence, he realized that the 1st and 2nd Defendants had **fraudulently** instructed the 3rd Defendant to create and register **fraudulent Mutation Form**, and the trio worked in cahoots and fraudulently registered a fake Mutation Form to create subdivision for non-existent land known as **Cis Mara/ Oldonyo Rasha/1300**.
6. He particularized the fraud on the part of the 1st, 2nd and 3rd Defendants in **Para 13(a) to 13(e)** of the **Plaint**, and

further averred that the Defendants intention is to trespass on his parcel of land, hive out a block measuring **20.23 Ha** and engage in illegal use and enjoyment of his parcel of land to his prejudice.

7. The Plaintiff further alleged that the alleged registered **Mutation Form** was received by the 5th Defendant on **21st August 2020**, through instructions of the 1st, 2nd and 3rd Defendants, under the pretence that the land was the property of **Oldonyo Rasha Group Ranch**, which is a defunct entity and does not exist nor does it have mandate to deal with his land.
8. He further claimed that the land parcel that was allegedly subdivided was **Cis Mara /Oldonyo Rasha/1300**, which does not exist, and the thumb print of one **Kelemet Ole Meingati**, was fraudulently obtained since he had passed on in **July 2020**.
9. It was his further allegation that the Defendants worked in cahoots and fraudulently created a register for **Cis Mara/ Oldonyo Rasha /1339**, which was registered in the name of the Defunct and non -existent **Group, Oldonyo Rasha Group Ranch**, measuring **approx. 20.23Ha**.
10. He particularized fraud of the Defendants in **Para 18(a) to 18(c)**, and urged the court to intervene and issue a **permanent injunction, nullifies the registration and cancels the illegal titles**, so that the Defendants do not continue to interfere with his proprietary right and cause

him irreparable loss and damage. He urged the court to allow his claim.

11. The suit is vehemently opposed by the Defendants. The 1st, 2nd and 3rd Defendants filed their initial Defence through **Meingati & Co Advocates** and urged the court to dismiss the Plaintiff's suit.
12. It was their claim that indeed the Plaintiff's land parcel is **Cis Mara/ Oldonyo Rasha/ 169**, which he unlawfully extended in an attempt to grab the annexed **Group Ranch Land**, Further, they admitted that the title for **Cis Mara/Oldonyo Rasha /1** was closed, and new parcels of land were issued. However, Land parcel No. **Cis Mara/Oldonyo Rasha/ 1300** was part of the **unregistered** land for the Group Ranch, wherein subdivision was later done by the **District Land Surveyor**, and relevant Green Card was opened.
13. The Defendants further claimed that the Plaintiff fenced his land beyond his boundaries, and that they have no interest at all in land parcel **No Cis Mara/ Oldonyo Rasha/ 169**, belonging to the Plaintiff. However, the Plaintiff is claiming extra land beyond his registered land, and that is what the Defendants are opposed to.
14. They denied any attempt to register illegal titles and subdivide the Plaintiff's land, and reiterated that they have

no interest in the Plaintiff's land, but the Plaintiff is the one who intends to grab land from the Group Ranch.

15. To them, there was no **fake Mutation Form**, and they never instructed the 3rd Defendant to fraudulently create fake Mutation Form, to purportedly subdivide the Plaintiff's land, and did put the Plaintiff to strict proof thereof.
16. Further, the 1st, 2nd and 3rd Defendants denied all the **fraud allegations** levelled against them and did put the Plaintiff to strict proof. They also denied ever trespassing on the Plaintiff's parcel of land, and averred that the Mutation Form for **Cis Mara /Oldonyo Rasha/ 1300**, was created by the District Surveyor after a successful survey of the land, and registration of the same as to his mandate under the law.
17. On the issue of **Kelemet Ole Meingati**, the Chairman of the Group Ranch, they averred that the process of subdivision started in **2014**, and the said Chairman signed all the documents and which documents were duly processed under his instructions before he died in **July 2020**.
18. Ultimately, the 1st, 2nd and 3rd Defendants claimed that the Plaintiff's suit is **frivolous, vexatious** and **an abuse of the due process of the court** and they urged the court to strike it out.

19. On **25th April 2022**, the Law Firm of **Bosibori Oganga & Co Advocates**, which had come on record for 1st, 2nd and 3rd Advocates filed a **Notice of Motion Application** dated **21st April 2022**, seeking for leave to file an **Amended Defence** to include a Counter-claim. They further urged the court to deem the annexed **Draft Defence and Counter-claim** as duly filed and served upon payment of the requisite court fees.
20. From the court record, on **28th April 2022**, the court allowed the said Application as prayed, and thus the 1st, 2nd and 3rd Defendants **had leave** to file an **Amended Defence** and **Counter-claim**. However, this court has perused the court file, and has not seen any formalization of the said draft Amended Defence and Counter-claim, and therefore no amended defence was filed by the 1st, 2nd and 3rd Defendants.
21. Without that compliance, the court will presume that no **Amended Defence and Counter-Claim** were filed, and the earlier Defence filed by the Law Firm of **Meingati & Co Advocates** is considered as the Defence on record for the three Defendants.
22. The 4th, 5th and 6th Defendants filed their Defence through the Office of the Attorney General dated **21st February 2022**, and denied all the allegations made by the Plaintiff against them.

23. They also averred that there has been a long-protracted complaint over survey errors arising from the initial subdivision of **Cis Mara /Oldonyo Rasha/1**, that had concealed the actual area of the parcel of land. That the **Group Ranch Trustees** had petitioned the survey office to rectify the said area to enable fair distribution of excess land on the ground.
24. It was their further averment that prior to registration of the Mutation, the officials of the Group Ranch had through the assistance of the Surveyor established that the parcel of land fronting the road next to **Maji Moto Group Ranch** were wrongly surveyed leaving out a huge chunk of land.
25. Consequently, they denied the **particulars of Fraud** as particularized in **para 13** of the Plaint, and did put the Plaintiff to strict proof thereof. Further, they alleged that the creation of **Cis Mara/ Oldonyo Rasha/1300**, was the Surveyor's option of correcting the first survey omission that led to the grievances that had been brought up by the **Group Ranch Officials**.
26. The suit having been filed in **2021**, after several mentions, applications and compliance with **Order 11** of the **Civil Procedure Rules**, the matter proceeded for hearing on **12th March 2024**, wherein the Plaintiff gave evidence for himself and called one more witness to support his case.

27. The 1st to 3rd Defendants called two witnesses to support their case, while the 4th, 5th and 6th Defendants called one witness in support of their case.

PLAINTIFF'S CASE.

28. **PW1 Moitalel Ole Kenta**, adopted his witness statement dated **2nd February 2021**, as his evidence in chief. He also produced his list of documents even dated as **PEXBTS 1 to 8**, and further list of documents dated **20th July 2023** as **PEXBTS Nos 9 to 17, 18th to 20** respectively.

29. Further, he testified that the 1st and 2nd Defendants were officials of **Oldonyo Rasha Group Ranch**, which was dissolved after subdivision of the Group Ranch's land in 1997. The 3rd Defendant was known to him as a private Surveyor based at Narok.

