

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. 37 OF 2020**

**PHYLIS      JEROTICH      MUTWOL-----**  
**PLAINTIFF**

**VERSUS**

**EMMY      JEPKEMOI      MUTWOL-----1<sup>ST</sup>**  
**DEFENDANT**

**AGRICULTURAL      FINANCE      CORPORTATION-----2<sup>ND</sup>**  
**DEFENDANT**

**COUNTY LAND REGISTRAR,  
TRANS-NZOIA      COUNTY-----3<sup>RD</sup>**  
**DEFENDANT**

**SARAH      CHEPTENGENY      BUSIENEI-----4<sup>TH</sup>**  
**DEFENDANT**

**MESHACK      KIMUTAI      KETER-----5<sup>TH</sup>**  
**DEFENDANT**

**JUDGMENT**

**(a) PLEADINGS**

1. By a Plaint dated **24th June 2020** the Plaintiff brought this suit against the 1st, 2nd, and 3rd Defendants. She also joined the current 4th Defendant as an Interested Party at the time. The said party would in the course of time, through an Amended Plaint dated **8<sup>th</sup> February 2022**, be added as 4<sup>th</sup> Defendant while the 5th Defendant who had not been a party was introduced as one.

2. By the Amended Plaintiff, it was the Plaintiff's claim that 3rd Defendant was an organ created under the Land Registration Act and mandated to formalize land transactions within the Trans Nzoia County. Further, in the year **2007** she bought a parcel of land known as **Chepsiro/Kibuswa Block 1/ Kelchinet/137** from the Sarah Cheptengeny Busienei, the 4<sup>th</sup> Defendant.
3. She claimed further that she was introduced to the 4<sup>th</sup> Defendant by her cousin Emmy Jepkemoi Mutwol, the 1st Defendant. She alleged further that she agreed on the purchase price with the 4<sup>th</sup> Defendant to buy the suit land at a consideration of Kenya Shillings **Seven Million Eight Hundred Thousand (Kshs. 7,800,000/=)** only and entered into an agreement for sale on **17th April 2007** at the law firm of M/S Yano & Company Advocates. She made the payment for the purchase price to the 4<sup>th</sup> Defendant and took possession of the subject parcel of land. Her further averment was that she took possession of the suit land in **December 2007** and started farming it between the year **2008** and **2010**.
4. She claimed further, since she was based in Mombasa, she entrusted the 1st Defendant to assist with processing the transfer of the subject land. She also entrusted her with the documentation to aid the transfer process. The Plaintiff pleaded further that the transfer process dragged but the 1st Defendant kept indicating to her that the process delayed

due to a third party's action by which he had lodged a caution against the subject parcel of land.

- 5.** She pleaded further that in **2011**, the 1st Defendant requested to be allowed to cultivate the land. The Plaintiff allowed her to do so. In **January 2020** the Plaintiff notified the 1st Defendant of her intention to utilize the parcel of land, but to her surprise, the 1st Defendant became hostile to her. The hostility prompted the Plaintiff to check on the status of the land from the Lands Office. She was surprised to learn that the land had been fraudulently registered in the name of the 1st Defendant in the year **2011** without her knowledge or consent. She noted from the records in the lands office that the parcel of land was transferred into the name of the 1st Defendant without the requisite Land Control Board consent, hence bringing to bear either complicity or negligence on the part of the 3rd Descendant.
- 6.** It was her further claim that she talked to the 4<sup>th</sup> Defendant who confirmed to her that she never signed transfer documents in favour of the 1st Defendant, hence the transfer documents used to obtain the title deed in favor of the 1st Defendant were wrought with fraud and forgery. It was the Plaintiff's claim that she had justifiable grounds to believe that the 4<sup>th</sup> defend either colluded with the 1st Defendant or acted recklessly in transferring the suit parcel of land into her name in spite of the fact that she knew the Plaintiff was the legitimate purchaser.

7. It was the Plaintiff's further claim that she conducted an official search on the subject parcel of land and discovered that it had been used as collateral to secure a loan facility from the 2nd Defendant. Further, at the time, the 2<sup>nd</sup> Defendant, the Agricultural Finance Corporation (AFC) was holding the original title deed with respect to the subject parcel of land as security and was likely to sell it in the event of default on repayment of the loan.
8. The Plaintiff averred further that she brought up the matter at the family level. In that level, when the 1st Defendant was pressed by the elders to give answers, she admitted to having irregularly transferred the property into her name to enable her to secure a loan facility with it. The Plaintiff tried to resolve the matter with the 1st Defendant amicably, but she declined to do so.
9. It was the Plaintiff's claim that the 1st Defendant in collusion with the 2<sup>nd</sup>, 3<sup>rd</sup> and 5th Defendants fraudulently transferred the parcel of land to the 5th Defendant after the commencement of the instant suit in a bid to defeat or frustrate the substratum of the and father did fraud her. Further, the 5th Defendant now holds a title deed over the subject parcel of land which was obtained through fraud and without following due process, hence it is a nullity. She averred further that the 5th Defendant did not pay any consideration for the suit parcel of land and the transfer into his name was purely aimed to knowingly perpetuate fraud

hence he does not qualify for the protection of an innocent purchaser for value.

**10.** Her further claim was that collusion and fraud on the transfer of the suit parcel of land to the 5th Defendant was evident from the fact that the Kenyan Revenue Authority (KRA) details reflected at the Lands Office purportedly used to affect the payment of stamp duty belonged to another person namely, Alice Mutenyo Webala who has since distanced herself from impugned transaction. Further, there was no Land Control Board meeting to approve the transfer of the suit land to the 5th Defendant and no valuation for stamp duty, and the 5<sup>th</sup> Respondent did not pay the Capital Gains Tax. She pleaded further that the Defendant's actions had infringed her proprietary rights occasioning her extensive losses taking into account the fact of appreciation of land.

**11.** The Plaintiff prayed for the following reliefs: -

- 1. A declaration that the subject passed along land being Chepsiro/Kibuswa Block 1/Kelchinet/137 belongs to the Plaintiff and the transfer process leading to the issuance of a title deed in the name of the 1<sup>st</sup> and 5th Defendants is irregular and illegal.**
- 2. A nullification or cancellation of the transfers and title deeds issued favour of the 1<sup>st</sup> and 5th Defendants with respect to land title number Chepsiro/Kibuswa Block 1/Kelchinet/137 and issuance of a title deed in the name of the Plaintiff with respect of the said parcel of land.**

- 3. A permanent injunction restraining the defendants and their agents either severally or jointly from interfering with the Plaintiff's ownership, possession, occupation and use of the subject parcel of land.**
- 4. Costs of this suit.**

**12.** The 1st Defendant filed a Statement of Defence dated **10th July 2020** which she amended on **17<sup>th</sup> February 2022** vide a 1st Defendant's Defence to the Amended Plaintiff. She averred that the 3<sup>rd</sup> Defendant was not a legal person or institution capable of being sued. She admitted Paragraph **5A** and **5B** of the Amended Plaintiff to the effect the then 4<sup>th</sup> Defendant resided in Trans Nzoia County and the 5th Defendant was a resident of Mombasa. She denied all the paragraphs **6A, 7A, 8A, 9A, 10, 11, 12, 13, 14** and **15** of the Plaintiff whose contents were, in summary, that the Plaintiff bought the suit land in the year **2007** from the 4<sup>th</sup> Defendant; the 1st Defendant introduced the Plaintiff to the 4<sup>th</sup> Defendant; the 4<sup>th</sup> Defendant and the Plaintiff entered into an agreement of sale on **17th April 2007**; the Plaintiff made payment of the purchase price as agreed with the 4<sup>th</sup> Defendant and took possession of the land; the Plaintiff had trusted her with assisting in the process of transfer and the documentation with respect to the transfer process; the 1st Defendant kept promising that the land would be transferred but there was a delay due to a caution lodged by a third party; the Plaintiff took possession of the land between **2008** and **2010**; in **2011** she requested the Plaintiff to allow her to

utilize the land, and in **January 2020**, the Plaintiff notified her of intention to utilize the land. She put the Plaintiff to strict proof of the allegations.

- 13.** The 1st Defendant specifically traversed in Paragraph **5** of the Defence to the Amended Plaint parts regarding the above allegations and added further traversed that the agreement exhibited by the Plaintiff was genuine; she further denied she made any promise to the Plaintiff; a representation or commitment to the Plaintiff regarding the transfer process; there was any basis for the transfer of the suit parcel of land to the Plaintiff from the 4<sup>th</sup> Defendant; the Plaintiff was ever in possession of the suit land; the Plaintiff ever farmed or undertook farming activities on the parcel of land in **2008, 2009** and **2010** or any other time; the request by the 1st Defendant to the Plaintiff could have been tenable; and the Plaintiff was entitled to take possession and use of the parcel of land.
- 14.** Further, the 1st Defendant denied paragraphs **16, 17, 18, 19, 20, 21, 22, 23, 24A - 24E** and **25** of the Ament Plaint whose contents were that the suit land was fraudulently transferred to the name of the 1st Defendant in the year **2011** without the Plaintiff's knowledge; the search in the lands registry office showed that the land was transferred without the Land Control Board consent; the 4<sup>th</sup> Defendant never signed transfer documents in favour of the 1st Defendant; an official search showed that the land was used

as collateral to secure a loan facility with the 2nd Defendant; the 2nd Defendant was then holding the original title; the matter was discussed with the family and the 1st Defendant admitted to having irregularly transferred the property to her name to secure the loan; the parties tried to resolve the matter; the 1st Defendant was intending to sell the land to an innocent purchaser; the 1st Defendant took advantage of the trust between her and the Plaintiff.

- 15.** The 1st Defendant specifically denied the assertions that the Plaintiff's demand on the suit parcel of land was justified; the 1st Defendant was expected to accede to the Plaintiff's demands; the parcel of land was fraudulently transferred to her; the transfer of the suit parcel to the 1st Defendant required the consent and knowledge of the Plaintiff; the transfer of the suit land was unaccompanied with a consent of the Land Control Board; there was any wrongdoing or complicity on the part of the 1st Defendant and the 3rd Defendant; that the Interested Party never executed transfer documents for the suit land in favor of the 1st Defendant; the transfer of their land to the 1st Defendant was obtained through fraud or forgery; the 1st Defendant admitted to having irregularly obtained transfer of the suit land into her name; the purpose of the transfer of the suit land to the 1st Defendant's name was the need to obtain credit facilities or a loan; the 1st Defendant was intent to dispose of the suit land or any part thereof; the 1st Defendant had taken an

unfair advantage of her relationship with the Plaintiff; the 1st Defendant was ever a trustee of the Plaintiff nor had the Plaintiff been a beneficiary of the suit land; and the Plaintiff had been defrauded of the suit parcel of land.

- 16.** She pleaded that the Plaintiff was not entitled to the reliefs she sought. Further, the Plaintiff's claim was intended to defraud the 5th Defendant of her property. The suit land was acquired by the 1<sup>st</sup> and 5th Defendants regularly, procedurally and illegally. The Plaintiff's claim was legally untenable. The suit was time barred under the Limitation of Actions Act. The entire suit was incompetent and unsustainable. She prayed for the dismissal of the suit with costs to her.
- 17.** The 2<sup>nd</sup> Defendant entered Appearance on the **5th of March 2021**. It was dated **10th December 2020**. It also filed on **5th March 2021** a Statement of Defence dated the same date Appearance. It averred that it was a stranger to all paragraphs **6A** to **19** of the Amended Plaint. In response to paragraph **20** of the Amended Plaint the 2nd Defendant averred that the 1st Defendant and itself entered into an Agreement dated **31st May 2011** wherein it advanced the 1st Defendant a sum of **Kenya Shillings Two Million (Kshs. 2,000,000/=)** only for purposes of purchasing **135** heads of cattle.
- 18.** It was its further claim that the 1<sup>st</sup> Defendant offered the title deed to the suit land as security. The loan was to be repaid

within **3 years**. Prior to advancing the loan to the 1st Defendant the 2nd Defendant conducted a search and confirmed that the 1st Defendant was the proprietor of the suit land. A first ranking charge was registered on **6th June 2020** in favor of the 2nd Defendant in the sum of **Kshs. 2,000,000/=**. No objection was raised to the registration of the charge. It was done in good faith. The 2nd Defendant further conducted a search to ensure that the charge had been registered in its favor. The loan had since been fully repaid.

- 19.** The 2nd Defendant averred further that it was a stranger to paragraphs **21, 22, 23, 24** and **25** of the Amended Plaint. It pleaded further that the registration of the charge of the suit property was done within the confines of the law. The 2nd Defendant performed due diligence and confirmed that the 1st Defendant was registered the proprietor of the suit land. The 2nd Defendant had no otherwise than to believe the information and evidence provided by the by the 1st Defendant since it was verified by the records held by the 3rd Defendant. The Plaintiff did not raise any objection to the registration of the charge and neither did the Plaintiff bring the averments in the Plaint to the knowledge of the 2nd Defendant. The 2nd Defendant had since prepared the relevant discharge of charge documents for the said property and given them to the 1st Defendant as required by law. The 2nd Defendant admitted the jurisdiction of the

Court and that there was no suit pending between the parties.

- 20.** Without prejudice to the foregoing the 2nd Defendant prayed to be removed from the suit since it did not have any interest beyond discharging the suit property. It averred that the claims against it were an abuse of the process of the court. It prayed for the suit to be dismissed with costs to it.
- 21.** The 3<sup>rd</sup> Defendant filed its Statement of Defence dated the **20th April 2021**. It amended it upon service of the Amended Plaintiff by filing its undated the 3<sup>rd</sup> Defendant's Amended Statement of Defence on **14<sup>th</sup> March 2022**. It admitted the descriptive parts of the Amended Plaintiff. It averred that it was a stranger to the contents of paragraphs **6A, 7A, 8A, 9A, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19A, 19B, 20, 21, 22, 23** and **25** of the Amended Plaintiff and put the Plaintiff to strict proof thereof. Further, it pleaded, in response to paragraphs **24A, 24B, 24C, 24D** and **24E** in addition to the previous and other paragraphs in the Amended Plaintiff, that the suit land was transferred in the name of the 1st Defendant on or before **21st April 2011** and a title deed issued to her on the same date. It was subsequently transferred and registered in the name of Meshack Kimutai Keter (now the 5th Defendant) on **19th of June 2020**. The transfer and registration of the 1st Defendant and subsequent transfer and registration of Meshack Kimutai Keter, the 5th Defendant, was lawfully and

procedurally done as provided for by the law and carried out in good faith based on documents duly executed and submitted to the 3<sup>rd</sup> Defendant.

- 22.** It averred, in the alternative, that if there was any fraud, irregularity or illegality in regard to the transfer and registration of the suit land to the 1st Defendant and subsequently to Meshack Kimutai Keter then the 3<sup>rd</sup> Defendant was not a party to it and had no knowledge of the same. It invited the Plaintiff to strict proof of all the allegations denied above. It also denied the contents of paragraph **26** regarding the jurisdiction of the court. It averred that the Plaintiff did not have a cause of action against it. Lastly, the 3<sup>rd</sup> Defendant pleaded that the suit was fatally defective, incompetent and bad in law, for it offended the Civil Procedure Rules and it would, at the earliest opportunity, apply to have it struck out or dismissed with costs.
- 23.** The 1st Defendant filed a List of Documents dated **31<sup>st</sup> January 2021**. She annexed to copies of **10** documents. Namely: -
- 1.** *Certified copy of the register to land reference Chepsiro/ Kibuswa Block 1/ Kelchinet/137.*
  - 2.** *Transfer form from Sarah C Busienei to the 1st Defendant.*
  - 3.** *Consent to transfer from Sarah C. Busienei to the 1st Defendant.*

- 4. Land purchase agreement between the 1st Defendant and the Interested Party.*
- 5. Transfer form from the 1st Defendant to Meshack Kimutai.*
- 6. Consent to transfer from the 1st Defendant to Meshack Kimutai.*
- 7. Application for consent of the Land Control Board.*
- 8. Copy of title to the suit land issued on 21st April 2011.*
- 9. Certificate of official search for the suit land.*

**24.** The 4<sup>th</sup> and 5th Defendants entered Appearance different dates and filed Statements of Defence dated the same date of **16th March 2022** in response to the Amended Plaintiff. The 4<sup>th</sup> Defendant filed hers on **21<sup>st</sup> March 2022** and the **5th Defendant** on **4<sup>th</sup> May 2022** respectively, The Statements of Defence to the Amended Plaintiff were filed by the same law firm, and they were nearly the same in content save for one or two particulars that were in reference to the specific party. This Court, thus, details the common parts of the Statements of Defence as one, and needs not rehash the same separately. But it will single out the specific averments unique to each party, after giving the common ones.

**25.** The 4<sup>th</sup> and 5th Defendants averred, separately, that the 3<sup>rd</sup> Defendant was not a legal person or institution capable of being sued. They admitted Paragraph **5B** of the Amended Plaintiff to the effect the then 4<sup>th</sup> Defendant resided in Trans Nzoia County and the 5th Defendant was a resident of Mombasa. They denied all the paragraphs **6A, 7A, 8A, 9A,**

**10, 11, 12, 13, 14** and **15** of the Amended Plaintiff whose contents were, in summary, that the Plaintiff bought the suit land in the year **2007** from the 4<sup>th</sup> Defendant; the 1st Defendant introduced the Plaintiff to the 4<sup>th</sup> Defendant; the 4<sup>th</sup> Defendant and the Plaintiff entered into an agreement of sale on **19th April 2007**; the Plaintiff made payment of the purchase price as agreed with the 4<sup>th</sup> Defendant and took possession of the land; the Plaintiff had trusted her with assisting in the process of transfer and the documentation with respect to the transfer process; the 1st Defendant kept promising that the land would be transferred but there was a delay due to a caution lodged by a third party; the Plaintiff took possession of the land between **2008** and **2010**; in **2011** she requested the Plaintiff to allow her to utilize the land, and in **January 2020**, the Plaintiff notified her of intention to utilize the land. They put the Plaintiff to strict proof of the allegations.