30. With the adoption of his witness statement as his evidence in chief and production of exhibits, he denied that he has fenced any land that does not belong to him. It was his evidence that he has had the title for his parcel of land since **2004**, and has been in occupation of the land for more than **20 years**, without any interference or adverse claim from anyone.

31. Further, he testified that his parcel of land is defined by **Registry Index Map No 769**, and it is distinct as it borders the road that divides **Maasai Mara road** and the **Maji Moto road**, and that his land is the last in the area.

32. He denied ever encroaching on anyone parcel of land, and he did not have any boundary dispute with his neighbours. He testified that the 1st to 3rd Defendants were trying to create land, where it does not exist, and he was never summoned by the **Land Registrar** and/or **District Surveyor** over the alleged anomaly.
33. It was his further testimony that the **Oldonyo Rasha Group Ranch** does not exist as it was dissolved **28 years ago**, and he urged the court to allow his claim.
34. Upon being cross examined by **Ms Bosibori** for the 1st to 3rd Defendants, he denied that he fenced his land past his boundary. He confirmed that the acreage of his land was **62.45 Ha**, and that the Defendants hived off **20.23 Ha** from his land.
35. It was his further evidence that he is a member of **Oldonyo Rasha Group Ranch**, and his name appears in the register, but he bought the parcel of land among many others, though he was allocated land parcel **No 168** by the Group Ranch. He also stated that his land has not been affected on the ground, but on paper, and the Defendants subdivided his land on paper, yet there was no land beyond his land.
36. He confirmed that **Kelemet Ole Meingati** was the Chairman of the Group Ranch, when subdivision started in

1997, and he remained so until **22nd July 2020**, when he passed on.

37. On cross exam by **Ms Ngira** for 4th, 5th and 6th Defendants, he testified that he had reported the issue of fraud to the **DCIO** and **Ant-corruption Authorities**, and the Defendants were summoned and they recorded statements.
38. It was his evidence that the Mutation Forms were illegal as the Defendants did not indicate that the boundaries were ascertained. Further, he clarified that the initial Mutation Form for land parcel No.**1300**, was illegal because **Kelemet Ole Mengaiti** who is said to have signed the Mutation Form on **30th June 2021**, had died on **22nd July 2020**. It was his further evidence that he did not call a government surveyor to the ground to confirm his acreage, and that he bought this parcel of land in **2002** and in **2004** it was transferred to him. He also confirmed that he carried out a search to confirm that the land belonged to the person who sold it to him.
39. In re-exam, he stated that the **New Mutation Form** showed that **20.23 Ha** were hived off from his parcel of land, and this Mutation Form was received by the Land Registrar on **24th May 2021**. He reiterated that land parcel **No 1339** was created out of his land, and he did not need a report to confirm that his land had been hived off.

40. He also confirmed that the **Oldonyo Rasha Group Ranch** was dissolved after members were issued with the title deeds, and the officials of the **Group Ranch** had completed their exercise. Further, that even if he did not have the sale agreement with him, no one has ever disputed his ownership of the suit land. That even if **Kelemet Ole Meingati** died on **22nd July 2020**, his signature appeared in Mutation Form of **2021**, when he was already dead.
41. When PW1, was recalled for further evidence on **22nd July 2024**, he confirmed having received the title deed from the 4th Defendant for **Cis Mara Oldonyo Rasha/1300**, whose acreage was **454. 03 Ha**, and was in the names of **Kelemet Ole Meingati, Maraswa Ole Njapit** and **David Ole Nampaso**, which was registered on **24th March 2021**.
42. He claimed that the title deed was not in the name of the Group Ranch, but in the names of the officials, while **Kelemet Ole Meingati** was already deceased by then, and he could not own proprietary interest. He also testified that he cautioned title **No 1339**, which was a subdivision of **No 1300**, which land was **20.23 ha**, and the said title was opened on **4th May 2021**, after the first title deed was issued.
43. He argued that **Kelemet Ole Meingati** could not have executed the transfer of the second title for **Oldonyo Rasha Group Ranch**, which did not exist, and it was not

possible for the title deed to be issued in his name. Again, the application to **Land Control Board** for consent for subdivision of land Parcel **No 1300**, was executed by the same officials on **11th August 2021**, while **Kelemet** was deceased, and the **Consent** was issued on **1st April 2021**, before the application was made. To him, all those documents were manufactured and should not be considered by the court.

44. On cross exam by **Ms Bosibori**, he confirmed that he did not have the Death Certificate for **Kelemet Ole Meingati**, who had died on **22nd July 2020**.
45. On cross exam by **Ms Ngira**, he testified that the beacons for his land Parcel **No 169** were tampered with during the illegal creation of land parcel **No 1300**, and his land is the last one bordering **Maji Moto Group Ranch**.
46. **PW2 Ernest Ogwambu Musembi**, the Assistant Director of Land Adjudication and Settlement produced documents in relation to **Oldonyo Rasha Group Ranch**. He referred to a letter dated **26th July 1996**, wherein the Director confirmed having received the minutes requesting for dissolution of the Group Ranch, and consent was granted. He confirmed that **Oldonyo Rasha Group Ranch** was dissolved on **25th July 1996**, and the **1403 acreage** of land was subdivided to **227 members**, and title deeds were issued. He produced the said letter as exhibit for the Plaintiff.

47. This witness was not cross examined by the Defence, and therefore the plaintiff closed his case.

1ST, 2ND AND 3RD DEFENDANTS' CASE

48. **DW1 Maraswa Ole Njabit**, adopted his witness statement dated **8th November 2022**, as his evidence in chief. He further testified that he was the Secretary of **Oldonyo Rasha Group Ranch**, and that he carried out his duty on behalf of the members of Group Ranch, every meeting of the Group Ranch was held with his knowledge.

49. Further, he testified that even if the Group Ranch was dissolved, it still existed because it had not finalised the task of issuing title deeds to members. That there was a parcel of land that had not been subdivided due to the dispute between their **Group Ranch** and **Maji Moto Group Ranch**, and when Maji Moto Group Ranch subdivided their land, there was a portion that was left out.

50. Due to this left out land, the Lands Office and the private Surveyor, 3rd Defendant visited this parcel of land, and subdivided the same as confirmed from their list of documents, which he produced as **DEXBTS 1 TO 4**. He also produced other documents as **DEHBTS 5 TO 11** respectively.

51. He testified that he was present when the Land Registrar visited the ground, wherein the **454 Ha** had been included in the map, and the land was subdivided among the members. That when **Kelemet Ole Meingati** passed on, the Members met and elected **Koonyi** in place of **Kelemet**.
52. Upon being cross examined by **Ms Ngira** for the **Attorney General**, he testified that the lands Office notified them of this land that had not been subdivided, and it did not belong to anyone. That this land had been left out after the two Groups subdivided their land to the members.
53. He clarified that the Plaintiff was not a member of the **Group Ranch** but was an invitee, as he had requested the Group Ranch to allocate him land during subdivision, and he bought additional parcel of land.
54. It was his testimony that the title for land parcel **No 1300** was genuine title, and they did not interfere with the Plaintiff's land at all, as their land is separate from that of the Plaintiff.
55. On cross exam by **Mr Kairu Maina** for the Plaintiff, DW1 testified that he became the Secretary of the Group Ranch in **1979**, and there were **228 Members** as per their Register. Though the Plaintiff was not a member of the Group Ranch, his name was in the Area list as member **No 168**, and his allocated parcel of land was **No 168**.

56. He confirmed that he was a member of the committee that oversaw subdivisions, and issuance of title deeds, which were issued after due process was followed. It was his evidence that consent to subdivide the Group Ranch Land was for **300 parcels** of land, and they settled their members on these parcels of land.
57. Though he testified that there was a dispute between **Oldonyo Rasha Group ranch** and **Maji Moto Group Ranch**, he confirmed that he did not avail any evidence to that effect. He stated that the said dispute was never referred to court, and was settled out of court in **1997**. Further, that the portion of land that they subdivided in **2021**, was the entire dispute.
58. He also confirmed that at the time of subdivision, the Chairman was already deceased. He could not recall whether the **Group Ranch** formally wrote to the **Lands office** requesting to be allowed to sub divide the portion of land.
59. It was his evidence that he visited the **un-subdivided land** together with the Surveyor and other officials from the land's office. From the map shown to him, he confirmed the last land parcel was **No 169**, which belongs to the Plaintiff. However, it was his evidence that land parcel **No 1300** was not included in the Map.

60. DW1, insisted that during the preparation of the Mutation Form for land parcel **No. 1300**, the Chairman was alive but in ill health, and the Chairman signed the Mutation Form in August, but he was sick.
61. Though he testified that they paid 3rd Defendant, he did not have receipts to that effect. That after the ground work, they applied for consent from **Land Control Board** and **consent** was given on **1st April 2021**, and by then **Kelemet Ole Meingati** was already deceased.
62. It was his further evidence that from Land parcel **No 1300**, they excised **10 parcels** of land, though there are **14 title deeds**. He also confirmed that the title deed for land parcel **No 1300**, was in the name of the three officials of the Group Ranch, and thereafter they transferred the land from **Oldonyo Rasha Group** to other persons. He denied that they allocated any land to 3rd Defendant, and he did not know how he sold to other persons.
63. On re-exam, it was his evidence that there was no time line within which to subdivide the Group Ranch, and that the Lands office confirmed to them that there was land that required to be subdivided, and that their names in the title deed **No. 1300**, were indicated as officials of the Group Ranch, He denied that they subdivided the said land among themselves.

64. On **24th March 2025**, after **Mr Kilel** came on record for 1st to 3rd Defendants, he recalled DW1, for further evidence, wherein he identified the Map of the area produced by the Plaintiff, and testified that the Plaintiff owns land parcels **No 168** and **169**, which are separated by a road, and that the road is a boundary for all the parcels of land.
65. He further testified that during subdivision of land parcel **No 1300**, they did not go beyond parcel **No 169**, and that the Plaintiff has no claim over the land on their side of the land. Further, that the Plaintiff has no right to bar them from doing what they did on their portion of land. The 1st Defendant also denied that they hived **22 ha** from the Plaintiff's parcel of land, and he also denied that the Defendants have encroached on the Plaintiff's parcel of land.
66. Upon being cross examined by **Mr Kairu Maina** for the Plaintiff, he confirmed that the Group Ranch was dissolved in **1997**, and it ceased to exist. However, the officials remained for unfinished business.
67. Further, that the Map shows that the land was subdivided and given to different persons. He insisted that the Plaintiff is claiming land that does not belong to him, but to **Oldonyo Rasha Group Ranch**, and that the Plaintiff refused to cooperate with them, when the Land Registrar and Surveyor visited the ground. He urged the court to visit the **Locus quo**.

68. On cross exam by **Ms Nyawira** for the Attorney General, he confirmed that they realized in **1997**, that there was an extra land, and they allocated it to their members. That this land had been left by **Maji Moto Group Ranch** after they subdivided their land.
69. He also confirmed that they appointed a surveyor to carry out the process of subdivision, and followed the due process, before the said portion of land was subdivided, and given to their members.
70. On re-exam, he confirmed that there is one road from one end to the other, and the land in dispute is in between the two roads. It was his evidence that the subdivided land was not claimed by **Maji Moto Group Ranch**, and therefore, it belongs to **Oldonyo Rasha Group Ranch**.
71. **DW3 Nderitu Michael Kimendero**, the 3rd Defendant and a private surveyor adopted his witness statement as his evidence in chief.
72. Further, he testified that he did survey work for **Oldonyo Rasha Group Ranch** in **June 2020**, and the work for extension of land between **Oldonyo Rasha Group Ranch** and **Maji Moto Group Ranch**. That the two boundaries were defined by the two roads from **Masaai Mara-Naroosura Road** and **Massai Mara Sekenani Road**. He confirmed that he went to do the ground work in **June 2020**.

73. That he measured the acreage which was **454.03Ha** and drew the Map, as per the Mutation Form. That the approx. acreage was **1200**, and he identified the Mutation Form in court. He stated that the parcels of land have not crossed to the other side of the road, and that he did not interfere with the boundary for land parcel **No 169**, as the boundaries were fixed.
74. It was his evidence that the Mutation Forms were signed by the **Secretary** and **Treasurer** of the **Oldonyo Rasha Group Ranch** since the **Chairman** had passed on. He denied hiving off any land from the Plaintiff's parcel of land, and denied having trespassed on the Plaintiff's land, and there was no variation to the original Mutation Form.
75. He clarified that the roads are the boundaries separating the parcels of land, and he urged the court to visit the ground and establish the boundaries. Further, that the Land Registrar had visited the Ground and his report was similar to their Report, and the **omitted area** or **unregistered land** was given land parcel **No 1300**, and he did not do anything contrary to what the District Surveyor and Registrar recommended, as he picked the beacons and fixed the other parcels of land. He denied ever touching land parcel **No 169**, which belongs to the Plaintiff.
76. Upon being cross examined by **Mr Kairu Maina** for the Plaintiff, he confirmed that he is a Diploma Holder since 2002, and he is a **private surveyor**. It was his evidence

that he was instructed by officials of **Oldonyo Rasha Group Ranch**, but orally. He had no retainer, and he was not paid in cash, but through land parcel **No Cis Mara/Oldonyo Rasha/ 1302 of 24.29Ha**.

77. His instructions were to draw and subdivide the omitted land, and he used the letter from the District Surveyor dated **15th June 2020**. He confirmed visiting the ground with the **Secretary** and **Treasurer** of the Group Ranch in **June 2020**, and the District Surveyor had already given the land its registration Number, though he did not see any copy of the title deed.
78. That his primary duty was to pick the ground and draw the map, which he did, by using **GPS**, and Coordinates, and the area was **Block 1300**.
79. He identified the title deed for **Block 1300**, as having been issued on **24th March 2021**, and the block was open for subdivision on **4th May 2021**, and therefore, at the time of instructions, the title deed was not in existence.
80. He confirmed that he subdivided the land which the District Surveyor had given as **No 1300**, and he prepared the Mutation Form, and the said Mutation Form was signed by three persons. He was given land parcel **No 1302** in **June 2020**, before they were created and he intended to sell it to **Kayioni Ole Kasero** on **4th August 2020**.