- 26.** They specifically traversed the above allegations and added further traversed that the agreement exhibited by the Plaintiff was genuine; the Plaintiff the suit parcel of land in **2007** or any other time; the Plaintiff bought the suit land from the 4<sup>th</sup> defendant; the 1st Defendant introduced the Plaintiff to 4<sup>th</sup> defendant; the Plaintiff and the 4<sup>th</sup> Defendant entered into a sale agreement in respect of the suit land on **17<sup>th</sup> April 2007**; the Plaintiff paid consideration to the 4<sup>th</sup> Defendant; The Plaintiff and trusted the 1st Defendant with

documents to effect a transfer of the suit parcel of land to the Plaintiff; a representation or commitment to the Plaintiff regarding the transfer process; there was any basis for the transfer of the suit parcel of land to the Plaintiff from the 4<sup>th</sup> Defendant; the Plaintiff was never in possession of the suit land; the Plaintiff never farmed or undertook farming activities on the parcel of land in **2008, 2009** and **2010** or any other time; the request by the 1st Defendant to the Plaintiff could have been tenable; and the Plaintiff was entitled to take possession and use of the parcel of land.

- 27.** Further, the two respective Defendants denied **paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24** and **25** of the Plaint whose contents were that the suit land was fraudulently transferred to the name of the 1st Defendant in the year **2011** without the Plaintiff's knowledge; the search in the lands registry office showed that the land was transferred without the Land Control Board consent; the 4<sup>th</sup> Defendant never signed transfer documents in favour of the 1st Defendant; an official search showed that the land was used as collateral to secure a loan facility with the 2nd Defendant; the 2nd Defendant was then holding the original title; the matter was discussed with the family and the 1st Defendant admitted to having irregularly transferred the property to her name to secure the loan; the parties tried to resolve the matter; the 1st Defendant was intending to sell the land to

an innocent purchaser; the 1st Defendant took advantage of the trust between her and the Plaintiff.

- 28.** The said Defendants specifically denied the assertions that the Plaintiff's demand on the suit parcel of land was justified; the 1st Defendant was expected to accede to the Plaintiff's demands; the parcel of land was fraudulently transferred to her; the transfer of the suit parcel to the 1st Defendant required the consent and knowledge of the Plaintiff; the transfer of the suit land was unaccompanied with a consent of the Land Control Board; there was any wrongdoing or complicity on the part of the 1st Defendant and the 3rd Defendant; the 4<sup>th</sup> Defendant never executed transfer documents for the suit land in favor of the 1st Defendant; the transfer of their land to the 1st Defendant was obtained through fraud or forgery; the 1st Defendant admitted to having irregularly obtained transfer of the suit land into her name; the purpose of the transfer of the suit land to the 1st Defendant's name was the need to obtain credit facilities or a loan; the 1st Defendant was intent to dispose of the suit land or any part thereof; the 1st Defendant had taken an unfair advantage of her relationship with the Plaintiff; the 1st Defendant was ever a trustee of the Plaintiff nor had the Plaintiff been a beneficiary of the suit land; and the Plaintiff had been defrauded of the suit parcel of land.
- 29.** The 4<sup>th</sup> and 5th Defendants denied in their separate Defences that there was collusion between the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and

5<sup>th</sup> Defendants in the acquisition of the title to the suit land; the 5th Defendant's acquisition of the suit parcel of land had anything to do with a suit which had not been filed; the acquisition of the suit parcel of land by the 5th Defendant was calculated at defeating the Plaintiff's claim or defrauding the Plaintiff or frustrating the substratum of the of the suit; the 5th Defendant obtained the title to the suit parcel of land fraudulently and without adhering to due process; the 5th Defendant's acquisition of the suit land was a nullity; the 5th Defendant acquired the suit parcel of land without paying valuable consideration; the 5th Defendant's right to the suit land is unprotected; the 5th Defendant is not an innocent purchaser for value; the use of another person's KRA details to pay stamp duty defeats the title; there was no Land Control Board meeting to approve the transfer of the suit land to the 5th Defendant; there was no valuation prepared for purposes of paying stamp duty; the 5th Defendant was under any duty to pay capital gains tax; the Plaintiff had a proprietary right over the suit land; the Plaintiff had suffered any loss attributable to the 5th Defendant.

- 30.** The 4<sup>th</sup> and 5th Defendants then pleaded in their respective Defenses that the 5th Defendant was an innocent purchaser for value without notice. The 5th Defendant conducted due diligence before purchasing the suit land. His dealings with the 1st Defendant was above board. There was nothing in the manner in which the 1<sup>st</sup> and 5<sup>th</sup> Defendants acquired the

suit land which could defeat their title to it. The Plaintiff was disentitled to the relief she claimed. Her claim was intended to defraud the 5th Defendant of his property. The suit land was acquired by the 5th Defendant regularly procedurally and legally, and the Plaintiff's claim was untenable. Lastly, they pleaded that the Plaintiff's claim was time barred under the Limitation of Actions Act and the suit was both incompetent and unsustainable. They prayed the suit be dismissed.

- 31.** The 4<sup>th</sup> and 5<sup>th</sup> Defendants filed a joint List of Documents dated **28<sup>th</sup> July 2022** on **4<sup>th</sup> April 2023**. Again, the 1<sup>st</sup> and 5th Defendants filed a separate List of Documents dated **12<sup>th</sup> September 2024**. But the 4<sup>th</sup> Defendant filed a Notice of Change of Advocates dated **31<sup>st</sup> July 2023** on **07<sup>th</sup> August 2023**.
- 32.** The 1<sup>st</sup>, 4<sup>th</sup> and 5th Defendants filed a joint List of Documents dated **28<sup>th</sup> July 2022** on **03<sup>rd</sup> March 2023**.

**(b) EVIDENCE**

- 33.** The Plaintiff listed ten (10) witnesses to call, besides herself, for proof of her case. However, at the hearing, she testified in her behalf as **PW1** and called one other witness. In her written witness statement dated **29<sup>th</sup> April 2021**, which she adopted as her evidence in-chief, the Plaintiff stated that the 1st Defendant and her were first cousins since their fathers were biological brothers. According to their culture, they regarded each other as sisters.

- 34.** In **2007** the 1st Defendant informed her that there was somebody selling land measuring about **50 acres** at Chepsiro in Trans Nzoia County. She got interested in the property and the 1st Defendant introduced her to the owner, Sarah Cheptengeny Busienei, the Interested Party (now the 4<sup>th</sup> Defendant). Sarah confirmed that she was the owner of the land parcel number **Chepsiro/ Kibuswa Block 1/ Kelchinet/137** measuring **20.2 hectares**. She showed her the original title deed which was in her name and confirmed that she was selling the parcel of land. They entered into negotiations for the transaction and eventually agreed at a sum of Kenya shillings **155,000** per **acre**, cumulatively being Kenya Shillings is **7,750,000/=**. There was an additional sum of Kenyan shillings **50,000/=** for the developments on the land, bringing a total of Kenyan shillings is **7,800,000/=**.
- 35.** The Plaintiff agreed with the vendor to have a formal sale agreement executed before an advocate. They visited the offices of Advocate Charles K. Yano on **14<sup>th</sup> July 2007** to prepare and execute the agreement. They met the Advocate Charles K. Yano (now Honorable Justice Charles K. Yano) who knew them well. They explained to him the nature of the transaction and the terms of agreement. He prepared the agreement of sale and gave it to them to review it. Then they signed it in the presence of the Advocate and one Alex Chepsiror, Sylvester Mutwol and Emmy J. Mutwol, the 1st

Defendant, and Alex Chepsiror who is a son to the vendor, the interested party. Sylvester Mutwol was the Plaintiff's father, now deceased.

- 36.** The Plaintiff added that she paid a sum of Kenya Shillings **4,000,000/=** at the execution of the agreement as a deposit of the purchase price. Subsequently, she added a sum of Kenya shillings **3,800,000/=**, both payments being made to the Interested Party. At the time of the transaction and during the intervening period she was stationed in Mombasa. She had limited time to pursue the transfer process and entrusted her cousin, the 1st Defendant, to assist with it. She left the 1st Defendant with the original of the agreement, her documents and the vendor's documents to facilitate the transfer. The process dragged on, but the 1st Defendant kept promising that the process was on course. She cited the existence of a Caution placed on the land by one Mary Muthoni as the reason for the delay. She did not suspect anything fishy at the time because of the trust she had in her.
- 37.** She stated further that she took possession of the land in **2007 December**. He used the land in the years **2008, 2009** and **2010**. In **2011**, the 1st Defendant requested her to use the land, and she allowed her to cultivate it until the end of the year **2019**. In **January 2020**, she informed the 1st Defendant of her intention to use the land for cultivation. Surprisingly, the 1st Defendant became hostile and declined

to voluntarily hand over possession to her. The 1st Defendant's attitude prompted her to carry out an official search at the County Lands Office on **7th May 2020**. To her shock, she discovered that the 1st Defendant was registered as the owner of the parcel of land. The records at the office of Lands indicated that she, the Defendant, registered herself as the proprietor on **21st April, 2011** and a title deed was issued to her on the same date. She already had used the property as security for a loan from the Agricultural Finance Corporation, the 2nd Defendant.

- 38.** She stated further that the registration of the property in the name of the 1st Defendant was fraudulent and irregular. She, the Plaintiff, talked to the Interested Party (the 4<sup>th</sup> Defendant) before commencing the instant suit. The 4<sup>th</sup> Defendant confirmed to her that she had not transferred the land to the 1st Defendant. She also confirmed that she executed her transfer in favour of the Plaintiff. She added that it was inexplicable how then the parcel of land ended up in the name of the 1st Defendant. She added that the fraudulent transfer of the parcel of land could only have been possible due to connivance or negligence on the part of the County Land Registrar, the 3rd Defendant. Further, the 1st Defendant took advantage of the trust she had in her and breached it to gain the parcel of land in an irregular manner. Also, she may have taken advantage of the age of the Interested Party to mislead her into executing a transfer

form instrument in her favour. The 1st Defendant's affinity to fraud could be gleaned from the demeanor in the manner that she made contradicting statements before the honorable Court.

- 39.** Lastly, she stated that in view of the relationship between she and the 1st Defendant, they tried to resolve the matter in an amicable manner. Unfortunately, the 1st Defendant declined to transfer back to the parcel of land to the Plaintiff's name as initially thought. That was why she sought the intervention of the court in order to get her land back.
- 40.** The Plaintiff filed a List of Documents dated **29th February 2021**. He annexed to it copies of four documents, being: -
- 1.** *A copy of the title deed in the name of Sarah Cheptengeny Busienei.*
  - 2.** *Agreement for sale dated 17th April 2007.*
  - 3.** *Certificate of Official site dated 27th May 2020.*
  - 4.** *Green Card extract dated 3<sup>rd</sup> June 2020.*
- 41.** During her oral testimony PW1 produced as **P. Exhibits 1, 3** and **4**, a copy of the Title Deed for the suit land, being parcel No. **Chepsiro/Kibuswa Block 1/ Kelchinet/137** in the name of Sarah Cheptengeny Busienei, the 4<sup>th</sup> Defendant, the certificate of official search, and the original of the green card for the parcel of land. She marked as **PMFI-2** the copy of the Agreement for Sale dated **17<sup>th</sup> April 2007**.
- 42.** In cross-examination by the **1<sup>st</sup>** and **5<sup>th</sup>** Defendant's counsel, PW1 admitted that she did not have any document to show

she gave Emmy (1st Defendant) any documents relating to the transaction. Also, that she was aware of the 1st Defendant's claim that bought the land. It was her evidence that the purchase agreement was prepared in Kitale and was given one copy while the seller (4<sup>th</sup> defendant) was given another copy. She added that her deceased father, a witness then, was given a photocopy while another copy remained in the Advocate's office.

- 43.** PW1 added that she endeavored to get one from Justice Yano's former office but when she went there she found another lawyer in the firm. She did not ask the lawyer to give her a copy.
- 44.** Her further testimony was that the land was registered in the name of Sarah (the 4<sup>th</sup> defendant) in **2007**. She stated that in her documents she indicated that Sarah signed the documents in favour of the 1st Defendant.
- 45.** When referred to an affidavit sworn by the said Sarah on **14/7/2020** and filed on **16/7/2020**, she confirmed that Sarah deposed at paragraph **3** that she sold the land to the 1st Defendant, Emmy Mutwol, on **17/4/2007**. Further, that at paragraph **4** she added she allowed the 1st Defendant to take possession and she did and had been in occupation, as deposed at paragraph **5**. Further, that the 4<sup>th</sup> Defendant stated that all procedures were followed to transfer the land to 1st Defendant. She acknowledged that at paragraph **10**,

- the 4<sup>th</sup> Defendant deponed that her (the Plaintiff's) agreement was a forgery and she never sold to her any land.
- 46.** She denied quarrelling with Sarah in **2020**. She stated she would call Justice Yano as her witness although she was unaware if he had recorded a statement in favour of the 1st Defendant. She was not aware of any complaint lodged by Sarah (4<sup>th</sup> defendant) with the police against the 1st Defendant. She was unaware of any document examination report by a document examiner that the documents held by the 1st Defendant were not genuine. Neither was she aware of any criminal case against the 1st Defendant.
- 47.** Regarding use of the land and documents from the AFC or the National Cereals Produce Board (NCPD.) or area Chief that she had ever used the land, she admitted she did not have any. She also did not have any document to show that she handed over possession of the land to the 1st Defendant.
- 48.** Of the 5th Defendant, Meshack, she stated she knew him on **23/7/2020**. She admitted he filed a Defence claiming he bought the land, and did not know her. But she knew Alex Chepsiror, the son to the 4<sup>th</sup> defendant. He was listed as a witness to the agreement she had. She was unaware he renounced the agreement by stating he was not a witness.
- 49.** About an Affidavit sworn by Alex Chepsiror, the son to 4<sup>th</sup> defendant, on **14/7/2020** and filed on **16/7/2020**, she admitted he deponed in paragraph **6** that the only person he

knew who purchased land from his mother was the 1st Defendant. Further, he disowned the agreement she claimed was done by her. She admitted that in her Agreement she alleged Alex witnessed it, but she did not list him as her witness yet she did not have any differences with him.

- 50.** Asked about the affidavit sworn by Sarah on **14/7/2020** she confirmed the 4<sup>th</sup> Defendant confirmed she only knew Emmy (the 1st Defendant). That the 4<sup>th</sup> Defendant stated she procedurally and voluntarily transferred the land to Emmy and the green card of the land confirms she transferred the land as stated. Further, when she sold the land it was in her name.
- 51.** She stated that the transfer form had the PIN, passport and copy of the ID attached to it. She confirmed there was a letter of consent of the Land Control Board in favour of Emmy, and there was an application for consent for transfer of the land, and the agreement between Sarah and Emmy. She had not interacted with Meshack before filing the instant case, but she interacted with 4th Defendant who did not suffer any incapacity.
- 52.** She admitted the agreement between the 1<sup>st</sup> and 4<sup>th</sup> Defendants showed the land was sold on **17/4/2007**, yet the instant case was filed in **2020**. She admitted that between **April, 2007** and **April, 2019** were **12** years. She added that the 4<sup>th</sup> Defendant and her son confirmed that what they said in their statements as being same in their affidavits.

- 53.** Regarding the possibility of a double sale by same person PW1 stated that for her it was not unusual as it could happen. She admitted the agreements she and the 1st Defendant had Emmy were made the same day before the same lawyer and it was not an unusual occurrence.
- 54.** She added that she produced her Barclays Bank Account statements to show she paid the seller.
- 55.** She stated that as at **2020** when she filed the case the registered owners were AFC and Emmy Mutwol jointly, with AFC as chargee. She admitted that 4<sup>th</sup> Defendant had not filed a complaint with the police and she was unaware of any criminal case over the parties.
- 56.** She added she used the land at one time when she planted the maize but she did not deliver any to the Cereals Produce Board. She did not produce any document to show she harvested maize.
- 57.** On cross-examination by the State Counsel for the 3<sup>rd</sup> Defendant, she admitted she and the 1st Defendant were cousin sisters from the paternal side. They tried to resolve the matter at home but could not agree. Her evidence was that there was collusion between the 1<sup>st</sup> and 3<sup>rd</sup> defendant to transfer the land to the 5th Defendant.
- 58.** PW1 added that the Land Registrar was not a party between the alleged agreement between her and Sarah (4<sup>th</sup> Defendant) and the one between Emmy and Sarah. Further,

the Land Registrar was not aware that she handed over her transaction documents to 1st Defendant for safe keeping.

- 59.** She added that by the time she purchased the land there was a caution placed on the parcel of land by Mary Muthoni who was claiming a boundary issue. She knew of the same after entering the agreement with Sarah. She was unaware whether the caution finally removed.
- 60.** She added that the property was first registered in the name of Lillian Wangari Mbugua on **14/1/1997** who transferred the land to Sarah Busienei on **11/5/2006**. Then a caution was registered on **4/6/2007** by which time she had already purchased the land. Thus, by the time she bought the land it had no encumbrance. The caution was withdrawn on **13/6/2007**.
- 61.** She admitted the green card showed no entry in her favour between when the land was registered in in the name of Sarah on **11/5/2006**, and **13/6/2007** when the caution was withdrawn after which the land was transferred to Emmy Mutwol on **21/4/2011**. She stated that the caution was placed because she had not completed the purchase. But she did not inform the Land Registrar that she had an interest in the land. Thus, the Land Registrar could not have known she had an interest in the land.
- 62.** PW1 testified further, that collusion occurs when two conspiring parties to some act to defeat the interest of another. But in her case, the Land Registrar did not know

her. That collusion was only between Sarah and Emmy Mutwol alone.

- 63.** She added that the Land Registrar's actions usually come at the tail end of transactions. Once instruments of registration were presented on behalf of Emmy Mutwol, the Land Registrar had no reason for not to register the transaction. There was no caution against the registration.
- 64.** In her testimony, PW1 added that the transfer between the 1st Defendant and the 5<sup>th</sup> was on **19/6/2020**. At that time there was no entry of a caution, restriction or court order that restrained the Land Registrar from transferring the land to the 5th Defendant. She added, by that time she had already filed the instant case. The Registrar of Lands relied on falsified documents to transfer the land to the 5th Defendant. Her further testimony was that by **19/6/2020** the title was still charged with the AFC since there were no discharge documents and had no receipt to show the discharge.
- 65.** PW1 added that there was a group of surveyors who were discharging their land on **19/6/2020** and it was their receipt that was used. Her testimony was that stamp duty is paid upon purchase of land. The 5th Defendant did not pay for it. She added that one of the Land Registrar used the receipt of Alice Webala to transfer the land. She added that there was no proof of fees payment for the Land Control Board. The transfer to the 5th Defendant was on **19/6/2020** and she

filed case on **29/6/2020** while the order injunction was issued on **30/6/2020**, by that date the property was registered in name of the 5th Defendant.