81. He also testified that land parcels **Nos Cis-Mara/Oldonyo Rasha 1303a -1370**, were transferred to other persons, and by then **Kelemet Ole Meingati** was deceased, and he was aware that his signature was used long after his death.
82. On cross exam by **Ms Nyawira**, for the Attorney General, he testified that the dispute is whether land parcel **No 1300** has encroached on the Plaintiff's land parcel **No 169**, and such dispute can only be determined by measuring the parcels of land. He urged the court to visit the ground and determine the extent of each parcel of land.
83. On re-exam, it was his evidence that the Group Ranch did not complain against him, and the Mutation Form was drawn by the District Surveyor, and he did not play any role, and there was nothing irregular in what he did. He also denied that the resultant subdivisions of land parcel **No 1300**, being land parcels **Nos.1339 to 1370**, had encroached on land parcel **No 169**. He reiterated that a ground visit would solve the dispute and the issues at hand.

4TH , 5TH AND 6TH DEFENDANTS' CASE

84. **DW2 Philip Mathew Odida**, the District Land Registrar, Narok adopted his Witness statement dated **May 2025**, as his evidence in chief. He also produced his list of documents as **DEXBTS NO 1-4**. He relied entirely on his witness statement as his evidence in court.

85. Upon being cross examined by **Mr Kairu Maina** for the Plaintiff, he testified that he was not actively involved in the activities that lay the foundation of this case. He further stated that what he recorded is from the information on record, and he was not present when the documents were prepared. That the documents were in the parcel file.
86. He confirmed that all the documents produced were copies, and not the original documents, and he did not know the history of the suit land. He further testified that the District Surveyor visited the Group Ranch in **2022**, as a follow up to various complaints. Though he had not seen the said complaints.
87. Though there was allegation of a chunk of land which had not been captured in the Map, he had not seen the said Map. He did not have evidence to show how the alleged area was picked, as that is a reserve of the surveyor. He also confirmed the title in issue was issued on **24th March 2021**, in the names of **Kelemet Ole Meingati** and **Maraswa Ole Njapit**, although it was supposed to be registered in the name of the **Group Ranch**.
88. He stated that he was surprised that **Kelemet Ole Meingati** was deceased at the time of registration of the title deed, and the consent to transfer was issued on **1st April 2021**, persuade to the application of **30th March 2021**, whereas **Kelemet** had died year earlier.

89. He identified the Green Card for **Cis-Mara/Oldonyo Rasha/1339**, which was first registered in the name of the **Oldonyo Rasha Group Ranch**, although by then the **Group Ranch** had been dissolved. To him, the intention of registration was good, but the procedure was wrong.
90. Upon cross exam by **Mr Kilel** for 1st to 3rd Defendants, he reiterated that the procedure used to register the suit land was wrong. That the District Surveyor had confirmed there was an **extra land**, and each member was supposed to get **100acres**.
91. It was his evidence that the Group Ranch was supposed to decide what to do with the **extra land**, but the Land Registrar was to be invited to draw boundaries, but he has never been to the ground. Further, he stated that land parcel **No 1339** was approx. **20.23 Ha**, and is registered in the name of the **Group Ranch**, and the Plaintiff land is **169**, and there was no evidence that land parcel **No 1339**, was from **169**, as it came from parcel **No. 1300**, and Plaintiff was not entitled to any portion of parcel **No.1300**.
92. He clarified that land parcel **No 1339**, could only be established by visiting the ground, as it might be sharing boundary with parcel **No 169**, belonging to the Plaintiff. However, the Land Registrar and Surveyor did not deal with land parcel **No 169**, which the Plaintiff is seeking protection over.

93. **Ms Nyawira** did not re-exam the witness, and that evidence of the land Registrar marked the close of the **4th, 5th** and **6th Defendants Defence.**
94. After the close of the Defence, the 1st, 2nd and 3rd Defendants applied for a ground visit by the court, which application was opposed by the Plaintiff and supported by the office of the Attorney General.
95. Vide a ruling of this court dated, **3rd April 2025**, the court allowed the ground visit by **District Land Registrar** and **Surveyor** to ascertain the size of Land parcel **No 169** and **1300**, and prepare a Report on the ground visit.
96. Following the above Court order, the ground was visited on **30th April 2025**, by the **District Land Registrar, Surveyor** and a private Surveyor **Jacob Mutembei**, from **Evirnosurv Systems** who had been contracted by the Plaintiff. The parties and their advocates were present. The two ground reports were filed in court, which the court will consider alongside the available evidence. However, the two ground Reports have different findings.
97. The parties filed their respective written submissions as directed by the court. The Plaintiff filed his submissions dated **23rd June 2025**, through **Kairu Maina & Associates** and urged the court to allow his claim.
98. The Plaintiff set out five issues for determination being;

- i) Is the plaintiff the legitimate proprietor of the land in question;**
- ii) Was the procedure adopted by the Defendants fraudulent;**
- iii) Legitimacy of the group Ranch; iv) should the court aid illegality;**
- iv) Does the case have merit.**

99. On whether the plaintiff is the legitimate proprietor of the land in dispute, the Plaintiff submitted that he purchased the land parcel **No Cis Mara/ Oldonyo Rasha/169**, in **2002**, and remain in ownership, which remained undisputed until when the 1st to 3rd Defendants **illegally** created land parcel **No. Cis-Mara/Oldonyo Rasha/1300**, and hived off **20.23ha** from his parcel of land.

100. It was his submissions that there was no material on record to support the contention that there exists land beyond the Plaintiff's parcel of land. The plaintiff relied on **sections 89, 107** of the **Evidence Act** and **section 30** of the **Land Registration Act**, to support his submissions.

101. It was his further submissions that he has been in active possession of his suit land since **2002**, without interference from anyone until **2021**, when the Defendants interfered with his possession, by creating an illegal title and identified his land to strangers with intention of transferring the same.

102. Therefore, the Plaintiff has proven that he is the legitimate proprietor of the subject land containing measurements approximate to the acreages provided for in the titled deed.

103. **On whether the procedure adopted by the Defendants was fraudulent**, he submitted that the claim that he has encroached on the land belonging to the defunct **Group Ranch** was made about **26 years** after the dissolution of the Group Ranch and distribution of the resultant subdivisions, to members.

104. He argued that it was inconceivable that **1121 Acres** of land could have been left out without mapping, registration, and without being noticed by the Land Surveyor and without R.I.M, and that it took the Defendants **26 years** to notice that big chunk of land.

105. Further, he submitted that the Defendants prepared the Mutation Form dated **19th August 2020**, and allegedly created **Cis Mara/Oldonyo Rasha /1300**, which was allegedly registered on **24th May 2021**, in the name of the three officers of the Group Ranch and a further **14 Subdivisions** were created from block **1300**. That the Defendants had allegedly applied for **Land Control Board Consent** on **30th March 2021**, and the consent was issued on **1st April 2021**, and a register for the new subdivision was opened in the name of the Defunct **Oldonyo Rasha Group Ranch**. Further transfers were

done from the Group Ranch to individuals and **DW1**, being one of them.

106. It was his further submissions that the purported **block 1300**, having been identified as belonging to the **Group Ranch**, then it ought to have been classified as **Community Land** as defined by **section 63** of the Constitution.

107. The Plaintiff argued that **section 8** of the **Community Land Act**, establishes the procedure for recognition and adjudication of the community land, which the Defendants did not follow. Therefore, the procedure used to create **Block 1300**, was fraudulent and wrong.

108. **On legitimacy of the Group Ranch**, it was submitted that **Oldonyo Rasha Group Ranch** was dissolved after the consent of the Director Land Adjudication and Settlement was issued through a letter dated **26th July 1996**, and the **Consent** to subdivide the Group Ranch land was issued on **17th July 1997**.

109. Therefore, the Group Ranch mandate was concluded upon distribution of the land to members and its dissolution. The Group Ranch did not exist after dissolution. The Plaintiff further submitted that there was no evidence that the Group Ranch was given Life after dissolution, and their action was voidable. Reliance was sought in the case of

Dennis Ololoigero & 2 Others vs The Art of Ventures Ltd & 2 Others (2006) eklr.

110. On whether the court should aid illegality, the Plaintiff relied on the cases of ***Wambui vs Mwangi & 3 others (Civil Appeal No 465 of 2019) (2021 KESA 144 (KLR) 19TH November 2021)***, which relied on the principles set out in the cases of ***Ardhi Highway Developers Ltd vs West End Butchery Ltd & 6Others; Alberta Mae Gacie vs Attorney General &4 Others; Joseph Muriithi Njeru Vs Mary Wanjiru Njuguna & Another (2018) eklr & Benjamin Mac Foy vs United Africa Co Ltd (961) 2 ALL ER 1169***. Among the principles set out is ***“where an act is a nullity, it is void and every proceedings founded on it is also in law a nullity.”***

111. The Plaintiff argued that the 1st to 3rd Defendants cannot purport to create an illegal parcel of land within the Plaintiff’s parcel of land by way of ***voidable mechanism*** and then urge the court to validate the same.

112. On whether the Plaintiff’s case has merit, it was submitted that his right to property which is protected by ***Article 40*** of the ***Constitution*** as well as ***sections 24, 25 & 26*** of the ***Land Registration Act*** have been violated, and this suit is brought about to protect his right. Reliance was sought in the case of ***Marima & 6 Others Vs Njabit & 5 Others (ELC No E018 OF 2024) KEELC 4038 (KLR) 21st may 2024***).

113. On costs, the Plaintiff relied on **section 27** of the **Civil Procedure Act**, and urged the court to use its discretion and award him costs being the successful litigant in this case, and is entitled to costs. He urged the court to allow his claim as prayed.

114. The 1st to 3rd Defendants filed their written submissions dated **3rd October 2025**, through **Lelei & Associates Advocates**, identified four issues for determinations being;

- i) Who is the legal owner of the suit property;**
- ii) Whether the claim of fraud have been met;**
- iii) Whether the dissolution of a Group Ranch can co -exist with unresolved land issues;**
- iv) Whether the plaintiff is entitled to the orders sought.**

115. **On who is the legal owner of the suit property**, the Defendants submitted that it was important to trace the root of the title through the documentary evidence, as was held in the cases of **Caroline Awinja Ochieng & Another vs Jane Anne Mbithe Gitau & 20Others (2015) eklr; Chutha Ndungu (2024) KECA 418(KLR); Wanjala & Another vs Enock Civil Appeal No E011 & E008 of 2023(Consolidated).**

116. The Defendants submitted that the Plaintiff's parcel of land **Cis Mara/ Oldonyo Rasha/ 169**, has been fenced off beyond the actual acreage, and that action constitutes an encroachment on land parcel **No Cis Mara/ Oldonyo Rasha/1300**, belonging to the community. They relied on **section 43** of the **Community Land Act**, which condemns unlawful occupation of community land.

117. **On whether the claim has been proven**, the Defendants relied on the case of **Koinange & 13 Others Vs Charles Karuga Koinange 1986 klr**, where the court held the onus of proving fraud is on the person alleging it. Since the Plaintiff had alleged fraud on the signatures affixed on the Mutation Form, then the onus was upon him to proof such fraud.

118. Further, they submitted that the **block No 1300**, was initially registered in the name of individuals who were officials of the Group Ranch as provided by **section 8(2) of the Land (Group Representatives) Act No 26 of 1968**, and it was never subdivided among the said officials.

119. It was their further submissions that the Plaintiff did not discharge his burden of proof as provided by **Section 107** of the **Evidence Act**. Reliance was sought in the cases of **Rosemary Wanjiku Murithi vs George Maina Ndinwa (2014) eklr; Alice Wanjiru Ruhu Vs Messiac Assembly of Yahwh (2021) eklr; Emfil Ltd vs**

Registrar of Titles Mombasa & Ignatius Makau Mutisya vs Reuben Musyoki Muli (2015) eklr.

120. **On whether the dissolution of a Group Ranch can co-exist with unresolved issues**, it was submitted that though **Oldonyo Rasha Group Ranch** had been dissolved, it was yet to finalize some tasks as some members had not collected their title deeds.
121. Further, the Group Ranch had not discharged its mandate concerning the undistributed portion of **Community Land**, and therefore the **dissolved Group Ranch** could co-exist with unresolved issues.
122. **On whether the Plaintiff is entitled to the orders sought**, it was submitted that since the site visit did not yield positive results to assist the court unless the acreage of **Cis Mara/Oldonyo Rasha/ 168** was established, then it was prudent for the court to issue an order for site visit to **Cis Mara/Oldonyo Rasha/168**, for the court to make an informed decision on the issues advanced by the parties.
123. The Defendants relied on the cases of **Douglas Mbugua Mungai vs Harrison M & Stephen Boro Gitiha vs Family Finance Building Society & 3 Others Civil Application No 263 of 2009**, and urged the court to allow a site visit.

124. The 4th, 5th and 6th Defendants filed their written submissions dated **1st August 2025**, through **Lynn Ngira, a Senior State Counsel** in the Office of the **Attorney General** and identified four issues for determination being;

- i) Who is the legal owner of the suit property;**
- ii) Has the allegation of fraud been established;**
- iii) Whether the Plaintiff is entitled to the relief and prayers sought;**
- iv) Who should bear costs of the suit;**

125. **On who is the legal and lawful owner of the suit property** these Defendants submitted that to determine this issue, the court need to investigate the historical ownership. land use, and any relevant documentation, through evidence of experts such as the land surveyors and Registrar. Further, that the root of the title needs to be established.

126. The Defendants relied on several decided cases; **Jacob Wekesa Bokoko Balongo vs Kincho Olokio Adeya & Another (2020) eklr; Gathundu (As Administrator of the Estate of the late Thumbi Kariuki & 3 Others Vs Registrar & 7 Others (Civil Appeal E505 of 2020) (Consolidated) (20240 KECA 668 (KLR); Munyu Maina vs Hiram Gathiha Maina Civil Appeal No 239 of 2009; Mistry Amar Singh vs Kulubya 1963 E.A 408.**

127. ***On whether the allegations of fraud have been established***, the 4th, 5th and 6th Defendants submitted that ‘*he who alleges must prove*’ as stated in **sections 107, 109 and 112** of the **Evidence Act**, and the burden of proof herein was on the Plaintiff who did not discharge the same is required by the law.