- 66.** PW1 changed her testimony to stated that by the time of transfer to 5th Defendant on **19/6/2020**, she had not filed the instant case. Further, that the order of **30/6/2020** was received and registered by the Land Registry on **10/7/2020**. That the Land Registrar so while acting on documents filed.
- 67.** The Plaintiff added that the transfers to Emmy and to Meshack were done when there existed a charge to AFC. The charge was **for Kshs. 2 million**, and made on **16/6/2011**. On further cross-examination she admitted the discharge of charge was made on **18/6/2020** while the transfer to Meshack was on **19/6/2020** hence the transfer to Meshack after the land was discharged. Also, the transfer was accompanied with passport photos of the 1st Defendant and Meshack and a receipt marked as **3DMFI-3**, reference No. **5486927** for **Kshs.1000/=** was paid by Meshack. Also, there was an application for the consent of the Land Control Board and a letter of consent dated **16/6/2020**. The land was valued on **18/6/2020** at **Kshs. 7.8M**. The value was similar to the one in **2007**. Accompanying the transfer also was the KRA PIN certificate of Emmy, her ID and that of Meshack. The payment of **Kshs. 150,000/=** for stamp duty was made by Alice Mutenyo Webala under her PIN No. **A010351802U**. It was made through a receipt for Co-

operative Bank. She stated that Alice should not have used her PIN to transfer the land. The transferor and transferee were Emmy Mutwol and Meshack K. Keter respectively, PW1 admitted that all documents for transfer of the land from Emmy to Meshack were in existence.

- 68.** She added that the Land Registrar should have verified the receipt to confirm that it was in the name of Alice and not transferred the land. She added that Alice complained about the receipt and she would testify on it but no one had been arrested and charged over it.
- 69.** PW1 admitted that neither the KRA nor the Land Registrar had not complained that there was no stamp duty paid. She added that the Land Registrar had not known all along and there could be no collusion on the issue between the Land Registrar and others against me.
- 70.** On further cross-examination she admitted she knew the 4<sup>th</sup> Defendant well through the 1st Defendant. She added she made her first payment to the 4<sup>th</sup> Defendant through a Banker's Cheque issued by Barclays Bank while she made the other instalments through Banker's Cheques and in cash at times. The last one was in **January, 2008**. She met Alex, the son to Sarah, once in **2007** at the execution of the agreement. He swore his Affidavit on **14/7/2020** but she was not present.
- 71.** She bought the land when she resided in Mombasa but Emmy was in Eldoret. She permitted Emmy to use the land

from **2011** to **2012** but did not authorize Sarah to transfer it to Emmy. Emmy did not produce any evidence of payment of money to Sarah over the land. PW1 did not receive the original title deed from Sarah. She could not know how Sarah surrendered it to Emmy.

- 72.** On re-examination she stated that the payment slip for the stamp duty was fraudulent. She explained that it was because it showed the tax payer was Alice Webala and not either Emmy Mutwol or Meshack Keter.
- 73.** She added that Webala stated that on that date she was doing Succession for their land and not in respect of the matter herein.
- 74.** PW1 summed a what she regarded as number is anomalies. Regarding the letter of consent from the L.C.B, she added that the discharge having been made on **18/6/2020** yet the consent given earlier meant the Board sat while there was a charge over the land. She said this was an anomaly. She added that her claim against the Land Registrar was over the transaction between Emmy and Meshack. She took issue with the transaction timings, being when the L.C.B. gave consent while the title was under charge and issued, and also the use of other people's receipt for issue. Again, her complaint was that everything was done within one day, and the valuation of the land being **Kshs.7.8M** yet she paid the same amount in **2007**.

- 75.** Regarding the twelve-year period, PW1 stated that her complaint against the defendants was that her land was not procedurally transferred. It was fraudulently transferred in **April, 2011**. She added, from **2011** to the time of filing suit **12** years had not elapsed. Further, when she discovered the fraud she talked with (Hon.) Justice Yano about it. She added that the 4<sup>th</sup> Defendant told her she did not know what the affidavits contained.
- 76. Alice Mutenyo Webala** a farmer resident in Kongoni Scheme testified as **PW2**. She adopted her written witness statement dated **12/7/2022** as her evidence in-chief. In it she stated that her identity card number was **1934653** and her career PIN **A010351802U**. She added that regard the KRA payment slip bearing registration number **2020200001486876** used for a paying stamp duty for the suit parcel of land and the bank deposit slip bearing reference number **017220115830** issued by the Corporate Bank of Kenya on **20<sup>th</sup> June 2020** were strange to her.
- 77.** She added in the statement that she had not made any payment for stamp duty to the Kenya Revenue Authority with regard to the suit parcel of land or any other parcel of land. Further, the persons indicated in the payment slip as transfer and transfer being Mutwol Jepkemoi Emmy and Meshack Kimutai Keter were unknown to her. She had never made a transaction or in dealing with them. She never gave consent to both or any other person to make payments to

the Kenya Revenue Authority under her name. She did not know both how both obtained the personal information to enable them generate a payment slip under her name but it must have been fraudulent.

- 78.** She urged the Court to have the County Land Registrar of Transit Nzoia explain how he received the payment and why he accepted it to effect a transfer whereas the same related to a stranger to the transaction. She added that he must have been working in collusion with the parties to the alleged transaction since due diligence would have required him to counter check the payment with her. She added she had reported the matter to Matunda Police station on **21<sup>st</sup> September 2020** under **OB28/21/9/2020** and the police promised to carry out investigations appropriately. She was waiting their action. She added that she had made the witnesses statement voluntarily, without coercion or undue influence and with the sole intention of getting the record straight in respect of the fraudulent transaction between Emmy Mutwol and Meshach Keter.
- 79.** She was cross examined immediately after the adoption. On cross-examination she stated that she did not know about the payment for the transfer of the land. She was called to the police but she was the complainant about the suit land. She neither knew the suit land nor the persons involved in the transfer. She also did not know the Land Registrar in Kitale. She did not know anything that went on in the Lands

Office. She denied being called to any government office over any allegation of loss of revenue or tax. She had never gone visited the bank to know whether payments were made.

- 80.** She admitted that Phyllis (the Plaintiff) was the one who called her to tell and informed her about the land in Chepsiro (suit land). She added she did not know her KRA PIN. She did not know the 1st Defendant or Meshack Kimutai Keter (the 5th Defendant).
- 81.** She stated the family had a Succession matter in court in respect of her husband in **2018** when it ended. They paid tax in **2018** and started succession. Its title deed was closed. She was the administrator of the Estate. Each buyer was given their parcel of land.
- 82.** She stated the Advocate asked them to pay **Kshs. 40,000/=**. She could not tell if the fees to the KRA during Succession matters **is Kshs. 200/=**. She did not know if the **Kshs. 150,000/=** was for the Succession case as alleged by Phyllis (Plaintiff). She did not know if the **Kshs. 150,000/=** was paid at the bank. Upon being referred to 3<sup>rd</sup> **DMFI-10**, the payment for the stamp duty, she denied knowledge of the same. She added she never gone to any bank to know who paid the money. She stated she never went to the Co-operative Bank about that payment. She denied ever complaining to the police that someone paid KRA using her PIN. She was only called by Phyllis to the police. PW2 denied

knowing 4<sup>th</sup> defendant. She never knew the outcome of the police investigation she was called over.

- 83.** She denied knowing Phyllis. She added that Phyllis had brought her to court, alleging that she had bought her land. She was shocked. They met in court. She added that she asked the Plaintiff how as a Bukusu she would buy a Nandi's land.
- 84.** On further cross-examination she admitted that the Plaintiff, Phyllis, usually carried her motor vehicle from home to court. Further, the Plaintiff knew her home and had been going for her there. She stated that it would be a lie if anyone claimed she colluded with the Land Registrar to defraud Phyllis land.
- 85.** On re-examination PW2 denied knowledge of both the 1<sup>st</sup> and 5th Defendant. She also did not know about the suit land or even where Chepsiro (where the land is situate) is. She added that when she was called to Matunda Police Station was when she was told someone had used her KRA PIN to say she bought land. She said someone stole her papers to use. She stated that the only transaction she did at the Lands Office was to give people titles to their parcels in Kongoni Scheme and not in relation to Chepsiro. She denied ever going to Co-operative Bank to make any payments there.
- 86.** That closed the Plaintiff's case.
- 87.** The Defence cases began with **DW1, Sarah Chetengeny Busienei**, a resident of Kibuswa, testifying first. She stated

that knew both Phyllis Mutwol and Emmy Mutwol. She knew them in **2005** or **2006**. She knew Emmy earlier than Phyllis. She adopted her written Witness Statement dated **28/7/2023**. In the Statement she stated that she was the 4th defendant. She knew Phyllis Jerotich Mutwol and Emmy Jepkemoi Mutwol. In **2007** she was contacted by Emmy Mutwol looking for land. They met and she showed her the land. Emmy informed her that she was looking for land specifically for her sister who was in Mombasa to purchase. Emmy went with Phyllis on a later date to her home. They agreed at the purchase price of **Kshs. 155,000/=** per care.

- 88.** Later they went to it to draft the agreement at the lawyer's office. The office was Yano and Company advocates. Phyllis and Emmy were present. The agreement was done on **17th April 2007**. She was the seller while the Phyllis was the purchaser. Emmy was a witness. The money was paid by Phyllis to her account. The agreement had three witnesses, namely, Alex Chepsiror, Sylvester Mutwol and Emmy Mutwol. The deed was to be surrendered after the final payment.
- 89.** Emmy was her contact person. She always called to monitor the deposits to clear the balance as per the sale agreement. She also called her to ask about the deposits whenever she, the 4th defendant, needed money. Both she and Emmy dealt with each other most of the time. She only saw Phyllis twice before the last installment was paid. After the last deposit Emmy asked for the original title deed. She inquired why

Emmy wanted the title deed and not Phylis. Emmy told her that she together with Phylis had agreed that she, the 4th defendant, transfers the land to Emmy for them to facilitate the processing of a facility from the Agricultural Finance Corporation for farming that planting season and also because Phylis liked to keep her properties private.

- 90.** In **2011** Emmy asked that she, the 4th defendant, attend the Land Control Board and transfer the land to her. She did not refuse because of the reasons above that she had an agreement with Phylis. They both visited the Land Board together with Emmy. Along the way Emmy asked that they proceed to procure a special Land Board rather than for the regular one. They appeared before the Officer at the land's office. She gave her details. Emmy was to pick the consent later. She gave Emmy the title on that date.
- 91.** After that she never heard from Emmy or Phylis. She believed everything was all right. On a date late in **2020** she was called by Phylis and Emmy's parents who wanted to know whom she gave the land. They told her that the land had been taken by Emmy. They asked her to visit their home to discuss the issue that had arisen because both Emmy and Phylis claimed the property. She called Emmy who asked her not to attend the meetings organized by Phylis's parents. The meetings all of which she did not attend were rescheduled three times. She did not attend following Emmy's advice.

- 92.** In **2020** Emmy went to her home and told her that Phylis had tried to take the land from her. She (the 4th Defendant) asked Emmy that she informed her that the land belonged to Phylis. Emmy told her that Phylis told her she did not like the land as there were so many Nandis living there. Therefore, Emmy bought the land from Phylis. She asked Emmy if she paid the purchase price. Emmy informed her that she gave Phylis a house in Nairobi and a trailer equal to the value of the land. They were to sort out the remaining balance later on their own.
- 93.** After Emmy went to the defendant's place in **2021** she took her to Emmys lawyer's office. They asked her to sign that the land belonged to Emmy and she had transferred it to her. All the time Emmy did the statement at the lawyer's office. Emmy guided her in drafting the Statement. The 4th Defendant thought she spoke about the events of the transfer of the title and not agreement to Emmy. After that officers from the Criminal Investigation Department visited her home. They asked her about the sale of the suit land. They also asked to have her signature as they were doing investigations. She informed them that she was unwell on that day due to (high blood) pressure and that her signature would be different because of lack of stability. She asked them to let her go another day to their Kitale office and give her sample signatures.

- 94.** The 4th defendant called Emmy inquiring why officers had visited her home and if there was anything wrong. She informed her not to see them or give signatures. She also asked to see her as soon as possible. She called several times. Emmy's husband also called her and advised not to give any information to the officers or sign documents. It was then that she realized that things were not okay. She quickly flashed through her mind that Emmy denied her to visit their parents and now was against signing documents for this CID office. She refused to meet Emmy and her husband as they were up to something not good. She went the following day to see the officers of the Criminal Investigation Department and gave her Statement on the transfer of the land as well as the sample signatures.
- 95.** She stated further that having dealt with her for so long and Emmy being the contact person between her and Phylis she took advantage of her closeness, used the opportunity to her advantage and absence of Phylis to transfer the land to herself by duping her into transferring the land to herself. She stated that she entered into agreement for the sale of the land with Phylis. Also, she received money from Phylis for purposes of the land. Emmy only brought an agreement that she signed. It was not true. She did not attend any agreement writing day with Emmy. She never sold the land to Emmy but she transferred the land to her. She asked the

court to give Phylis the land for she was the rightful purchaser and the true owner.

- 96.** DW1 continued orally that she sold the land to Phylis. She referred to a copy of an agreement, **PMFI 2**, to show she sold the suit land. She added, the original was misplaced.
- 97.** On cross-examination she stated know Emmy and Phylis Mutwol well. The suit land **Chepsiro/Kibuswa/Block 1/Kolimet/137** was hers and she sold it **2007** to Phylis Cherutich Mutwol. She was approached by Emmy to sell the land to Phylis. She denied selling the land to Emily Mutwol. She added that Phylis Mutwol was the one who paid her the purchase price. About **PMFI 2**, the agreement, she signed it in “wakili Yano’s office”. It was made on **17/4/2007**. she was with Emily and another mzee and Alex. The mzee was the father to Phylis while Alex Chepsior was her son.
- 98.** When she was shown another agreement dated the same date of **17/4/2007** on the 1st Defendant’s List, she denied knowledge of it and selling the land twice. She denied selling the land to Emmy Muthwol. She denied the signature thereon as hers although she admitted the agreement indicated it was between her and Emmy and was done before the Advocate. She denied doing any agreement without one of her children as a witness.
- 99.** When referred to her own Statement attached to 1st Defendant’s List of witnesses dated **31/5/2021**, DW1 admitted it was dated **17/5/2021**. She added that when she

went to the offices of the advocate of Emmy she did not sign the statement. She did not go for the statement.

**100.** She admitted that she transferred the title to Emmy (the 1st Defendant). She gave Emmy the title to give Phylis but she did not. She added that she transferred the land to Emmy was because Emmy was very involved in the process of transfer. Further, that Emmy informed her that she needed a transfer so that she would take the papers to the Agricultural Finance Corporation (AFC). She believed her. Later DW1 asked Phylis about the transfer of the title to her name and Phylis informed her it was okay because she did not want all properties to be registered in her name. By that time, she had given Emmy the title (transfer into her name). The land belonged to Phylis.

**101.** She added in further cross-examination that she did not visit the 1st Defendant's Advocate's office with (her son) Alex Chepsiror who is a lawyer and is still alive. She added Alex may have gone there after left. She knew Alex was an advocate. On being shown the Statement of Alex dated **28/8/2021** and hers she stated she had not seen the statements before in order to complain about the allegation that she wrote it.

**102.** About her Affidavit sworn on **14/7/2020** she admitted it was in her name and the signature thereon hers.

**103.** About the agreement between her and Emmy Mutwol DW1 stated again that she had not gone to the police to complain

that the signature was not hers although she denied it. She also admitted not reporting to the police her agreement with Phylis got lost. She had not also gone to the office of Yano Advocate to complain or get a copy. She stated she did not see the need after Phylis brought the suit since she would tell the court how it was.

**104.** Regarding the payment of the purchase price, DW1 stated that her Statement did not show that the purchase price was deposited in a bank and it did not show any bank account. She admitted not availing any bank statement to show she received money from Phylis. She admitted not having a document to show that Phylis deposited money into her bank account.

**105.** About the execution of the agreement she referred to, she admitted that none of the people who signed it with her before Yano Advocate (as he then was) had written a statement that she received money from Phylis on **14/7/2007**. She did not also have any written statement from Yano advocates or my son Alex that she went to Yano's office. She admitted she wrote a Statement before the advocate of Emmy and she had not complained to the Law Society that she was told to sign documents involuntarily. She admitted she not forced to sign the two documents (Statement and Affidavit).

**106.** She admitted that her written statement did not include anywhere that she talked with Emmy on phone, and she and

Emmy did not write anywhere that they talked about the transfer. But she added that her Statement showed that Emmy was the contact person who used to update her through phone about the bank deposits. But she admitted in cross-examination that she neither wrote the phone number down nor did she talk to Emmy on phone.

**107.** On further cross-examination regarding the transfer to Emmy Mutwol, she admitted she voluntarily went to the land control board to give consent to transfer the land to Emmy. She voluntarily signed the transfer forms in favour of Emmy. She was not misled and signed documents including the transfer form, knowing what she was doing. Then she gave her photograph and Identity Card No. **5723143**.

**108.** She did not know if Charles Yano (now Judge) said he only knew of the agreement between her and Emmy. She personally went to the land control board and was given a consent to transfer upon which she gave to Emmy original title deed, with the aim of transferring the land to Emmy. She stated that when she went to the land control board she told them (Board) that she wanted to transfer the land to Emmy as a buyer. She never went back to tell them that she made an error. She added the court could look at the application to the Land Control Board, the Consent and transfer form. She admitted she surrendered her title. She stated that when the title came out in the name of Emmy the transfer process was done in accordance with her will.