128. Reliance was sought in the case of ***Kuria Kiarie & 2 Others vs Sammy Magera (2018) eklr; Mumbi M’Nabea vs David M.Wachira (2016) eklr;Demutilla Nanyama Pururmu vs Salim Mohamed Salim (2021) eklr***, which relied on the case of ***Vijay Morjaria vs Nansingh Madhusingh Darbar & Another (2000) eklr***; where the court held that fraud must not only be pleaded and particularized, but strictly proven.

129. ***On whether the Plaintiff is entitled to the reliefs and prayers sought***, they submitted that where a party does not receive a good title to the suit property, then the transaction is ***void ab initio***, as was held in the case of ***Macfoy vs United Africa Co. Ltd 9 1961) 3ALL E.R 1169***.

130. ***On who should bear costs of the suit***, these Defendants submitted that costs follow the event, as costs are used to compensate the successful party for the trouble taken in prosecuting or defending the suit. reliance was sought in **Section 27** of the **Civil Procedure Act** and

the case of **Joseph Oduor Anode vs Kenya Red Cross Society, HCCC No. 66 of 2009(2012) eklr.**

131. In conclusion, the 4th, 5th and 6th Defendants submitted that the issue of overlap of the parcels of land and encroachment can best be resolved as provided by **sections 18, 19 and 20 of the Land Registration Act.** Further, that the unresolved issue of whether the creation of land parcel **No Cis Mara/ Oldonyo Rasha/1300**, did encroach on the Plaintiff's **20.23 ha**, the court will need to establish whether the said creation did affect the Plaintiff's acreage, by a site visit.

132. Reliance was sought in the case of **Beatrice Ngonyo Ndungu & Another vs Samuel K. Kanyoro & 2 others (2017) eklr**, where the court held;

“A visit to the site by a judge who is not a survey expert and who is not armed with survey equipment would not yield anything. An expert report by a surveyor complied with the aid of survey equipment would certainly be more useful”.

133. Ultimately the 4th, 5th and 6th Defendants urged the court to dismiss the Plaintiff's suit and direct that the Plaintiff must first seek determination from the Land Registrar before invoking the jurisdiction of this Court.

134. The above are the pleadings by the parties herein, the evidence adduced in court, and the exhibits produced in support of the respective positions of the parties, the rival written submissions and the cited authorities which this court has carefully read and considered. The court has also considered the relevant provisions of law and finds the issues for determination are; -

- i) Whether the Plaintiff is entitled to the prayers sought in his claim?***
- ii) Who should bear costs of this suit?***

135. In determining the above issues, the court will take into consideration the issues set out by the parties herein, and renders itself as follows;

136. From the available evidence, there is no doubt that the Plaintiff herein is the registered owner of land parcel **No Cis Mara/Oldonyo Rasha/169**, wherein he acquired a title deed in **2004**. From the title deed produced in court, which was issued on **12th March 2004**, the said parcel of Land is **62.45Ha**.

137. The Plaintiff testified that he has been in possession and occupation of the said parcel of land from the date of acquisition, **enjoying quiet and peaceful possession**, without any interference until **June 2021**, when he learnt that **20.23 ha** had been fraudulently hived off his suit land, with the aim of transferring to other third parties.

138. There is no doubt that this parcel **No 169**, was a subdivision of the larger **Cis Mara/Oldonyo Rasha/1**, which parcel of land belonged to **Oldonyo Rasha Group Ranch**, which was dissolved in **1997**, after subdivision of its land and distribution to its members. After the dissolution and subdivision of the **Group Ranch Land**, the said Group Ranch cannot be said to be in existence. See the case of **Bowen v Chebungei (Environment and Land Appeal 12 of 2023) [2024] KEELC 227 (KLR) (23 January 2024) (Judgment)**.

139. On the face of it, after dissolution of the Group Ranch, the said Group Ranch ceased to exist and it is deemed to be legally dissolved, apart from carrying out a few activities during the transition Period. These activities may include distributing out of uncollected titles and ensuring the titles are issued to the rightful members. See the case of **Dennis Olooiigera & 2 Others vs The Art Ventures Ltd & 2 Others (2006) eklr**.

140. However, once the subdivision of the Group Ranch Land is complete and the title deeds are distributed to the allottees, and mother title is surrendered and cancelled, the Group Ranch ceases to be a legal entity, and cannot transact for the Group Ranch. Further, the resultant subdivisions after issuance of title deeds become private properties, and are managed by the individuals title holders without holding involving the Group Ranch. See the case of **Marigat Group Ranch & 4 others v Kisenger &**

another (ELC 49 of 2022 & 49B of 2023) (Environment & Land Court at Iten, judgment 19 September 2023)

141. From the evidence on record, ***Oldonyo Rasha Group Ranch*** was dissolved in ***1997***, after it applied to the Director Land Adjudication and Settlement for its dissolution. PW2, produced a List of all the dissolved Group Ranch in Kenya, and ***Oldonyo Rasha Group Ranch*** was one of those dissolved Group Ranches.

142. Further it is evident that after dissolution of the said Group Ranch, the Officials remained in office for purposes of specific legal purposes, which role was more for the purposes of winding up, the Group Ranch Affairs such as overseeing the final subdivision and transfer of land to registered members. See the case of ***Tamei & 416 others vs Kaiye & 9 others [2024] eklr***

143. Further, it is not in doubt that after the dissolution of the Group Ranch, as ***Oldonyo Rasha Group Ranch*** did in ***1997***, its legal capacity was restricted, to only finalizing existing obligations and completing subdivisions of land. The said officials cannot enter into new transaction for the Group Ranch after dissolution such as selling land and/or allocating land to private individuals. See the ***section 13*** of the ***LGR Act 1968***.

144. From the above analysis, it is evident that after the ***Oldonyo Rasha Group Ranch*** was dissolved in ***1997***, the

officials who remained in the Office being **Kelemet Ole Meingati** as the Chairman, **Maraswa Ole Njabit** as the Secretary and **Nderi Ole Nampaso** as the treasurer remained for specific purpose. As observed above, their role was transitional in nature, and they could not enter into new transaction for a dissolved Group, and could not instruct any surveyor for a major subdivision since the Group Ranch stood dissolved.

145. Further, during the proceedings all the witnesses confirmed that **Kelemet Ole Meingati**, the alleged Chairman of the Group Ranch died in **July 2020**, and the transactions that have brought about this suit were signed for in the year **2021** after the demise of **Kelemet Ole Meingati**.

146. The activity that has brought about this suit is the alleged registration of land parcel **No Cis Mara/Oldonyo Rasha/1300**, which was allegedly created in **2021**, as is evident from the title deed produced by the Land Registrar- DW2. The 1st, 2nd and 3rd Defendants alleged that after subdivision and distribution of **Oldonyo Rasha Group Ranch** to its members, there remained a huge portion of about **454. 03 Ha**, which remained undistributed and unmapped.

147. The Defendants claimed that due to the said discovery, the officials of the Group Ranch applied to the Lands office for survey of the said **undistributed** and **unmapped** land,

which was done by the Surveyor, and the land was given a number as **Cis Mara/Oldonyo Rasha/1300**, registered in the names of the three officials on **24th March 2021**. By then **Kelemet Ole Meingati** was deceased. Further, if the land was for the Group Ranch, how then could it have been registered in the names of the three officials of a dissolved Group Ranch?

148. Later, the suit land was subdivided into **14 parcels** of land **Cis Mara /Oldonyo Rasha/1339**, being one of them. These new parcels of land were registered in the names of new individuals, and it is not clear whether the said registered individuals were original members, and how they were allocated the discovered unmapped land? Why was the **454.03Ha**, not distributed to all the original members?

149. The Plaintiff averred that this land parcel **No 1339**, has encroached on his parcel of land, and due to the said registration of the illegal titles, the Defendants have hived off **20.23 ha** from his parcel of land. He urged the court to declare the registration of land parcel **No Cis Mara/Oldonyo Rasha/1339**, was fraudulently done, and the same should be nullified.

150. The Defendants have opposed the Plaintiff's suit and insisted that the Plaintiff fenced off more land than he is entitled to, and has grabbed the land from the Group Ranch, and his claim should be dismissed. Further, the

Defendants urged the court to direct that there be another **visit to the ground** to pick out the acreage of land parcels **No 168 ,169** and **1339** to determine whether there is any encroachment.

151. It is evident that land Parcel No **Cis Mara/ Oldonyo Rasha/1300**, which is the original title that gave rise to parcel **No 1339**, was created in **2021**. This was about **26 years** after the dissolution of the **Oldonyo Rasha Group Ranch**, and after the death of one **Kelemet Ole Meingati**, who allegedly signed the Mutation Form, and the transfer Forms.

152. The court will now proceed to determine whether the said creation of Land Parcel No **Cis Mara/Oldonyo Rasha/1300**, was lawful, before determining the merit of the Defendants application at the judgment stage for ground visit to determine the acreage of land parcels **Nos 168** and **169**, and the merit of the Plaintiff's case.

153. From the onset, it is not in doubt that the original **Oldonyo Rasha Group Ranch** land was subdivided in **1997**, and the Group Ranch was dissolved after an application was made to the Director of Land Adjudication and Settlement through the minutes of the General meeting held on **9th July 1996**, wherein the majority of the members present passed a resolution to dissolve the said Group Representative, and subdision of the **Group Ranch**.

154. The Director gave consent to dissolve the Group, vide a letter dated **26th July 1996** and which letter was produced by PW2. The said letter is also contained in the list of documents for the Defendants. The said letter had condition that the Chairman of the Group was to remain in the office “ ...to *sign all necessary documents during the ranch subdivision process , to make sure the exercise was fair to all registered members...make sure each member was allocated with the individual plot with title deed...after the exercise was fulfilled, the chairman was to inform the office of the Director and finally dissolve the Group.*

155. From the available evidence, it is clear that the **Oldonyo Rasha Group** made an application for Consent to subdivide to the Chairman of the **Land Control Board** on **17th July 1997**, which consent was given, and the **Oldonyo Rasha Group Ranch Land** was subdivided among **321** members as is evident from the Area list produced in court as exhibit.

156. After this exercise of subdivision of the **Group Ranch Land**, the Group stood dissolved, and there is no evidence that any land was left unmapped. A Registry Map was prepared, and members were issued with individual title deeds under **“The Registered Land Act Cap 300(Repealed).”**

157. As registered proprietors of their respective parcels of land, the title holders became the **absolute** and

indefeasible owners of the said registered parcels of land, with all rights and privileges appurtenant thereto as provided by **section 27** of said repealed Act. The Plaintiff being the title holder of land parcels **Nos 168** and **169** was one of such proprietors with such right and privileges. This position is now mirrored in **section 24** of the **Land Registration Act 2012**.

158. Further, **section 28** of the said **repealed Cap 300** provided that the right of such registered owner cannot be defeated except as provided by the Law or the Act. This provision of law is reiterated in **section 25(1)** of the **Land Registration Act**, which states;-

1) “The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

159. The Plaintiff testified that he has been in **possession** and **occupation** of his parcel of land, as shown to him after allocation and purchase, and has fenced the said land and used it without any interference. However, in **June 2021**, after more than **20 years**, he learnt that a new title had been created without his knowledge and/ or consent and it

hived off **20.23 ha** from his parcel of land. This new parcel was a subdivision of **Cis Mara/OldonyoRasha/1300**, which was created after the alleged officials of the dissolved **Group Ranch** in conjunction with the 4th and 5th Defendants created a Mutation Form for the said parcel of land, and which picking of the beacons was done by the 3rd Defendant.

160. The 3rd Defendant told the court and stated in his witness statement that on **7th June 2020**, the officials of **Oldonyo Rasha Group Ranch** approached him, to consult on survey work on part of **Oldonyo Rasha Ranch**. It is evident by then the Group Ranch had been dissolved, and all the subdivided land had been issued to their respective title holders. There was therefore no legal entity by the name of **Oldonyo Rasha Group**, that could give new instructions. See the case of **Elangata-Ewuas Group Ranch (Suing through its Registered Group Ranch Representative Officials) v County Government of Kajjado & 2 others (Environment & Land Case 443 A of 2017) [2024] KEELC 4189 (KLR) (13 May 2024) (Judgment)**

161. The said officials of a dissolved **Group Ranch (Oldonyo Rasha Group Ranch)** could not unilaterally give new instructions or seek to consult a surveyor regarding land subdivision as they did since their legal mandate ceased upon dissolution. The law provided that any amendments to land boundaries or survey plans require approval from

the Ministry of Lands, Land Adjudication Officers, and consent of the members. See **section 11** of the Community **Land Act**

162. The alleged officials did not seek consent from the relevant office. The Defendants had alleged that after the dispute with **Maji Moto Group Ranch** was finalized, then there remained a huge chunk of land of about **454.03 Ha**, which remained unmapped, and that the parcel of land that the 1st and 2nd Defendants contacted the 3rd Defendant to pick it on the Ground. That picking of the ground was done after about **26 years**, and there was no evidence the neighbouring land owners were involved.

163. Though it is doubtful how such a huge track of land could remain unmapped for such a long time, after subdivision of **Cis Mara /Oldonyo Rasha/1**, was effected in **1997**, even with such discovery, the officials of the dissolved Group Ranch were not the ones with mandate to give directions on its survey and subdivision. This is because the Community Land Act was already in force see the case of **Kelvin & 5 others vs Ng'aari Group Ranch & 7 others (2025)**.

164. This is because once the **Group Ranch** is dissolved, the registered officials or former representatives lack the legal authority or they loss of authority to give new directions to surveyors and /or to alter cadastral maps (R.I.M), since any discovery of unmapped land as alleged by the defendants

becomes a community land. See the case of ***Elangata Wuas Group Ranch (Suing through it Registered Group Ranch Officials) v County Government of Kajiado & 2 others [2025] KEELC 6978 (KLR)***.