- 109.** DW1 denied writing a Statement at the police about the agreement. On being referred to her statement, she admitted it showed she wrote a written statement at the police. She added the police only needed her signature. She did not know that what the police investigations were about.
- 110.** DW1 repeated that when the land was being transferred to Emmy (the 1st Defendant), Phylis knew of it.
- 111.** Regarding occupation of the land, DW1 stated that when the land was being transferred, Phylis was on it but she, DW1, did not have anything including any evidence from neighbours to show that fact.
- 112.** DW1 denied the agreement between her and Phylis being fraudulent. She stated both she and Phylis did not have the original of the agreement. She stated that the person she found in the Advocate's office informed her a copy could work but it was not a certified one as a true copy of the original. She added that the purchase of price of **Kshs. 7.8 million** of which payments were made as **Kshs. 4 million** on execution and the balance of **Kshs. 3.8 million** to be paid as **Kshs. 1 million by 6.5.2007** and **Kshs. 2.8 million by 31.12.2007**. The **Kshs. 4 million** was paid via a bank account transaction at Equity bank. She admitted not having any document to show the payments having been made. Regarding lack of her bank statement she stated that the bank informed her that it does not store statements or

documents after 10 years. She did not have evidence to show she wrote to Equity to give her the statement.

**113.** DW1 denied being in enmity with the son Alex.

**114.** DW1 admitted that Clauses **5** and **7** of the agreement required her to sign all papers, the transfer and other documents required to transfer the land to Phylis but she did not do so. Instead she signed the transfer in favour of Emmy who was not the buyer. Phylis did not give her any written document to sign the documents in favour of Emmy. She added that the document signed in favour of Emmy were in breach of the agreement. She admitted breach of the agreement. She stated further that any claim over the breach of the agreement should be borne by her.

**115.** She admitted the Land Registrar was not present at the time of entering into the agreement. He could not know the agreement was entered agreement into with Phylis. After giving the documents to Emmy, the land registrar was given them to transfer the land and he did it. He did no wrong in the transfer.

**116.** On re-examination she stated that Emmy told her to transfer the land to her. She had no reason to doubt Emmy about it since she used to discuss the transactions of the land with her on behalf of Phylis. She denied seeing any document showing that Emmy paid her. She stated that she got the copy of agreement between her and Phylis from Yano and Company Advocates. She added she did not go to complain

to the police about the agreement between Emmy and her because she signed hers before a lawyer. She did not refute the Equity Bank being asked to give evidence in court. She closed her case.

**117.** The **1st Defendant, Emmy Mutwol**, testified as **DW2**. She adopted her written witness Statement dated **18/5/2021** filed on **2nd June 2021** as evidence in-chief.

**118.** In it she stated that she was a civil servant, and the Plaintiff was her cousin. She knew the other defendants. The Interested Party was the registered owner of the suit land up to **21st April 2011**. On **17th April 2007** she, the 1st Defendant, bought the said parcel of land from the interested party. An agreement was executed in the presence of Charles Yano Advocate in Kitale. From **21st April 2011** to **19th June 2020**, she had been the exclusive registered owner of the suit land after it was transferred to her by the interested party. She added that the Plaintiff had never purchased the suit land reference number, **Chepsiro/Kibuswa Block 1/ Kelchinet/137**. It was untrue that she witnessed the Plaintiff's purchase of the suit land from the Interested Party on **17th April 2007** when she, the 1st Defendant, purchased it. It was untrue that the Interested Party sold the suit land twice on **17th April 2007** in the same advocates' office to two different purchasers. She had never participated in negotiations or a meeting in

which there were negotiations over the purchase of the suit land by the Plaintiff.

**119.** She stated further that Alex Chepsiror, Sylvester Mutwol and herself did not witness any land sale agreement between the Plaintiff and the Interested Party. Further, the Plaintiff had not made any payments towards the purchase of the parcel of land nor was the alleged Sale Agreement between her and the Interested Party genuine. She has not been entrusted with the responsibility of dealing with the suit land or its conveyance by the Plaintiff. She did not receive any documents of conveyance of the suit land in favor of the Plaintiff from the Plaintiff or anyone else. She did not receive any instructions from the Plaintiff to deal with the suit parcel of land in that behalf.

**120.** She added that there was no way she, the 1st Defendant, would have received instructions from the Plaintiff on how to deal with her land, being, land Reference Number **Chepsiro/Kibuswa Block 1/Kelchinet/137**. She had never given any excuse or explanation to the Plaintiff as to why this suit land was not immediately transferred to her as the same could not have arisen. The Plaintiff had never been in possession of the suit land. It is her, the 1st Defendant, who had always been on the suit parcel of land since she purchased it until last year (the previous year to the filing of the Statement) when she sold it to Meshack Kimutai and vacated.

**121.** She added that she had never requested the Plaintiff to allow her to use the suit parcel of land, nor could it have been tenable for her to make such a request. The Plaintiff unjustifiably staked acclaim on her parcel of land in **2020**, which obviously she could not accede to. There was no way she could hand over possession and use of the parcel of land to the Plaintiff. The Plaintiff had known all along that the suit land belonged to her, the 1st Defendant. The registration and transfer of the suit land in her favor was done by the Land Registrar in the usual and normal manner of business. As a matter of fact, the Interested Party transferred the suit land to her as she was the one who purchased it from her. The Interested Party had never executed a transfer of land in favor of the Plaintiff. The transfer of the parcel of land from the interested party to her name was not fraudulent. It was regular and legal. There was no negligence or connivance at the Land's office during the processing of the transfer of the land to her and the subsequent transfer to the current registered owner's name.

**122.** She stated that she had not breached any trust between herself and the Plaintiff on the suit parcel of land, as there was none. The Interested Party had not been taken advantage of. She, 1st Defendant, had no affinity to fraud. There was no way she could have entered into the negotiations on the suit parcel of land with the Plaintiff as she, Plaintiff, had no interest, whether legal or equitable, in

it. There was no arrangement whereby the suit land was to be transferred to the Plaintiff's name. The Plaintiff had no interest in the suit parcel of land.

**123.** Further, the Plaintiff had been trying to unjustly enrich herself from her sweat. The advocate who handled the land sale agreement, now Justice Charles Yano, would vindicate her on her position on the parcel of land. The Interested Party would also vindicate her in confirming who between she and the Plaintiff dealt over the suit parcel of land. It was improbable that the same seller of the parcel of land would on the same date, execute two separate sale agreements over the same puzzle band to two different purchasers in the same advocates office. It was also improbable that the same parcel of land would be sold to her on the same date, and she also witnessed the Plaintiff's purchase of the same parcel of land.

**124.** Further, she had seen witness statements from Phillip Boit Mutwol, John Komen Seroney, Samuel Yego Cheboi, Robert K Chesinen, Benjamin K. Kibor, Paul Kosgei and Paul Kemboi Yano regarding a meeting that took place on **12th December 2020**. It was not true that at the meeting she stated that she did not buy the land from Sarah C. Busienei. It was untrue that she stated in the meeting that Phylis Mutwol was the one who bought the suit land. She did not admit in the said meeting that the parcel of land belonged to Phylis Mutwol. She did not state in the meeting that Phylis

intended to sell the land to her, but she was unable to raise the purchase money. She did not make a request that Phylis Mutwol surrenders part of the land to her in the form of appreciation for taking care of it. The elders unjustly and baselessly tried to convince her to surrender the land to Phylis in exchange for some acreage of land which she declined because in any event, she did not have land to give. She never agreed to receive any land from Phylis in consideration of the suit parcel of land being surrendered to her. She was not aware of any committee formed to oversee the implementation of the agreement or settlement, as there was none. She never made any proposals on who to oversee the implementation or any resolutions as none was agreed upon. There was no resolution reached on **12th to December 2020** and if there was one, she could have endorsed it. She could not resolve to give what she did not own. In the meeting that took place on that date, the elders appeared to have been compromised and were not impartial hence she walked out of the meeting. The Plaintiff was trying to put into question the character of Justice Yano while he was in private practice.

**125.** In her oral testimony she stated that she was a paternal cousin to Phylis J. Mutwol. She, DW2, bought the land and not Phylis J. Mutwol. She produced a number of documents as Exhibits in support of her case. She produced the certified copy of the register (Green card) as **1 Dexh 1.**

**126.** She added that Sarah, the 4<sup>th</sup> Defendant, transferred the land to her. She produced the certified copy of the transfer form from Sarah to her as **1 Dexh 2**; the certified copy of the consent to transfer land from Sarah to her as **1 Dexh 3**; the original agreement between myself and the defendant dated **17/4/2007** as **1 Dexh 4**; a certified copy of the consent to dated **16/6/2020** transfer between her and the 5th Defendant Meshack as **1 Dexh 5**; a certified copy of transfer form dated **19/6/2020** between her and Meshack Kimutai as **1 Dexh 6**; a certified copy of the application dated **12/6/2020**, for the land control board consent between her and the 5th Defendant as **1D exh 7**; a certified copy of the title deed issued on **21/4/2011** in her name as **1Dexh 8**; the original agreement dated **15/5/2020**, between her and Meshack as **1D exh 9**; the original of Acknowledgments dated **30/6/2020** and **28/7/2020** from Meshack about payments as **1 Dexh 10(a)** and **(b)**.

**127.** She testified further that it was not true that Phylis bought the land. Rather, it was her who purchased it. She denied selling the land to Meshack to defeat the interest of Phylis. She was the owner and had a right to sell. She also relied on the statement of Sarah dated **14/7/2020** and her affidavit and that of Alex. She asked that the case be dismissed.

**128.** On cross-examination she stated that Phylis had a firm stance against resolving the case. She too was not willing to resolve the matter at home. She repeated she knew Sarah

Busienei in **2006** or **2007**. Someone introduced her to Sarah that she had a parcel she wanted to sell the land. She denied meeting Sarah together with Phylis. She refuted Sarah's evidence that she sold the land to Phylis. She stated all she knew was the earlier position of Sarah and not the one she, DW1, took or said in court.

**129.** DW2 denied the evidence by DW1 that she sold the land to Phylis and that she and the said DW1 went to the advocates office and signed an agreement, with her (DW2) being a witness. She was only aware of an agreement between her and Sarah, which she produced (see **1DExh 4**). She too agreed that the land registrar was not a party or present at the execution. He did neither sign it nor was present when money exchanged hands between her and Sarah. He only became aware of the transaction when she presented the transfer of the land to him. He was not aware of the agreement, the payment of the consideration or even signing the transfer. Even when she and Sarah went to the **land control board** the **land registrar** was not present.

**130.** About Land Registrar effecting the transfer from Sarah to her, she added that there was no caution on the title when that happened hence the Land Registrar had no reason not to register the land to her. He made no mistake or bore any blame.

**131.** About the agreement between her and Meschack K. Keter, Land Registrar was not present when they prepared it. After

executing agreement, she went to the Land Control Board to transfer the land to Meshack. The Land Registrar was not present. He did not sign the application for consent. In the transaction between her and Meshack, the Land Registrar became aware of the transaction when she presented the transfer to him. All the fees and duties were paid before the registration in favour of Meshack. She transferred the land to Meshack when there was no caution to prevent the transaction. It was the duty for the Land Registrar to transfer the land as a public officer. She could not blame him for anything or any wrong.

**132.** On further cross-examination she repeated she knew Sarah in **2006-2007** through someone she could not recall. She added she was then doing farming in the area.

**133.** Regarding the agreement between Sarah and her produced as **1Dexh 4**, she stated it was not witnessed. Further, Sarah sold to her the property but she did not have any acknowledgment thereof. She paid Sarah in cash at execution. Her source of income in **2006 and 2007** was farming. She did some savings and borrowed from her husband money to pay.

**134.** On re-examination she stated that at paragraph **4** the Affidavit of Sarah sworn on **14/7/2020** indicated that she sold all the land to her and put her into possession. She was in exclusive possession. Further, that deponed that she had never sold the land to the Plaintiff. At paragraph **10** and **11**

she deposed that the agreement allegedly executed between herself and Plaintiff was a forgery, and she had never received any money from the said Plaintiff.

**135.** DW2 added that Sarah did not complain that she did not receive any money from her or that she sold the land to someone else. About the Affidavit of Alex Chepsiror sworn on **14/7/2020** she repeated that he deposed he did not recognize the purchase of the land by Phylis. Further, he deposed that she, DW2, bought the land from the 4<sup>th</sup> defendant. When referred to the Statement of Sarah dated **14/7/2020**, she added it confirmed it at paragraph **14** of the Affidavit. Further, that at paragraph **6** of Alex's Affidavit it was confirmed that the land was sold to me. She concluded her testimony that Sarah was not claiming any money from her.

**136.** The **5th Defendant, Meshack Kimutai Keter**, testified as **DW3**. He adopted his written witness statement dated **26/5/2022** filed on **15/6/2022**, as evidence in-chief. In it he stated that he bought the suit land from Emmy vide an agreement dated **15/6/2020**. He paid Emmy by way of instalments. Before buying the land, he visited it and found Emmy's workers on it. He carried out a search. It showed the land had a charge to the AFC. It was removed. They went to the Land Control Board and obtained consent to transfer. Emmy signed transfer documents in his favour.

- 137.** He testified orally that he bought the suit land from Emmy. They entered into an agreement dated **15/6/2020, 1Dexh 9**. He relied on it. He paid Emmy and she acknowledged the money, in documents **1Dexh 10(a) and (b)**. He relied on them. He stated that before buying the land he visited the land and went to the lands to confirm who the owner was. The owner was Emmy Jepkemoi Mutwol. The land had a charge. They went to the Land Control Board and applied for and were given a consent. He relied on the documents, being **1Dexh 5 and 7**. The land was transferred to him vide a transfer between Emmy and him. It was **1Dexh 6**. He paid all fees. He was introduced to Emmy when he heard she was selling land. He was not aware of any claim by Phylis on the land. He too prayed that the suit by Phylis be dismissed.
- 138.** On further cross-examination he added that when he met Emmy she told him about the land, its location and that it had no issue except the charge to the AFC. She promised to have it discharged. He visited the land and met Emmy's workers. They were doing top dressing at the time. He asked them about the land. They said it was owned by Emmy. He also interacted with the locals. Then he went to Kitale land's office, conducted a search and confirmed it.
- 139.** He added, they entered into the agreement during the Covid-19. Interactions were limited at the time hence he did not have a witness. He paid a consideration of **Kshs. 20 million**. He was a businessman and maize trader. He paid in

cash. He admitted, Clause **3 (c)** of the agreement provided that payments be by RTGS, electronic transfer.

**140.** About the Land Registrar, he was not involved in the transaction. He could not know whether DW3 paid the money or not. The transfer in his favour was done outside of the Lands registry. He only submitted it for registration. The land registrar was not involved in the process. The land registrar was not with him at the Land Control Board. He did not participate. The land Registrar was only involved when DW3 presented the transfer. By that time the charge was already withdrawn. There was no reason to prevent the land registrar from proceeding with the registration in his favour.

**141.** That closed the 1<sup>st</sup> and 5th Defendant's cases.

**142.** The **3<sup>rd</sup> Defendant** called the Land Registrar in charge of Trans Nzoia County, Sharon Gerald, as **3DW1**. She stated that her mandate was being the custodian of the land records for, as well as being the administrator of, the lands office in Trans Nzoia County. One other duty is to register title deeds.

**143.** She had the parcel file for parcel number **Chepsiro/Kibuswa Block 1/Kelchinet/137** whose approximate size was **20.2 Ha**. Its registered owner was Meshack Kimutai Keter. Its Green card was opened on **14/1/1997**, as absolute ownership. It was first owned by Lilian Wangari Mbugua from **14/1/1997** and its title deed issued on **20/1/1997**. It was charged to Co-operative Bank

of Kenya on **7/10/1997** for **Kshs. 240,000/=** and discharged on **17/2/2004**. Then on **11/5/2006** it was transferred to Sarah Cheptengeri Busienei and a title deed issued the same day. A caution was registered on it on **4/7/2007** in favour of Mary Muthoni and withdrawn on **13/7/2007**. On **21/4/2011** it was transferred to Emmy Jepkemoi Mutwol and a title deed issued the same date. It was charged to for **Kshs. 2 million** and discharged on **18/6/2020** as Entry No. **5** on the encumbrance section. It was transferred on **19/6/2020** to Meshack Kimutai Keter, and a title deed issued the same day. On **10/7/2020** there was temporary injunction on dealings on the property.

**144.** 3DW1 stated further that at the time of transfer from Emmy J. Mutwol to Meshack Keter there was no charge on the land. The charge on it was discharged a day before the transfer, that is, the charge was discharged on **18/6/2020** and the transfer made on **19/6/2020**. She refuted the claim by the Plaintiff that the land was transferred to Meshack in defiance of a court order as the order of injunction was registered on **10/7/2020**. By the time the land was transferred the lands office had not been served with the order. She produced the certified Green card as **3Dexh.1**.

**145.** 3DW1 produced the Transfer in favour of Mary Muthoni as **3Dexh2**; the one dated **21/4/2011** from Sarah C. Busienei to Emmy Mutwl as **3 Dexh3**; and the one for Emmy Mutwol to Meshack Keter dated **19/6/2020**, as **3 Dexh 4**. She

produced as **3Dexh 5** the title deed surrendered from Sarah C. Busienei to Emmy Mutwol. She produced as **3Dexh 6** the application dated **20/4/2011** for consent to the Cherangani Land Control Board; and the consent dated **20/4/2011** issued from the Control Board; and a transfer from Sarah C. Busienei to Emmy J. Mutwol as **3DExh.7**. She did not see the receipts for the payment of stamp duty.

**146.** 3DW1 produced the transfer from Emmy Mutwol to Meshack Keter, and the title issued on **21/4/2011** and surrendered by Emmy as **3Dexh. 8**; the application dated **12/6/2020** made to the Land Control Board as **3Dexh.9**; the consent dated **16/6/2020** for transfer between Emmy Mutwol and Meshack Kimutai Keter as **3 Dexh.10**; the valuation for stamp duty dated **18/6/2020** as **3Dexh.11**. The value was indicated by the County Valuer as **Kshs. 7,500,000/=**; the Stamp Duty of **Kshs. 150,000/=** was paid as per the assessed valuation. It was paid through the Cooperative Bank of Kenya dated **13/6/2020** to K.R.A on **19/6/2020** and an E.T.R receipt from the Co-operative Bank Agent and a payment slip of the same date by K.R.A given. She produced the Cooperative Bank receipt as **Dexh.12(a)** and the KRA payment slip as **Dexh.12(b)**. She produced a fee receipt for payment of certificate of title and registration dated **19/6/2020** as **3Dexh 13**. Further, the copies of the identity card of Emy Mutwol **3Dexh14(a)**; the KRA certificate for Emmy **3 DExh.14(b)**; and the copy of ID for Meshack Keter and his

KRA PIN certificate as **3Dexh 14(c)** and **3Dexh.14(d)** respectively.