165. **Article 63(3)** of the Constitution provided as follows; -

“Any unregistered community land shall be held in trust by County Governments on behalf of the communities for which it is held”.

166. If at all there was any unmapped land, and thus ***unregistered land***, since it was allegedly done after the ***Community Land Act 2016*** had come into force, then the provisions of the Community Land Act, was to be adhered to ***Section 4(3)*** of the ***Community Land Act, (Act No. 27 of 2016)*** provided as follows.

“Community Land shall vest in the community and may be held under any of the following tenure system -

a. Customary

b. Freehold

c. Leasehold, and

d. Such other tenure system recognized under this Act or other written law”.

167. If there was indeed unmapped or unregistered land that was allegedly discovered after ***26 years***, then an approval process was required as provided by the ***Community Land Act***. It is trite that after ***2017***, any

changes to subdivision plans on community land, must comply with the **Community Land Act**, and be approved by the relevant **Land Adjudication Officer** and not by former officials of the Group Ranch. The **1st, 2nd** and **Kelemet Ole Meingaiti(deceased)**, could not instruct the surveyor or even complain to the Land Registrar as they did about unmapped land.

168. Further, it is also evident that after **7th June 2020**, the activities that followed were done in such a haste thus raising suspicion on how the creation of land parcel **No Cis Mara/Oldonyo Rasha/1300** was done. The 3rd Defendant informed the court that on **8th June 2020**, he visited the Ground of the suit land with the alleged officials of the **dissolved Group Ranch**, and they found that **454.03 Ha** that was unmapped. This parcel of land was allegedly bordering several other parcels of land, but the said neighbours were not informed or invited. The Defendants alleged that the Plaintiff had fenced off his land beyond his actual acreage, but there was no evidence that he was involved in the picking of the ground on **8th June 2020**.

169. The 3rd Defendant further testified that he advised the **District Land Registrar** on the issuance of a title deed, and on **9th June 2020**, the District Surveyor and Land Registrar visited the ground, and it was agreed that the 3rd Defendant to pick the ground measurements, which he did on **10th June 2020**, and completed on **12th June 2020**. That he presented the drawing to the District Surveyor on

13th June 2020, and he was issued with the Mutation Form to draw the map and measurements on **14th June 2020**. He returned the Mutation Form on **15th June 2020**, to the District Surveyor, and the Mutation was given parcel No **Cis Mara/Oldonyo Rasha/1300**.

170. The above activities were done in such a breakneck speed, but the only concern is that the Mutation and subdivision was affecting existing land parcels that were in existence since **1997**, but the owners of the said parcels of land were not consulted or involved. Further, the 3rd Defendant admitted that they went back for subdivision of the suit land into **14 parcels** of land on **10th July 2020**.

171. By the time of subdivision of the **14 parcels** of land, **Kelemet Ole Meingaiti** was allegedly unwell, and he died shortly thereafter. However, the Mutation Forms for subdivision and application for consent to subdivide contained his thumb print which was affixed long after his death. It was averred that **Kelemet Ole Meingaiti**, who was alleged to be the Chairman of he dissolved Group died in **22nd July 2020**.

172. It is therefore evident that by the time the 3rd Defendant went to the District Surveyor to pick another **Mutation Form** to draw the subdivision, and returning it on **30th July 2020**, with drawn mutation subdivisions bearing land parcels **No Cis Mara/Oldonyo Rasha/ 1339, 1301-**

1313&1370, Kelemet Ole Meingaiti was deceased, and could not have affixed his thumb print as alleged.

173. The alleged contracted surveyor ought to have submitted the subdivision plans to the District Land Registry for approval based on approved subdivision schemes, and the 3rd Defendant therefore could not act on instructions from individuals who were lacking legal capacity or standing to represent the community. If indeed there was unregistered land, which has not been adequately proved, under the **Community Land Act (2016)**, then such land transitioned to community land instead of Group Representatives Land, and was to be under the **Community Land Management Committee (CLMC)**. See **Section 8** of **Community Land Act**.

174. The creation of land parcel **No Cis Mara/Oldonyo Rasha/1300**, flouted the above procedure and was not procedurally created, and so are the resultant subdivisions. If the Mutation that created Land parcel **No 1300**, was prepared through instructions issued by individuals who had no legal capacity to do so, and which Mutation was allegedly signed by a deceased person, then the court finds and holds that the said process is **void**, and the created parcel of land is **null** and void ab initio, see the case of **Benjamin Mac Foy vs United Africa Co Ltd (1961) 2 ALL ER 1169**, where the court held;-

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no

need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse...

175. The Land Registrar ***Philip Odida*** had indeed confirmed that the procedure used to create land parcel ***No. 1300*** was wrong. The Mutation Form was signed by a deceased person, and he wondered how that was possible. The Land Registrar also claimed he never saw any complaint on the dispute about unmapped ***Oldonyo Rasha Group Ranch*** Land. It is also trite that a Mutation Form to be validly processed by the Land Registrar, it must be signed by the current legally recognized officials of the Group Ranch. In this case the Group Ranch had been dissolved. The alleged official was also deceased and his authority to act on behalf of the Group Ranch ended upon his death. See ***section 9(3)*** of the ***Land Group Representative Act***.

176. Having found that the Mutation and Creation of Land Parcel No. ***Cis Mara/Oldonyo Rasha /1300***, was unlawful, unprocedural and illegal, it follows that the subdivision of the said parcels are ***void*** from conception and cannot stand, as provided by ***section 80*** of the ***Land Registration Act***, having found the Mutation that gave

rise to the subdivision of land parcels **No 1339, 13301- & 13370**, was unlawful, the court finds that that said resultant subdivisions are candidates of cancellation.

177. Consequently, the court finds and holds that the Plaintiff herein has proved his case on the required standard of balance of probabilities. For the above reasons, this court enters judgment for the Plaintiff against the Defendants jointly and severally in terms of **prayers No 1, 2, 3, and 5. Of his claim dated 2nd July 2021.**

178. On the prayers sought by the Defendants, having found that the Mutation and creation of **Cis Mara/Oldonyo/Rasha /1300**, was **unlawful, unprocedural** and **void ab initio**, this court finds that it cannot condone an **illegality** by ordering for a site visit to pick the boundaries of land parcel **No 168** and **169**. The two parcels of land have been in existence since **1997**, and the **Oldonyo Rasha Group Ranch** was dissolved without any claim against the two parcels of land.

179. In any event, the dispute herein emanates from an activity or instructions of officials of a dissolved Group Ranch, who had no legal capacity to carry out activities on behalf of a dissolved Group Ranch, which was not in existence.

180. The said prayer as sought by the Defendants is **not merited**, and is disallowed on its entirety.

181. In nutshell Judgment is entered for the Plaintiff against the Defendants jointly and severally as set out in para 177 above.

It is so ordered.

Dated, signed & delivered virtually at Narok this 24th day of March 2026.

***L. Gacheru
Judge***

Delivered virtually in the presence of.

Elijah Meyoki - Court Assistant

Mr. Kairu Maina for the Plaintiff

Mr. Kilel for 1st to 3rd Defendants

Ms. Ngira for 4th to 6th Defendants.

***L. Gacheru
Judge***