- 147.** She testified that the office did not received any complaint of a forgery of consent from Land Control Board in favour of Meshack Keter from Emmy J. Mutwol, or even for the application for consent. Further, she stated that the land registrar does not sit in the Land Control Board, and the Board had not disputed the issuance of the consent.
- 148.** 3DW1 testified further that although the complaint was that the payment for stamp duty was paid by a stranger, one Alice Mutengo Wabala, at the payment details section the transferee's details were Mutwol Jepkemoi Emmy and Meshack Kimutai Keter. She added that the transferor's details were same and the transferor's PIN given. If KRA had an issue to confirm that the land was registered in their names, their PIN numbers had also been given. As to why the parties chose to use the PIN of Alice Mutenyo Wabula, she would not know. She would not know if the land should not have been registered without payment of the Capital Gains Tax.
- 149.** On cross-examination 3DW1 stated that there was no caution or restriction at the behest of Phylis Mutwol. Further, the order of injunction was made on **30/6/2020** and issued on **11/7/2020**, about **10** days later. It could not have prevented a transaction made on **19/6/2020**.

- 150.** Regarding a case of an issue of non-payment stamp duty 3DW1 testified that the step the registrar takes is registration of a restriction on the land to prevent further transactions stamp duty until stamp duty is collected first. Non-payment of stamp duty does not nullify a transfer. She stated that the transfer between Meshack and Emmy was done procedurally and therefore legitimate.
- 151.** On further cross-examination the witness noted that the payment of stamp duty was made by Alice Webala but it was up to the parties to agree on how they agree but ideally it should be paid by the purchaser. She added that Alice was neither the purchaser nor the vendor in the transaction. She stated that the payment by Alice was not irregular because parties were free to choose who to make payment for them.
- 152.** On re-examination 3DW1 stated that the description of the payment by Alice Mutenyo shows the payer is her but the PIN number for her Alice M. Wabula was not indicated. She added that as per **3Dexh 12(b)** the beneficiary of the payment, the KRA, acknowledged the same. The payment showed the transferee's and transferor's details and the amount payable as **Kshs. 150,000/=**. The transferor was Emmy Mutwol and transferee Meshack Keter. Further, that the Kenya Revenue Authority (KRA) acknowledged receipt of the **Kshs. 150,000** on behalf of the parties.
- 153.** Asked further to explain steps the Land Registrar takes in case of payment of stamp duty that is not full, 3DW1 stated

that the Registrar places a file under lock and key and not placing a restriction on it. When the parcel is then subsequently brought up in case of a new purchaser, he is told that the payment was not made and he has to pay it first. A penalty is also made under the Stamp Duty Act. Her evidence was that the failure to pay the fees does not nullify transaction. A penalty would be put against the transaction. She summed it that the KRA could not receive any payment for a transaction purporting to emanate from the lands office of which transactions does not exist.

**154.** That closed the 3<sup>rd</sup> Defendant's case, and the entire case. Parties were given chance to submit.

**(c) SUBMISSIONS**

**PLAINTIFF'S SUBMISSIONS**

**155.** The Plaintiff filed her submissions dated **4<sup>th</sup> February 2026**. She began by summarizing that she commenced the instant suit vide its Complaint dated **24<sup>th</sup> June, 2020**, whose substratum was the fraudulent, irregular and unlawful transfer of the suit parcel of land to the 1st Defendant who later transferred it to the 5th Defendant. Further, she amended the Complaint through an Amended Complaint dated **8<sup>th</sup>, February, 2022**. In it she sought the four reliefs given at the initial pages (above) of this judgment. She summarized that the Defendants entered appearance and lodged Statements of Defence to the Complaint.

**156.** She then gave two issues for determination, being;

- a. Whether the transfer process leading to the issuance of a Title Deed in the name of the 1st and 5th Defendant with respect to the suit parcel of land is irregular, and**
- b. Whether an Order for Permanent Injunction can be granted to the Plaintiff.**

**157.** She submitted on the first that the 1st Defendant fraudulently or irregularly obtained a Title Deed on **21st April, 2011** over the suit parcel of Land under her name in a blatant disregard to her proprietary rights since she (the Plaintiff) paid for the value of the land in the year **2007** and has been in possession occupation and use of the suit Land for a period exceeding **12 years**.

**158.** She contested the sale agreement produced by the 1st Defendant as being valid, given the evidence of the 4th Defendant. She relied on the case of **Dismas Munialo Kalamu v Martin Juma Kwata & 4 others [2020] eKLR** the Court wherein the court held that the fact of one having a title to the suit land is not proof of ownership when the root thereof is under challenge since it requires the registered proprietor to go beyond the instrument and prove the legality of how he acquired it.

**159.** She argued that no consent of the Land Control Board was obtained hence proof of fraud. She urged the Court to look at the evidence of DW1 (Sarah Busienei Cheptekeny), the previous owner of the suit Land who stated that she sold the Land to the Plaintiff and not the 1st Defendant. Further that

DW1 stated that she received payment for the suit Land from the Plaintiff. She added that the evidence of DW1 was that the 1st Defendant only helped the Plaintiff with scouting the Land, and DW1 only transferred the Land to the 1st Defendant because the 1st Defendant told her that the Plaintiff had allowed her so that she could secure a loan from AFC. That DW1 denied ever signing the Agreement presented by the 1st Defendant and acknowledged the one presented by the Plaintiff (sic).

**160.** On the 5th Defendant being an innocent purchaser for value the Plaintiff denied it and argued that it was incumbent upon him to undertake due diligence before purchasing the suit property. Further, had the 5th Defendant undertaken due diligence, he would have discovered that the 1st Defendant was never in actual possession of the suit property, but that Plaintiff was. She argued that it was not enough for a party to state that they have a title. That the 5th Defendant ought to have conducted a forensic historical audit which would have helped him ascertain from the initial owner if indeed she sold the Land to the 1st Defendant and who was in actual possession of the land.

**161.** The Plaintiff relied on the Court of Appeal case of **Teleposta Pension Scheme Registered Trustees v Intercountries Exporters Limited & 5 others (Civil Appeal 293 of 2016) [2024] KECA 870 (KLR) (12 July 2024) Judgment**. In it their Lordships held that the title of an

innocent purchaser for value without notice can be defeated if it originates from an irregular and illegal allocation. Also, that the Supreme Court in **Dina Management Limited vs Mombasa County Government & 5 others [2023] KESC 30 KLR** held that it could not sanction irregularities and illegalities in the allocation of public land on the basis of indefeasibility of title.

- 162.** The Plaintiff then urged the court to find that the transfer process leading to the issuance of the title Deed in the name of the 1st Defendant and subsequently the 5th Defendant with respect to the said parcel of Land was irregular and illegal hence void *ab initio* and cancel it.
- 163.** The Plaintiff relied further on the case of **Zacharia Wambug Gathimu & another v John Ndungu Maina [2019] eKLR**.
- 164.** On whether an Order for permanent injunction could be granted to her, the Plaintiff relied on the case of **Giella v Cassman Brown & Co Ltd [1973] EA 358** which laid down the conditions to prove as a prima facie case with a probability of success, irreparable injury that cannot be compensated by an award or damages, and if in doubt a decision on the balance of convenience.
- 165.** She relied on the case of **Mrao versus First American Bank of Kenya Limited & 2 others [2003] eKLR** to define a prima facie case. She argued that the Plaintiff had been in possession, occupation and use of the suit land from the year **2007** which she said was proved by her List of

Documents and evidence of witnesses. She argued that the 1st Defendant misled the Court that she purchased the Land from the 4th Defendant who vehemently denied selling it to her and entering into a Sale Agreement with her.

**166.** She relied on the Court of Appeal case of **Maina & 87 others v Kagiri (Civil Appeal 6, 26 & 27 of 2011 (Consolidated)) [2014] eKLR** where the Court held that the superior one erred in failing to consider that the Appellants were in possession of the suit property and a constructive trust created in favour of all individuals who had paid the purchase price for respective plots.

**167.** The Plaintiff argued that she had a valid uncontested Sale Agreement dated **17th April, 2007** with respect to the suit land, duly executed between her and the original owner to the suit land. She then submitted that the Sale Agreement was marked as **Dexh 2**. It complied with the requirement of **Section 3(3)** of the Law of Contract Act which requires all contracts for the sale of land to be in writing, signed by all parties and attested. Further, she made payment of the entire Purchase Price as envisaged in the Agreement hence the proprietary interests over the suit land transferred to her on 31<sup>st</sup> December, 2007 upon the completion of the payment of the Purchase price, which fact, according to her, was confirmed by the 4th Defendant.

**168.** The Plaintiff then made an interesting argument that the Defendant had failed to establish a prima facie case. On this

she contended that the Defendant had not presented any evidence to show that she purchased the Land from the 4th Defendant and thus the transfer in her favour was irregular. She discounted the 1st Defendant's evidence of the Agreement produced as an exhibit, indicating that she bought the suit land from the 4th Defendant. She argued that the 4th Defendant denied ever entering into an agreement with her and stated that the signature appended in that Agreement doesn't belong to her.

**169.** The Plaintiff again submitted that the property was unique in its own way and had sentimental/social value to the Plaintiff since it was where she sought to build her dream retirement home. Its location was unique for the consideration of a home by the Plaintiff and her family hence any interference with the ownership and possession would have far-reaching repercussions on her and the family, which could never be remedied by compensation. Moreover, the land was located in a prime area within Trans- Nzoia County in close proximity to the Plaintiff's home in Marakwet and it would be impossible to get another parcel of similar acreage within the same area. She urged the Court to consider the catastrophic harm to be suffered by the Plaintiff if the reliefs sought were declined.

**170.** Lastly, the balance of convenience tilted towards allowing the injunctive orders sought. She relied on the case of ***Films***

**Rover Internationale [1986] EALL ER**, on grant of orders of injunction.

**171.** The Plaintiff submitted that the suit had merit.

**1<sup>ST</sup> & 5<sup>TH</sup> DEFENDANTS' SUBMISSIONS**

**172.** On their part, the two defendants began their submissions by giving the summary of the Plaintiff's claim and the defences thereto. They summed it that the issue was basically whether it was the Plaintiff or the 1st Defendant who purchased the suit parcel of land from the 4<sup>th</sup> defendant. They then summed up the Plaintiff's evidence and the Defendants'. They proposed that for the Plaintiff's suit to succeed she was required to demonstrate three things, namely, that she was the purchaser; the transfer into the 1<sup>st</sup> and 5th Defendant was fraudulent, and if so, that the 5th Defendant was privy to the fraud.

**173.** They argued that the Plaintiff failed to prove her assertion of purchase to the requisite standard. She did not produce the land sale agreement and the acknowledgments of payment. They added that the 5th Defendant (*sic*) on their other hand clearly indicated in her affidavit and statement that the person she sold the land to was the 1st Defendant. Further, that the Plaintiff was a stranger to her and that all payments of the purchase sum came from the 1st Defendant. They argued that the evidence was supported by that of Alex Chepsiror. They concluded that the 1st Defendant discharged the burden of proof by demonstrating the

purchase of land by production of the original land sale agreement in her favour and all the other documents in support of the transfer.

**174.** On the Plaintiff's claim of fraud on the part of the Defendants they submitted that the case ought to have been proved beyond a preponderance of probability.

**175.** Regarding the Plaintiff's claim about fraud on the part of the 1<sup>st</sup> and 5th Defendants, they contended that no evidence was tendered to demonstrate the perpetration of fraud. they added that the Plaintiff having failed to prove purchase of the land, she admitted that the land was transferred to the 1st Defendant by the 4<sup>th</sup> defendant and all the procedures were adhered to. On the Plaintiff's claim that the transfer to the 5th Defendant was done when the suit was already filed and interim orders in place, they argued that the transfer preceded both the suit and court order and even the discharge of charge. Again, they argued that stamp duty was paid, and even though in another person's name the receipt captured the name of the rightful transferor and transferee and that could not possibly vitiate the transfer.

**176.** Regarding the issue as to whether the 5th Defendant was privy to any fraud, they submitted that he was not and no evidence was tendered to connect him with any fraud. He was an innocent purchaser for value without notice.

**177.** They relied on the cases of **Arthi Highway Developers Ltd v West End Butchery Limited & 6 Others (2015) eKLR**

which held that fraud ought to be specifically pleaded and proved on higher balance of probability but not beyond reasonable doubt. They added that the burden lay with the Plaintiff to prove that she was the real purchaser.

**178.** They relied further on that Court of Appeal decision in **Munyu Maina v Hiram Githiha (2013) eKLR** in which the held an owner of a property whose title is challenged ought to go beyond the instrument to prove the legality of how he acquired the title. They added that the 1<sup>st</sup> and 5th Defendants went beyond tangling the certificate of title. They demonstrated the purchase, transfer and the acquisition of the requisite consents.

**179.** About innocent purchaser for value without notice, they relied on the case of **Said v Shume & 2 others Civil Appeal E050 of 2023) KECA 866 (KLR) (26 July 2024) (Judgment)**; the *Black's Law dictionary*; the **Dina Management Limited v County Government of Mombasa & 5 Others (Petition 8 (E010 of 2021) (2023) KESC 30 (KLR)**. In the last authority, the Supreme Court held that a bona fide purchaser for value must prove that they acquired a valid and legal title, and carried out the necessary due diligence to determine the lawful owner, and they paid valuable consideration for the purchase of the suit property.

**180.** They prayed for dismissal of the suit.

### **3<sup>RD</sup> DEFENDANTS' SUBMISSIONS**

**181.** The 3<sup>rd</sup> Defendant filed its written submissions dated 30<sup>th</sup> January 2025. In them, after summarizing the parties' cases and the reliefs sought in the Amended Paint, it identified two issues for determination. The first one was whether the Plaintiff had proved her case against the 3<sup>rd</sup> defendant to the required standard.

**182.** On this issue, the 3<sup>rd</sup> Defendant submitted that the allegations about the its involvement in the alleged fraud was borne at paragraphs 18, 21 and 24 of the Amended Plaintiff. In them, the Plaintiff alleged fraud and collusion on the part of the 3<sup>rd</sup> defendant. The first limb on fraud was the manner in which the 1st Defendant obtained the title from the 4<sup>th</sup> defendant. That the Plaintiff contended that the 3<sup>rd</sup> defendant should be held liable for being party to the fraud and allowing it to be perpetuated by the 1st Defendant.

**183.** Regarding this allegation, the 3<sup>rd</sup> Defendant submitted that it collapsed when the Plaintiff (PW1) and the 4<sup>th</sup> Defendant (DW1) were subjected to cross-examination. Both admitted that the 3<sup>rd</sup> Defendant was not a party to the agreement of sale and could not know who between the Plaintiff and the 1st Defendant purchased the suit land. Therefore, the allegation that the 3<sup>rd</sup> defendant transferred a suit proper to the 1st Defendant who was not a party to the agreement collapsed.

**184.** The second limb was that the alleged transfer was fraudulent. But the 3<sup>rd</sup> Defendant submitted that both PW1

and DW admitted that the transfer from the fourth defendant to the 1st Defendant was based on duly executed instruments of transfer and completion documents. PW1 admitted after the resale transaction she neither notified the 3<sup>rd</sup> defendant of her interest in the suit land nor did she register a caution to prevent any dealings on the land. Furthermore, DW1 admitted that the transfer of the land in favor of the 1st Defendant was signed by her and she surrendered to the 1st Defendant a copy of her identity card, the KRA PIN card; and the original title deed. She also obtained a consent from the Land Control Board on an application thereto, and upon attending the Board for that purpose to facilitate the transfer of the suit land to the 1st Defendant.

**185.** The other limb of alleged fraud was that the transfer between the first and 5th Defendants was not procedural. The third defend, however, submitted that the evidence of the Plaintiff the 1st Defendant and the 3<sup>rd</sup> Defendant's witness was clear on the point. First, they confirmed that the 3<sup>rd</sup> defendant was not to blame for anything done innocently on documents presented for registration and that none of the documents presented had an anomaly which would prevent the 3rd Defendant from effecting the transfer. Thus, the allegation of fraud failed. It relied the definition of fraud and the Black's Law Dictionary 7<sup>th</sup> Edition. It had added that for a claim of nature the Plaintiff should have proved that the

3<sup>rd</sup> defendant misrepresented material facts to the detriment of the Plaintiff or concealed material facts to induce the Plaintiff to act to their detriment.

**186.** The 3rd Defendant relied on **Sections 107 10** and **112** of the Evidence Act on the bad proof being placed on anyone who alleges fraud to Strictly Pro the same

**187.** It relied on the case of **Jennifer Nyambura Kamau versus Humphrey Mbaka Nandi (2013) eKLR** by the Court of Appeal. and also **Ndolo versus Ndolo (2008) 1KLR (G&F) 742 (sic)** and **Central Bank of Kenya Limited via Trust Bank Limited & 4 others, NAI Civil Appeal No. 215 of 1996 (UR)**; and **Rosemary Wanjiku Muriithi versus George Maina Ndinwa, NYR Civil Appeal No. 9 of 2014 (2014) eKLR.**

**188.** It submitted that fraud allegations are serious and proof thereof should be above a balance of probabilities but below beyond reasonable doubt. Further, that it was not enough for anyone to infer fraud as having been committed. The registrar only acted on documents presented to him. The person who presented such documents was to do so within the rules, and absence of any objections to the documents the only option the registrar had was to register the instruments.

**189.** It is submitted further that the evidence tendered to prove every case depended on the cause of action and particular pleadings. It added that since the 5th Defendant's title was

under challenge; it was upon the Plaintiff to prove fraud on the part of the said Defendant.

**190.** On the second issue which was whether the 3<sup>rd</sup> defendant acted in good faith and in furtherance of its statutory duty. It submitted that every action taken by the office in regard to the property was in good faith and in accordance with the law. Further, that the evidence of DW confirmed that the 3<sup>rd</sup> defendant was mandated to receive and register documents of transfer duly executed and attested, and issue titles. It acted within that mandate and within the provisions of the Land Registration Act. It further submitted that it followed the prescribed procedures. It relied on **Section 32** of the Land Registration Act to argue the registrar's role was essentially to register interests on land in a manner that reflected the intention of the parties. There was no evidence led that it acted the contrary.

**191.** On the allegation that there was some form of irregularity in the documents submitted for registration the 3<sup>rd</sup> Defendant submitted that the Plaintiff neither proved the specifics of the pleaded irregularities nor did she prove the alleged irregularities which would rendered the transaction void. It was their contention that under-stamping of an instrument could be remedied by the Land Registrar demanding for the payment of unpaid stamp duty and penalties as the 3DW1 for testified.

**192.** Regarding the allegation by the Plaintiff on the receipt for payment of stamp duty as a forgery it submitted that the payment of stamp through other person(s) than the parties to a transaction did not affect the transaction. Further, PW2 was unable to explain how her details found her way to the Kenya Revenue Authority. This, they submitted, dented her credibility. Moreover, her evidence that she used her details for a different transaction involving a Succession matter of her deceased father's estate was not proved. Additionally, she failed to explain the variance in the stamp duty noting that the stamp duty for transmissions was a nominal fee of Kenya shillings **200/=** whereas the payment in the transaction was a sum much higher. It concluded that PW2 was a gun for hire to denounce a transaction undertaken by her in good faith.

**193.** It was their submission that in any event, the 3<sup>rd</sup> defendant was not privy to the arrangement between the 1<sup>st</sup> and 5<sup>th</sup> Defendants. Further, that in absence of evidence from the KRA to the extent that a duty was not actually paid, the court ought to reject the invitation by the Plaintiff and PW 2 on any wrongdoing on its part. It relied on the case of **Hussein versus the Land Registrar (2021) eKLR** wherein the court held that public officers, including land registrars, are not reliable for errors committed in the course of performing their duties if there is no evidence of

deliberate wrongdoing. It summed it that the case be dismissed.

#### **4TH DEFENDANT'S SUBMISSIONS**

**194.** On her part, the 4th Defendant filed submissions dated **21<sup>st</sup> January 2025**. She started by giving a summary of the parties' cases. This court needs not summarize it again here. Suffice it to say that regarding her case, she argued that she was over 80 years old. In or about **April, 2007**, Emmy Jepkemoi Mutwol (the 1st Defendant) approached her looking for a property for her sister to purchase. They met and she showed her the suit property. The 1st Defendant informed her that she was specifically looking for land for her sister who stayed in Mombasa. The said sister was Phylis Jerotich Mutwol (the Plaintiff). The 1st Defendant agreed with her to meet with the Plaintiff to finalize the transaction. They met and agreed on the price. On **17th April, 2007** they proceeded to advocate Yano's office to draft the sale agreement between the Plaintiff and her and **3** witnesses, being, Alex Chepsiror (4<sup>th</sup> Defendant's son), Sylvester Mutwol and Emmy Mutwol.

**195.** The Plaintiff paid the purchase price and with deposits therein. Upon payment of the final deposit, the 1st Defendant informed her that she needed the original title deed for the suit property. The 4th Defendant enquired why

she needed the title deed and not for her to handover it the Plaintiff. The 1st Defendant informed her that they had agreed with the Plaintiff that she transfers the property to her to facilitate her get financing for Agricultural Finance Corporation (AFC) the 3rd Defendant for farming on the suit property. She believed her. She went to the 1st & 5th Defendants' Advocate's office to draft the transfer where she signed documents.

**196.** It was her submission that some of the documents may have included the sale agreement which the 1st Defendant alleges to have been entered into for sale of suit property. That was how the 1st Defendant became the registered owner of the property she now sold to the 5th Defendant. Her case was that she sold the suit property to the Plaintiff.

**197.** She set forth the following two issues for determination;

- 1. *Whether the 4th Defendant entered into a contract with the Plaintiff or the 1st Defendant;***
- 2. *Whether the sale agreement herein referred to as contract for sale of land between the 1st Defendant and the 4th Defendant amounts to a contract.***

**198.** In regard to the first issue, the 4<sup>th</sup> Defendant submitted that she entered into a contract for the sale of land with the Plaintiff, a copy of which she marked for identification as **PMFI-2**. She submitted that the Plaintiff's evidence was that she purchased the suit property from her and paid the purchase price. She added that the only contrary evidence

was whether the transaction was done. Further, she testified that it had been a long time and the bank she used to deposit the money informed her that most records for that period had been transferred to Mombasa offices archives and given time she would avail them.

**199.** About whether the sale agreement, **DExh-1**, amounted to a contract for sale of land, she submitted that it does not have any witness to the transaction. Further, the 1st Defendant did not produce any transaction relating to the contract showing payment of consideration thereon. Also, that the 4th Defendant denied receiving any money from the 1st Defendant. She relied on **Section 3(3)** of the Law of Contract whose text she reproduced and argued that **DExh 1** was unenforceable. She relied on the Court of Appeal in the case of **Jane Catherine Karani Vs Daniel Mureithi Wachira** (sic). She urged the court to find that there was no valid contract between the 1st Defendant and the 4th Defendant, and that the execution thereof showed the intentions of the contracting parties to be bound by the terms therein.

**200.** She submitted further that C.K Yano Company Advocates who drew the contract were not called to testify, yet the title was under scrutiny, as was captured in the case of **Munyu Maina v Hiram Gathiha Maina, Civil Appeal No 239 of 2009** (sic).

**201.** Further, that there was no evidence that the 1st Defendant ever paid the consideration for the Sale to the 4<sup>th</sup> Defendant. She added that no contract was formed in the drawn agreement and it was only meant to cover up for misrepresentation towards transfer of land. She argued that the Plaintiff gave testimony that she bought the suit property from the 4th Defendant and produced a copy of a Sale Agreement which was dully and legally drawn as per the parameters of **Section 3(3)** of the Law of Contract Act. She reproduced the terms of the agreement and argued that she (the 4th Defendant) acknowledged in her evidence receipt of these funds hence evidenced that the Plaintiff paid the consideration of sale. She finally urged the court to find that the contract for sale of land between her and the 1st Defendant was mere expression of intention to enter into legal agreement and did not amount to passing of interest in land.

### **ISSUE, ANALYSIS AND DETERMINATION**

**202.** The Court has carefully considered the Plaintiff's claim, the defences thereto, the law (both statutory and case law), the evidence adduced by the respective parties in support of their claim or defences and their submissions. At this point, it is worth noting that the parties did not agree on issues for determination. Rather, each of them set forth issues as they deemed fit. The court having considered the respective

submissions wherein the issues were set forth now lists them hereunder.

**203.** The Plaintiff set forth two issues for determination, namely:

- a. *Whether the transfer process leading to the issuance of a Title Deed in the name of the 1<sup>st</sup> and 5th Defendant with respect to the suit parcel of land is irregular.***
- b. *Whether an Order for Permanent Injunction can be granted to the Plaintiff.***

**204.** On their part the 1<sup>st</sup> and 5th Defendants set forth following three issues for consideration:

- 1. *Did the Plaintiff prove her assertion of purchase of the land to the requisite standard?***
- 2. *Did the Plaintiff prove that the transfer into the 1st Defendant and 5th Defendant was fraudulent?***
- 3. *Was the 5th Defendant privy to any fraud.***

**205.** The 3<sup>rd</sup> Defendant also set forth two issues:

- 1. *Whether the Plaintiff has proven his (sic) case against the 3<sup>rd</sup> defendant to the required standard.***
- 2. *Whether the 3rd Defendant acted in good faith and in furtherance of their statutory duties.***

**206.** The 4<sup>th</sup> Defendant set forth two issues for determination, being:

- 1. *Whether the 4th Defendant entered into a contract with the Plaintiff or the 1st Defendant;***
- 2. *Whether the sale agreement herein referred to as contract for sale of land between the 1st Defendant and the 4th Defendant amounts to a contract.***

**207.** Having considered the respective issues at length and the entire case, this court formulated the following issues for determination:

- a) *Whether parties are bound by their pleadings and can adduce evidence to the contrary.***
- b) *Whether documents marked for identification but not produced can be relied on in evidence.***
- c) *Whether the 4<sup>th</sup> Defendant is a credible witness.***
- d) *Whether the Plaintiff proved her assertion of purchase of the land to the required standard.***
- e) *Whether the Plaintiff proved that the transfers to the 1st and 5th Defendants were fraudulent or forgery.***
- f) *Whether the Plaintiff has proven her case against the 3<sup>rd</sup> defendant to the required standard.***
- g) *Whether the 5th Defendant was privy to any fraud or an innocent purchaser for value.***
- h) *Whether the sale agreement between the 1st Defendant and the 4th Defendant amounts to a contract.***
- i) *Whether the Plaintiff can recover the land, if it is hers, or her title thereto is extinguished.***
- j) *Whether the Plaintiff's suit was time barred.***
- k) *Whether an Order for permanent injunction can be granted to the Plaintiff.***
- l) *Who to bear the costs of the suit.***

**208.** Before embarking on the determination of the issues this court reminds the parties herein that the cardinal principle of

the law of evidence is that he who alleges proves, unless the law has specifically placed the onus of proof on another person other than the one who asserts. **Section S107, 109 and 112** of the Evidence Act are to the effect that he who alleges or relies on certain facts as proof of the existence or non-existence of a fact bears the burden of proving the facts unless the law specifically places the onus on another party.

**209. Section 107** of the **Act** provides:

***“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”***

**210. Section 109** of the same **Act** provides:

***“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”***

**211.** In this case, the burden lay on the Plaintiff to prove the allegations in the Amended Plaint. In particular, and summary, she bore the burden of proving that she bought the suit and therefore became the legal proprietor; she took occupation thereof; she still retains the ownership; the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants committed the acts of fraud alleged against them, her claim of fraud was not time barred; the 3<sup>rd</sup> Defendant committed irregularities alleged; the 5<sup>th</sup> Defendant was not an innocent purchaser for value, among many other issues.

**212.** This court will consider the issues it formulated sequentially.

In doing so, the court will endeavor as much as possible to use the simple legal technique or process of determining issues. It is *Issue (I), Rule (R), Application (A) and Conclusion (C)*, simply abbreviated as *IRAC*. This means that the court will ask itself a question at each stage. Put in simple terms the mnemonic would translate into four simple questions:

- 1.** *My Lords and My Ladies, what is the problem or Issue? Answer: the dispute herein is... (Assuming the party posing the question wants to understand the real issue better than the Respondent puts it, they would move to the next question).*
- 2.** *My Lords and Ladies, we suppose now you know what we are complaining about. So, what is the law or Rule (R) on it? Answer: this provision which creates the right or is said to be breached is this one.*
- 3.** *My Lords and Ladies, then why is the party asserting complaining or what did the Respondents do to the contrary? That means, my Lords and Ladies now apply (A) the law to the facts.*
- 4.** *My Lords and Ladies, what answer have you come up with on this issue? Meaning, what do we conclude (C), my Lords and my Ladies?*

**213.** That said, the first four issues this court formulated for determination cut across the parties' respective positions from the gravamen of fundamental legal issues that lay the basis of determining the rest of the issues subsequent thereto. The first issue was:

- (a) Whether parties are bound by their pleadings, and can adduce evidence to the contrary**

- 214.** The issue in this suit is that parties drew and filed respective pleadings as summarized at the beginning of this judgment. They proceeded to lead evidence to support each of their standpoints or claims. But one of the parties' evidence, the 4<sup>th</sup> Defendant's, was diametrically different, contrary or divergent from the pleadings she filed. That being so, how should the Court treat the same, in terms of the law?
- 215.** To determine the issue, the law is that parties present their cases to courts or judicial for a through pleadings. They bind themselves to their pleadings. The starting point here is that pleadings are a critical nerve in the life of any claim. Parties must always pay attention to their pleadings because they are bound by them. They cannot trudge beyond their claims. The Supreme Court of Kenya in **Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR** while discussing the essence of pleadings in an election petition found and held as follows in respect to: -

***“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party.*”**

***Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings...’”***

**216.**In **Odongo v Wadiya & 2 others (Environment and Land Appeal 029 of 2025) [2025] KEELC 7976 (KLR) (13 November 2025) (Judgment)**, this court held;

***“Parties bound by their pleadings. They are not permitted to depart in adduction of evidence from the pleadings otherwise it would amount to trial or defence by ambush. One’s case must be stated and made plain to the other or adverse party so that they know what to expect both in pleadings and evidence so that they too prepare. To do otherwise would lead to an unfair trial which is not only unconstitutional but would open a den and present to the adverse party of a boundless marouding mongrel which would obviously devour them. That would be unfair and an uneven ground for play.”***

**217.**In a fairly similar issue for determination, A C Mrima J. in the case of **Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR**, stated as follows: -

***“It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of***

***Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -“.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”***

**218.** In ***Tolksdorf v Mwangi & 3 others (2025) KEELC 848 (KLR)***, the court restated this principle by holding that;

***‘Additionally, this is an issue that was not pleaded in them Plaint dated 8<sup>th</sup> April 2022. It is trite that parties are bound by their pleadings and cannot be allowed to depart from the same.’***

**219.** Even the situation which may call for the Court to look at parties’ pleadings differently by altering them are not permitted by the law, unless in extremely exceptional circumstances where the content does not change at all. Thus, in ***Obonyo v Owuoti & another (Environment and Land Appeal E031 of 2024) [2026] KEELC 405 (KLR)***

(29 January 2026) (Judgment) this court stated as follows:

***“It is trite law that parties are bound by their pleadings, and the court should not trudge into granting that which has not been pleaded, unless whatever relief other than that which is pleaded is arising out of the necessity to give efficacy to the main reliefs granted. In the circumstance, it is this court’s view that in as much as the trial court found that the 1st Respondent was the owner of the suit parcel, the trial magistrate erred in fact and law in directing the Land Registrar Migori County to remove the caution registered by the Appellant because in any event the Land Registrar was not a party to the proceedings.”***

**220.** Therefore, it is clear that a party should not trudge in evidence adduction beyond his or her pleadings. If that were to happen then her claim or defence collapses. The claim or defence would be likened to ‘dead’ dry skeleton bones to which no life can be breathed since there is no flesh that can be attached to them.

**221.** In the instant matter and as noted in this Judgment at paragraphs 10 to 16 herein-above, the 4<sup>th</sup> Defendant filed a Defence which was similar in many respects as the one for the 5<sup>th</sup> Defendant. The 4<sup>th</sup> Defendant specifically denied all of the Plaintiff’s claims in paragraphs **6A, 7A, 8A, 9A, 10, 11, 12, 13, 14** and **15** of the Amended Plaint whose contents were, in summary, that the Plaintiff bought the suit land in the year **2007** from the 4<sup>th</sup> Defendant; the 1st

Defendant introduced the Plaintiff to the 4<sup>th</sup> Defendant; the 4<sup>th</sup> Defendant and the Plaintiff entered into an agreement of sale on **19th April 2007**; the Plaintiff made payment of the purchase price as agreed with the 4<sup>th</sup> Defendant and took possession of the land; the Plaintiff had trusted her with assisting in the process of transfer and the documentation with respect to the transfer process; the 1st Defendant kept promising that the land would be transferred but there was a delay due to a caution lodged by a third party; the Plaintiff took possession of the land between **2008** and **2010**; in **2011** she requested the Plaintiff to allow her to utilize the land, and in **January 2020**, the Plaintiff notified her of intention to utilize the land.

**222.** Further, the besides the above and other denials, the 4<sup>th</sup> Defendant also traversed the Plaintiff's claims that there was collusion between the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 5th Defendants in the acquisition of the title to the suit land; the 5th Defendant's acquisition of the suit parcel of land had anything to do with a suit which had not been filed; the acquisition of the suit parcel of land by the 5th Defendant was calculated at defeating the Plaintiff's claim or defrauding the Plaintiff or frustrating the substratum of the of the suit; the 5th Defendant obtained the title to the suit parcel of land fraudulently and without adhering to due process; the 5th Defendant's acquisition of the suit land was a nullity; the 5th Defendant acquired the suit parcel of land without paying

valuable consideration; the 5th Defendant's right to the suit land is unprotected; the 5th Defendant is not an innocent purchaser for value; the use of another person's KRA details to pay stamp duty defeats the title; there was no Land Control Board meeting to approve the transfer of the suit land to the 5th Defendant; there was no valuation prepared for purposes of paying stamp duty; the 5th Defendant was under any duty to pay capital gains tax; the Plaintiff had a proprietary right over the suit land; the Plaintiff had suffered any loss attributable to the 5th Defendant.

**223.** The 4<sup>th</sup> Defendants then pleaded that the 5th Defendant was an innocent purchaser for value without notice; he conducted due diligence before purchasing the suit land; his dealings with the 1st Defendant was above board; none of the actions of the 1<sup>st</sup> and 5th Defendants in their acquisition of the suit land could defeat their title to it; the Plaintiff was not entitled to the relief she sought; her claim was intended to defraud the 5th Defendant of his property; the suit land was acquired by the 5th Defendant regularly procedurally and legally; and lastly, that the Plaintiff's claim was time barred under the Limitation of Actions Act.

**224.** After filing documents to support the said pleadings, she also filed a written Witness Statement dated **28<sup>th</sup> July, 2023** to accompany it. It was on all fours contrary in content with the pleadings. This Court needs not repeat the content. Notably,

when the party testified orally she adopted her written Witness Statement.

**225.** I have stated above that the parties are bound by their pleadings. They should adduce evidence in line with their pleadings. That being so, in the instant case therefore, the defendant would not be heard to adduce evidence which was totally at variance with her pleadings or depart from them. Again, even if she were permitted to amend the pleadings, it would change her Defence diametrically or substitute it with a new Defence, which is not permissible in law. Thus, that being the factual position herein, her defense miserably failed.

**(b) Whether documents marked for identification but not produced can be relied on in evidence**

**226.** The Plaintiff and her witness place a lot of weight on the copy of the agreement dated **14<sup>th</sup> July 2007** which was marked as **PMF1 2**. Her counsel and that of the 4<sup>th</sup> Defendant submitted that the document was produced in evidence and that it showed and proved that the Plaintiff bought the suit land from the 4<sup>th</sup> Defendant.

**227.** This Court notes that from the record, it is clear that such a document was never ultimately produced in evidence. Thus, regarding documentary evidence, particularly where the document is not the original, there proof thereof is preceded by three stages, as stated by this Court in **Lwangu v Ndote (Environment & Land Case 79 of 2010) [2021] KEELC 2**

**(KLR) (10 November 2021) (Ruling)**. It the decision this Court held,

***“It is worth explaining here the four stages of the production of secondary evidence (for example the photocopy in this case). Before a document is produced to show its contents, its existence or state/physical appearance (whichever is relevant to the proceedings before the court), it passes through three stages if it is the original or four if it is the secondary thereof that is available.***

***(i) First, the document is filed in court (according to the rules or legal requirements. In civil cases, refer to order 3 rule 2 and order 11 of the Civil Procedure Rules and rule 28 of the Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in other Courts (herein referred to as the “Mutunga Rules”). Worth noting here is that if the party has not complied with the rules of filing the documents, he has to seek leave of the court to be permitted to file them out of time. The court has to be satisfied on the reasons why the party failed to comply with the rules.***

***In Mansukhalal Jesang Maru v Frank Wafula [2021] EKLR, this court held as follows, “Essentially, I am saying here that the bar at which the court gets convinced that there is need of filing and relying on an additional document or witness statement should be very high, higher than the fifty-fifty chance. This is because by the time the parties are having the pre-trial conference, they shall have weighed their case and become satisfied that all is ready for the ship of trial to unhook from the anchor and sail.***

***” This means that it is not a walk in the park for a party who fails to comply with the timelines set***

**by law or an order of the Court. Even Article 159(2) (d) that parties often rely to does not come to the aid of all parties in all situations. Each case has to be treated on its own merits. Even so, the bar for convincing the court to exercise its discretion to permit documents to be filed out of time is higher than the usual standard.**

**(ii) Second, if the document is not the original, that is to say, it is secondary evidence, the party has to show the copy to the other parties and the court first. Then he will proceed to lay the basis for the production of the copy and not the original. This has to fall within the usual standard of satisfaction of the requirements of reliance on secondary evidence.**

**(iii) Third, once the Court is satisfied that the party has laid a proper basis for producing secondary evidence of the document, it then permits the party to lay further basis for production of the document. This has to be in accordance with the rules of relevance and admissibility in the law of evidence.**

**(iv) Once, the above is complete, then the party has to prove the contents, state or physical appearance of the document.**

**21. Short of following the above steps, the party seeking to rely on a document to prove the issue in court will not succeed to do so unless the court exercises its discretion under section 69(iv) of the Evidence Act to dispense with the need for production of the document.”**

**228.** In the instant matter the Plaintiff did not produce in evidence the document marked as **PMFI 2**. The same document it did not pass through the four (4) stages envisioned above. Therefore, its content would not amount to proof of the

existence of an agreement between the Plaintiff and the 4<sup>th</sup> Defendant. Any oral evidence, unsupported by any documents amounts to nothing but mere inadmissible hearsay. This was the position held by the Court of Appeal in the case of **Mwige v Kiguta & 2 others (Civil Appeal 140 of 2008) [2015] KECA 334 (KLR) (16 October 2015) (Judgment)** where the Court of Appeal held;

***“Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.”***

**229.** In any event, **Section 3 (3)** of the Law of Contract Act requires the production of evidence of a written agreement with each signature of the parties attested by signatures of witnesses. Therefore, the Plaintiff, and indeed any other party herein could not rely on a document marked for identification, as evidence in support of their claim or position.

**(c) Whether submissions amount to pleadings and evidence (of parties)**

**230.** The Plaintiff and the 4<sup>th</sup> defendant submitted at length on various aspects which touched on evidence which was not adduced at the hearing. For instance, the Plaintiff submitted extensively that the suit land was strategically situated and of sentimental value. On that basis she urged the Court to make a determination in her favor by granting her an injunction. The issue that arises here from is whether parties can introduce evidence into proceedings through submissions.

**231.** The position of the law submissions neither constitute participating nor are they evidence they are only a language it is used to convince the court to then onto their proposed view in the dispute before the court. Simply put, as was in the case of **Moi v Muriithi & another (Civil Appeal 240 of 2011) [2014] KECA 642 (KLR) (9 May 2014) (Judgment)**, they are a marketing language of the parties. In the case, the Court held:

***“Submissions are generally parties’ “marketing language”, each side endeavoring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”***

**232.** In summary then, the court shall only rely on evidence adduced at the trial in order to make its findings herein.

**(d) Whether the 4<sup>th</sup> Defendant is a credible witness**

**233.** The issue at this point is that the 4<sup>th</sup> Defendant testified as DW1. She adopted her witness Statement dated **28<sup>th</sup> July 2023** as evidence in-chief. Her oral testimony was in line with the written Statement. However, the court record bears that on **2<sup>nd</sup> June 2021** the 4<sup>th</sup> Defendant who was then an Interested Party filed a written Statement which she titled “The Interested Party’s Statements.” It was dated **17<sup>th</sup> May 2021** this statement was totally in line with her pleadings to the effect that there was no fraud on the part of the 1st Defendant and that she never sold the land to the Plaintiff and that the transactions between her and the Plaintiff as alleged were a forgery and she never received any payments from the Plaintiff when this statement is with her affidavit which she swore on **14<sup>th</sup> July 2020** and on which she was cross-examined extensively and she admitted that she swore it. The Statement was totally similar in content or in agreement with her depositions in the said Affidavit. The question that follows is whether the witness could talk out of both sides of her mouth.

**234.** The law is that when witnesses are called upon to give evidence they should be truthful hence credible. **Section 154** of the Evidence Act, **Chapter 80** Laws of Kenya provides that,

***“When a witness is cross-examined he may, in addition to the questions hereinbefore referred to, be asked any questions which tend-  
(a) to test his accuracy, veracity or credibility;***

***(b) to discover who he is and what is his position in life;***

***(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.”***

**235.** The 4<sup>th</sup> defendant was the owner of the suit parcel of land issue before she sold allegedly sold it to one of the two parties herein, namely, Plaintiff or the 1st Defendant. Therefore, her evidence was critical in this case since both parties held unto their distinct positions. This was because, in the face of the two fiercely clashing standpoints between the two parties, Sarah was expected to be the independent impartial party, and witness to unravel the mystery of the alleged sale transaction, besides other witnesses.

**236.** The 4<sup>th</sup> defendant was examined extensively by 1<sup>st</sup> and 5th Defendants counsel and the 3<sup>rd</sup> Defendant’s counsel regarding her statement, her pleadings and the affidavit which she swore as stated above, and the variance thereto. It turned out the witness took two different positions in two different situations but over the same issue. Her credibility then came into sharp focus and in question. The court is of the humble view her credibility was great damaged, on cross-examination.

**237.** For instance, at one time, the witness stated that she did not transfer the land to the 1st Defendant. In her written statement she stated as much and on testifying and

adopting her witness's statement she stated as much. But on cross-examination she admitted that she voluntarily and willingly signed all the transfer documents in favor of the 1st Defendant and her intention was to transfer the said parcel of land to the said 1st Defendant.

**238.** Further, in my view her evidence tended to be more confusing than enlightening. This is because the said witness at one time appeared to side with the 1st Defendant completely in terms of confirming that she was the one to whom she sold the parcel of land. This was in line with the Affidavit the 1st Defendant produced which she (the 4<sup>th</sup> Defendant) swore in her advocate's office while in the company of her son Alex who is a lawyer by training. The Affidavit and that of her son detailed the fact she sold the land in issue to the 1st Defendant.

**239.** This evidence was the opposite of the oral and adopted testimony. Besides, at one time she stated that she did not sign a Statement in the 1st Defendant's lawyer's offices yet she admitted as much in her same statement, and the said lawyers filed her defence. In my humble view this witness could not be relied on in evidence.

**(e) Whether the Plaintiff proved her assertion of purchase of the land to the required standard**

**240.** At the core of the dispute herein was the alleged sale and transfer of land parcel number **Chepsiro/Kibuswa Block 1/ Kelchinet/137**. The Plaintiff claimed to have bought it from

the 4<sup>th</sup> defendant, on **14<sup>th</sup> July 2007**. The 1st Defendant also claimed as much. The Plaintiff attempted to prove her claim by adducing evidence in that regard through a copy of a sale agreement, marked **PMFI 2** dated the same, purportedly signed between her and the 4<sup>th</sup> defendant and witnessed three people. But she ultimately did not produce the copy of the agreement in evidence. The 1st Defendant, on her part, produced an agreement, purportedly signed by her and the 4<sup>th</sup> also on the same date as that the Plaintiff alleged. Both documents were allegedly signed before one lawyer who would thereafter rise to the position judge in Kenya.

**241.** Interestingly both parties were relatives by virtue of being first cousins. As to what transpired between before and after the alleged transaction it is known between them. Needless to say, the Court was called upon to determine the issue of the purchase of the land by either. Thus, The Plaintiff sued the first defend over an allegation that the 1st Defendant defrauded her of the parcel of land which was hers by virtue of having allegedly bought it from the 1st Defendant. At this point it is worth repeating that **Sections 107, 109 and 112** of the Evidence Act provide in totality that he who alleges a fact proves it except where the law has placed the onus on another person. In this case, therefore, the burden lay on the Plaintiff to prove that she bought the suit land. She was to do so on a balance of probabilities.

**242.** It was not on the 1st Defendant to disprove that the Plaintiff bought the suit land. This finding or observation is important here for the reason that the Plaintiff emphasized in her evidence, and also the 4<sup>th</sup> defendant summoned all evidence she could, to convince the Court to make a finding that the 1st Defendant had provided any evidence by way of valid agreement off sale or documentary proof payments of money to the 4<sup>th</sup> defendant over the alleged transaction of sale of the suit land. To require the 1st Defendant to adduce evidence to show that indeed it was not the Plaintiff but her who bought the suit land would inverse the law and make a grave error. I sympathize with the clashing views herein especially of that of the Plaintiff who did not at all adduce any documentary evidence to prove her claim. But that is the law.

**243.** Thus, in terms of **Section 3(3)** of the Law of Contract Act, it was incumbent on the Plaintiff to adduce evidence by way of a written agreement duly executed by her and the 4<sup>th</sup> defendant and each signature witnessed by or attested by independent persons in accordance with the law. **Section 33** provides as follows:

***“No suit shall be brought upon a contract for the disposition of an interest in land unless-***  
***(a) the contract upon which the suit is founded-***  
***(i) is in writing;***  
***(ii) is signed by all the parties thereto; and***

***(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party: Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust."***

**244.** The Plaintiff brought the instant for a claim over a disposition of land. She led oral evidence, by herself as PW1 to the effect that she handed over the original of the sale agreement to the 1st Defendant to use to assist her to process the registration of the suit land in her favor. This claim and evidence were vehemently refuted by the 1st Defendant. Even when the defence was raised in that regard, the Plaintiff did not attempt to have the copy of the agreement which she had certified as a true copy of original by lawyers who allegedly prepared the document. Furthermore, a disposition of land, or transaction of such a nature, would be required to be in writing and evidence led that indeed money exchanged hands during the transaction, particularly in accordance with the terms of the alleged agreement. The Plaintiff called to aid the evidence of the 4<sup>th</sup> Defendant. While I have stated above that the said party was an unreliable witness, neither the Plaintiff nor her produced any evidence to that effect, other than alleging orally in the dock that indeed such transactions took place. Therefore, since there was compliance **Section 33** of the Land

Contractor Act, this Court finds that the Plaintiff failed to prove to the required standard of a balance of probabilities that she bought the suit land from the 4<sup>th</sup> defendant. Her allegation then that she was the owner fails.

**(f) Whether the Plaintiff proved that the transfers to the 1st and 5th Defendants were fraudulent or forgery**

**245.** The issue between the and the Plaintiff and the 1<sup>st</sup> and 5th Defendants is that the suit land was transferred from the 4<sup>th</sup> defendant to the 1st Defendant fraudulently, and all that the documents used for that purpose were fraudulent and a forgery. Regarding the transfer between the 1st Defendant and the 5<sup>th</sup> she alleged that it too was unprocedural, carried out with collusion with the 3<sup>rd</sup> Defendant and intended to defeat her proprietary interests in the suit land. This court will look the evidence on the transactions on the two transfers separately, starting with the transfer between the 1<sup>st</sup> and 4<sup>th</sup> defendants.

**246.** It was the Plaintiff's testimony that the 4th Defendant confirmed to her that she had not transferred the land to the 1st Defendant. Further, PW1 testified that DW1 confirmed that she executed her transfer in favour of the Plaintiff and not the 1st Defendant. She added that it was inexplicable how then the suit land got registered in the name of the 1st Defendant. It was her evidence that the fraudulent transfer could only be possible due to connivance or negligence on the part of the 3rd Defendant. The 1st Defendant took

advantage of the trust between her and herself and breached it. Also, she may have misled the 4th Defendant due to her age to executing a transfer instrument in her favour.

**247.** This Court, however, finds that it came out from the evidence of DW1, the 4th defendant, that indeed she signed a transfer in favor of the 1st Defendant and gave her the necessary documents for purposes of processing the transfer of the title in her favor. This testimony sharply contradicted both the Plaintiff's pleadings that the 4<sup>th</sup> Defendant never signed documents in favour of the 1<sup>st</sup> Defendant and the Plaintiff's own testimony that there was a fraudulent process of transfer of the suit land to the 1<sup>st</sup> Defendant, without documents of transfer being made. She also testified that she and the 1st Defendant made an application to the Land Control Board and attended it. Further, that through a special Control Board the 1st Defendant was given a consent to transfer the property to herself. Furthermore, the Land Registrar testified that all the procedures were followed and that instruments of transfer of the land executed and presented to the said office which acted on them by issuing the title deed in favor of the 1st Defendant.

**248.** The Plaintiff having found out that the 4<sup>th</sup> Defendant signed documents of transfer in favour of the 1<sup>st</sup> Defendant, and applied for and actually attended with the Plaintiff the Land

Control Board, did not amend her pleadings. Thus, her own testimony also contradicted her claim.

**249.** Regarding the transfer between the 1st Defendant and the 5th, the Plaintiff testified that it was irregular: that it was done when there existed a charge to the AFC, a court order, and also that the instruments of transfer were not in existence, and no stamp duty was paid.

**250.** From the evidence on record, the Land Registrar testifying as **3DW1**, provided evidence by way of documents as **3DWExh 1** to **14**, which included transfer applications, valuation forms, Land Control Board consent and payment for stamp duty that, among others, to show that the transfer was lawful. **3DW1** also testified that all procedures were followed regarding the transfer of the suit land. On whether there existed a charge or a subsisting charge when the transfer was made, the Registrar gave evidence and DW2 also, contrary to that of the Plaintiff that indeed there was no charge subsisting at the time of transfer from 4th defendant to the 1st. Evidence was led by both 3DW1 and the 1st Defendant on the fact the discharge of charge was done a day before the transfer was affected. Similarly, they testified and there was documentary evidence by the two witnesses, particularly the green card, **3DExh 1**, that by the time the suit was instituted **29th June 2020** and the order of injunction issued on **30th of June 2020**, the suit land had already been transferred to the 1st Plaintiff, which happened

on **19th June 2020** while the order was served on **11th of July 2020, eleven (11)** days later.

**251.** Regarding payment of stamp duty for the transfer between the 1st Defendant and the 5th, the Plaintiff stated that none was paid by the two. Further, that the payment used was that of PW2, Alice Webala, whose KRA Personal Identification Number (PIN) was used and a payment from her Cooperative Bank account made in that behalf. PW2 testified that she neither knew of the two parties nor had she ever gone to the bank to make such a transaction. The Plaintiff added that the Kenyan Shillings **150,000/=** paid through PW2 account was for Succession proceedings she was carrying out on behalf of the Estate of her deceased father. Again, PW1 stated the valuation for the land was less than it ought to have been because the value given and paid for was the same as one of **2007** when she bought the land. She testified that the transfer was irregular and the transaction should be canceled.

**252.** This Court notes that PW2 was hard pressed and failed in cross-examination to explain how her PIN and Bank details and account could be used for the transaction without her knowledge and authorization. Whereas she testified that she did payments on behalf of the estate, she did not explain why a transmission whose fees is **Kshs. 200/=** would suddenly translate to **Kshs. 150,000/=** yet she said that she did not transact for stamp duty for any other

transaction. Again, she did not explain how money could be withdrawn from her account without her knowledge yet she could not complain to the police or any other authority it so done. Moreover, the witness failed to explain how all the details of her private data or information would find its way to the transaction without her knowing and complaint about it.

**253.** It is curious to note that PW2 and PW1 had been doing transactions closely together, particularly, with the Plaintiff giving favours to PW2 by way of lifts to and from Court and even asking her to the police station yet (or while) PW1 had complained of or accused PW2, if true, that she had participated in or taken or 'stolen' her land. She did not bring bank documents from her bankers to confirm that indeed she was not the one who made the payments because contrary to the Plaintiff's earlier evidence of bank transactions of **2007** having been very old and archived, those of her witness, PW2, were recent: less than four years at the time of testimony. For these reasons, this court is inclined to agree with the 3rd Defendant's submissions that the witness, PW2 was an individual who participated well in the process of paying stamp duty for and on behalf of the 1st and 5th Defendants but was now being used as a gun for hire to scuttle the transfer process.

**254.** Be that as it may, 3DW1 testified that there was nothing irregular arising from the use of another person's

identification number to pay stamp duty in a transaction. Again, the KRA was not called to give evidence that the stamp duty it received for the transaction was irregular. Further, it was upon the parties to choose or through whom a duty would be paid.

**255.** In addition, the land registrar testified that when stamp duty has not been paid or a lesser sum paid than required it would not entail a cancellation of the transaction or annul it but rather the Registrar would keep the title under lock and key and raise an invoice for the sum or balance and penalties until they are paid for completion. Therefore, this Court finds that even if capital gains tax too was not paid that is a procedural process curable by asking the owner of the land to pay it.

**256.** Lastly, the Plaintiff testified that since the Land Control Board consent was obtained during the pendency of the charge on the property it was irregular. Indeed, the court finds that an application dated **12/6/2020 (3Dexh.9)** was made to the Land Control Board and a consent dated **16/6/2020 (3DExh 10)** issued while the charge was discharged on **18th June 2020**. But in my humble view, and I agree with the evidence of DW2 and 3DW1, that there was no irregularity in that process because apart from unrecorded overriding interests, the law is concerned with transactions or entries in the Register that affect a proprietor's interests because that is what is 'tangible' and

alters a proprietor's position. If the process outside of the register would be taken to be unprocedural as the Plaintiff wants this court to believe then it would be unprocedural or illegal for a party who wishes to create a further charge on charged agricultural property to seek a consent to create that further charge during the pendency of the earlier one. To hold that would stifle genuine and forward-looking economic transactions. It would call for parties to be shut up in their private negotiations and plans over transactions where charges exist.

**257.** It is the finding of this court, from the evidence of DW2 and 3DW21, that the transfers between the 4th and 1st Defendants and the 1st and 5th Defendants were regular.

***(g) Whether the Plaintiff has proven her case against the 3<sup>rd</sup> defendant to the required standard***

**258.** This issue revolves around whether the said defendant acted in good faith and in furtherance of its statutory duties. On it, the Plaintiff alleged that the 3<sup>rd</sup> defendant committed irregularities and fraud, and colluded with the 1<sup>st</sup> and 5th Defendants, which actions would make it liable.

**259.** This court starts the determination of this issue by first observing that the inside defendant is a statutory body that is mandated, among other duties, to conduct processes leading to issuance of titles. It was upon the Plaintiff to prove that the actions of the 3<sup>rd</sup> Defendant fell outside of those that it is mandated to carry out.

**260. Section 14 (5)** of the Land Registration Act provides: “*The Registrar shall not be held personally liable for lawful acts discharged by the Registrar under this Act in good faith.*” By the same token any officer acting in faith good faith in the office of the land registrar while executing the mandate that he has been given makes an honest mistake or error ought not to commit the office to liability.

**261.** In ***Hussein versus the Land Registrar (2021) eKLR*** it was held that public officers, including land registrars, are not reliable for errors committed in the course of performing their duties if there is no evidence of deliberate wrongdoing.

**262.** The Plaintiff testified the actions of the 3<sup>rd</sup> defendant was such that it committed irregularities and participated in fraud and collusion with the 1<sup>st</sup> and 4<sup>th</sup> and 5<sup>th</sup> Defendants. It was her evidence in-chief the acts of the 3<sup>rd</sup> defendant in registering the property in question from the 4<sup>th</sup> Defendant into the name of the 1<sup>st</sup> Defendant and from that of the 1<sup>st</sup> Defendant to the 5<sup>th</sup> Defendant’s without proper documentation in existence and also without satisfying itself that all the processes had been followed was wrong. However, in cross-examination she admitted that the land registrar did not participate in the transactions between the set of the first two parties and even that between 1<sup>st</sup> Defendant and the 5<sup>th</sup>. Further, that his actions only came tail end of the process when he received documents prepared by the parties, analyzed and satisfied himself that

they were proper and proceeded make the requisite entries or registration and issuance of title documents. This was the evidence of PW2 during cross-examination and also the 1st Defendant, the 4<sup>th</sup> and even the 5<sup>th</sup>. It was also the similar evidence by the 3<sup>rd</sup> defendant's witness. The witness stated further that the actions of the 3rd Defendant in the two transactions fell within, and were in line with, the statutory mandate given to it. the Court was satisfied with this evidence.

**263.** The analysis above, and the totality of the evidence as analyzed in the previous issue **(g)** above, clearly shows the Plaintiff did not prove her claim against the 3<sup>rd</sup> defendant to the required standard. It is this court's finding therefore that the Land Registrar did not a commit acts that would attach liability to the 3<sup>rd</sup> Defendant.

**(h) Whether the 5th Defendant was privy to any fraud or an innocent purchaser for value**

**264.** The competing claims on the issue of the purchase of the suit property between the Plaintiff and the 4<sup>th</sup> defendant as compared to that between 1<sup>st</sup> and 4<sup>th</sup> defendants are now settled. The question that remains is whether the 5th Defendant who bought the suit land from the 1st Defendant was an innocent purchaser for value without notice or a participant of the alleged fraud.

**265.** Where the root of the title is clear and a purchaser acquires it innocently for valuable consideration, his interest is or

ought to be protected by law. Thus, in **Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR)**, the Supreme Court held that an innocent purchaser for value is the purchaser who exercises due diligence, which includes, but is not limited to, carrying out an inspection of the suit property. It defined that person as follows;

***“An innocent purchaser for value would also denote one was aware of what they were purchasing by inspecting the suit premises. This takes us to the question of whether the appellant had visited the suit premises and if so, what was its impression of the military installations on the suit premises? The fact that the suit land was occupied must have sounded a warning of “buyer be aware” to the appellant. We therefore find that it was not an innocent purchaser for value entitled to orders for restoration or compensation” [Emphasis added].***

**266.** The case of **Sehmi (infra)** reiterates that

***“It is worth emphasizing that the innocent purchaser doctrine only protects the purchaser against those basing their claims upon an equitable interest in the suit land.”***

**267.** Similarly, in the case of **Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)** the Supreme Court restated the principle of an innocent purchaser for value as follows:

***“58. It is a fundamental principle of the law of property in land that a purchase of a legal estate***

***for value without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. The onus of proof however lies upon the person claiming to be a bona fide purchaser. Three main ingredients must be present for a claimant to mount a successful defence based on the doctrine. These are, innocence, purchase for value, and a legal estate.***

***59. The element of innocence means that the purchaser must act in good faith. His conduct must not raise any doubt as to whether indeed, he did not have any notice or knowledge as to the existence of a rival interest in the suit land. If for example, it comes to light that during the process of purchase, the claimant engaged in conduct that was unconscionable in the eyes of equity, such conduct would weaken his claim of innocence as to the existence of a rival interest. The element of innocence also connotes the exercise of diligence expected of any reasonable purchaser. The claimant must demonstrate that he acted diligently and conducted a reasonable inquiry into the status of the estate or land that he sought to purchase.”***

**268.** The 5th Defendant bought the suit land on **16<sup>th</sup> June 2020**.

The land was sold to him by the 1st Defendant in the sum of Kenya shillings **20 million**. Subsequent to that the purchase the vendor obtained a consent from the Land Control Board for the transfer of the property to him and was registered as the owner. It was contended by the Plaintiff in both her claim and the evidence she adduced that the 5th Defendant did not do due diligence to ascertain who the registered owner of the property was or that it was regularly registered as

such. Indeed, the Plaintiff claimed further that therefore if the defendant was not an innocent purchaser for value and his title thereto should be cancelled or nullified. The Plaintiff claimed further that the 5th Defendant ought to have known that the land was not owned by the 1st Defendant.

**269.** On his part the 5th Defendant testified that when he learnt of the seller's intention to sell the land he did due diligence on it. First, he talked with the seller. Then he went to or visited the ground to actually see it. He found 1st Defendant's workers on the ground. They were doing top dressing of her crops. He inquired from the workers whose land it was and they informed him it belonged to her. He also talked with neighbours about it. The 1st Defendant informed him that except for the charge in favor of the AFC the land did not have any issues. He then went to the land's office in Kitale and carried out a search to confirm who the owner was. The search confirmed it. He embarked on negotiations over it. By the time he bought it and it was transferred to him the 1st Defendant had discharged the property.

**270.** Further, regarding occupation and due diligence, the Court observes that the Plaintiff herself testified that from the year **2011** she was not in occupation but the 1st Defendant was. DW1 too testified that the 1st Defendant was in occupation.

**271.** It is my finding, and as guided by the decisions above cited, the evidence of the 5th Defendant as supported by that of the 1st Defendant demonstrates that the 5th Defendant did

that which was required of him to ascertain before purchase that that the interest he was about to acquire in the suit land was a valid and lawful one hence proper, following the steps he took prior to the transaction. Further, the fact that the occupation thereon was of the 1st Defendant and her workers, and given there was barrier in the register against any registrable interest at the time the 5th Defendant presented his documents for registration, it's my view that he was an innocent purchaser for value without notice and his interests are protected.

**(i) Whether the sale agreement between the 1st Defendant and the 4th Defendant amounts to a contract**

**272.** The 4<sup>th</sup> Defendant raised the issue of the legality of the agreement between her and the 1st Defendant, under **Section 3(3)** of the Law of Contract Act, during submissions. Could the 4<sup>th</sup> Defendant successfully litigate on the issue without it being part of her pleadings?

**273.** This Court has carefully considered the issue. On the one hand, the 4<sup>th</sup> defendant did not file a Counterclaim. She also did not file a notice of claim against her co-defendant. In no other pleading did the 4<sup>th</sup> Defendant pray for the cancellation of the agreement between her and the 1st Defendant. Instead, her pleadings were that the transaction between herself and the 1st Defendant was regular and free from fraud and collusion. It was only the Plaintiff who prayed for

that, and on the basis that she was the buyer of the suit property. On that relief, the Court has found to the contrary.

**274.** Therefore, it sees no basis for a declaration to be made based on a nonexistent relief of a party not seeking it by her pleadings, but only at the submissions stage that the agreement was not proper, invalid or defective. In any event, none of the parties challenged the validity or legality of the agreement between the 1<sup>st</sup> and 5<sup>th</sup> Defendants or even the one between the 1<sup>st</sup> and 4<sup>th</sup> Defendants. The Court can only grant, upon successful litigation, reliefs prayed for by parties.

**275.** In this suit, the dispute is between the Plaintiff and the 1<sup>st</sup> Defendant and the 5<sup>th</sup> over ownership of the suit land. The 4<sup>th</sup> Defendant had nothing to do with it apart from providing evidence on sale and transfer from her.

**276.** On the other hand, the 4<sup>th</sup> defendant adduced evidence in support of the Plaintiff's case. She also argued in her submissions in support of the Plaintiff's case. As the court has observed before, parties are bound by their pleadings. It is an absurdity for her to claim against a party she has not raised a claim against. This wonders why she did not attempt to amend her pleadings to align her case with that of Plaintiff. This Court, therefore, finds her submissions that the agreement between her and the first once a mere contract contrary to her case, misplaced and untenable.

**277.**As I have stated before the 4<sup>th</sup> defendant adduced evidence which was contrary to her pleadings yet she was bound by them. She could not abate and reprobate. Her evidence that she was taken to the 1<sup>st</sup> and 5<sup>th</sup> Defendant's lawyer and caused to sign an agreement and documents she did not understand is an afterthought. It is my humble view that the contract between the 4<sup>th</sup> defendants and the 1<sup>st</sup> was as true and genuine and that the 4<sup>th</sup> defendant's submissions were arguments likened to a drowning person clutching onto a reed.

***(j) Whether the Plaintiff can recover the land, if it is hers, or her title thereto is extinguished***

**278.**This issue is a simple one: the dispute is between the Plaintiff and the 1<sup>st</sup> and 5<sup>th</sup> Defendants. It stems from the Plaintiff's claim that she was the owner of the suit land. She claimed that she bought it on 14<sup>th</sup> July **2007** and started farming it from **2008** all the way to **2011**. That from **2011** she left it in the care or hands of the 1<sup>st</sup> Defendant. But on cross-examination the Plaintiff admitted that she did not have any evidence to show she bought the land, or that she actually occupied it. Further, the Plaintiff did not have any evidence to show that she used harvest farm produce from the land and deliver it in any government stores.

**279.**On her part, the 1<sup>st</sup> Defendant proved that she bought the land from the 4<sup>th</sup> defendant. She also stated that she took occupation of the land upon purchase and began farming it

up to the time of suit. Her occupation of land the land was confirmed by the 5th Defendant who stated that by the time he bought the land it was the Plaintiff in occupation, and her workers were working on it. Further, her occupation of it was also confirmed by the Plaintiff, assuming she was truthful at that point, that from the year **2011**, the 1st Defendant was the one occupying and using the land.

**280.** This court makes a finding that the Plaintiff's claim and evidence that she occupied the land and worked on it from the year **2007** to **2011** is untrue for two main reasons. First, she never established that she ever bought the land. Secondly, the Plaintiffs own testimony and that of the 4<sup>th</sup> Defendant in cross-examination, proved that when the land was bought she (the Plaintiff) resided in Mombasa. Further, the Plaintiff's own pleadings and evidence show that her absence from the ground was why, according to her, she entrusted the 1st Defendant to scout for land for her and she made payments through her. Also, her evidence was that she gave the 1st Defendant the land to use, but which claim was profusely denied by the 1st Defendant. This, when compared to the 1st Defendant's claim and evidence show that it was the 1st Defendant who was in occupation of the suit land from the period of purchase. This is because, the 4<sup>th</sup> Defendant did not refute the claim that she gave up possession upon completion of the payment of the purchase price. That was from that time she bought the land. In any

event **Clause 5** of the Agreement produced as **1DExh 4**, was clear that she would give vacant possession on **31<sup>st</sup> December 2007**. There was no documentary proof to the contrary. Thus, in terms of **Sections 97(1)** and **98** of the Evidence Act, no oral evidence by the 4<sup>th</sup> Defendant or other person can be adduced to contradict that fact unless the said evidence falls among the exceptions in paragraphs **(i)** to **(vi)** of the latter Section. Hence the 4<sup>th</sup> Defendant's oral testimony on occupation is inadmissible. Further, apart from the unreliable evidence of the 4<sup>th</sup> Defendant, the Plaintiff did not produce any evidence of occupation.

**281.** It is the court's finding then that, if indeed any other Court of competent jurisdiction were to find that the suit land was owned by the Plaintiff, then the fact that there was no evidence of permission by the 1st Defendant to occupy and use the land means that she was on it against the owner, whether the 4<sup>th</sup> Defendant or the Plaintiff. But the 4<sup>th</sup> Defendant renounced ownership. The totality of the evidence of the non-permissive occupation by the 1st Defendant and any subsequent heirs means time ran from **2007** to **2020** when the suit was filed. The claim by the Plaintiff to the title would stand extinguished. Then by virtue of **Sections 7** and **13** of the Limitation of Actions Act the Plaintiff cannot recover the parcel it from her.

**(k) Whether the Plaintiff's suit was time barred**

**282.**The Plaintiff sued the defend claiming that for reason of fraud she lost the suit land which she bought on **14<sup>th</sup> July 2007**. She pleaded and testified that the fraudulent activities which led to the 1st Defendant being registered were in **2011**, specifically, on **21<sup>st</sup> April 2011** when the transfer took place. And in paragraph **14** of the Amended Plaint the Plaintiff pleaded that the 1st Defendant requested her to allowed her cultivate the land in the year **2011**. At paragraphs **19, 24A, 24B, 24C, 24D, and 24E** the Plaintiff pleaded that the land was fraudulently transferred to the 1st Defendant in **2011**. The question that remains unanswered then is that if at all there was fraud as alleged, when did the Plaintiff discover it? This is important because time for institution of suit started running for the Plaintiff from the time of discovery of the fraud.

**283.**The Plaintiff testified that the fraud took place in **2011** when the 1st Defendant became the registered owner. She did not the specify the year she discovered the fraud. However, the evidence of the 4<sup>th</sup> defendant was clear that the alleged transactions or alleged actions of fraud took place in the **2011**. She stated that when Emmy wanted to be registered as owner, the 4<sup>th</sup> Defendant approached Plaintiff to inquire whether she had instructed the Plaintiff to be registered as owner. She also asked her if she had consented to the fact that the 1st Defendant would be given title and have the parcel registered in her name. At that point, the Plaintiff

informed her (4<sup>th</sup> Defendant) that she was okay with the transaction going on because she wanted a number of our properties to be kept private.

**284.** The 4<sup>th</sup> Defendant's evidence above is analyzed with that of the Plaintiff, particularly during re-examination where she testified that from the year **2011** when the alleged fraud took place to **2020** when she filed the instant case, that the period was not more than twelve years. Further, the Plaintiff's own testimony was that she was in occupation to **2011**. Again, she pleaded and testified that from **2008** she used to inquire from the 1<sup>st</sup> Defendant why there was a delay in registration of the title in her name and the answer given was that there was a caution on the property. It was her evidence too that the fraud took place in **2011** and when she discovered, she talked with (now Hon.) Yano about it.

**285.** It is my humble view that this evidence confirms that indeed the Plaintiff was aware of the alleged fraud front the year **2011** when the registration was made in favour of the 1st Defendant. If she was not aware, then in terms of **Sections 4(2)** and **26(1)** of the Limitation of Actions Act the Plaintiff ought to have, with due diligence, discovered the fraud from that year, and the limitation period for a suit thus started running from then. However, the Plaintiff chose not to sue within the stipulated time. She only raised the issue in the year **2020**, over nine (**9**) years when she filed the instant suit.

**286. Section 4 (2)** of the Limitation of Actions Act if to the effect that causes of action involving fraud should be brought within three years from the time of discovery of the fraud or when with due diligence the fraud would have been discovered. It stipulates,

***“An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”***

**287.** The conclusion is that the Plaintiff’s claim for fraud was time barred hence the suit ought to be dismissed, even on that account alone.

**(I) Whether an Order of permanent injunction can be granted to the Plaintiff**

**288.** The success or otherwise of this issue depended on the finding about the Plaintiff’s claim that she was the owner of the suit parcel of land as against the 1<sup>st</sup> and 5<sup>th</sup> Defendants respectively. As noted from the determination of the issues above this Court has clearly and specifically found that the Plaintiff is not the owner of the suit land. It has also found out that, even if the suit land would have by any chance been the Plaintiff’s by virtue of the transaction allegedly between her and the 4<sup>th</sup> defendant, her right to recover the land, or put differently, her title thereto was extinguished at the expiry of the end of **12** years of her non-occupation and none recovery of the land, given that the 1<sup>st</sup> Defendant was

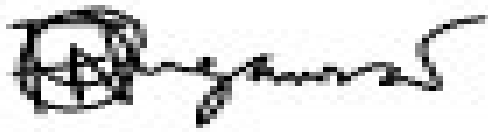
in occupation without her permission. It goes without saying then that the relief of a permanent injunction prayed for by her cannot be granted. It also then goes without saying that the orders status quo issued herein on the suit parcel of land are hereby discharged.

***(m) Who to bear the costs of the suit***

**289.** The totality of the determination in this judgment is that the plaintiff's claim failed and the suit is dismissed. Under **Section 27** of the Civil Procedure Act this Court is obligated to make an order on who to bear the costs of the suit. Having carefully considered all the facts herein and particularly the fact that the plaintiff and the 1<sup>st</sup> Defendant are family members, it is the Court's view that for harmony purposes each party shall bear their own costs.

**290.** Orders accordingly.

**Judgment dated, signed and delivered** virtually via the **Teams Platform** this **17<sup>th</sup>** day of **March 2026**.



**HON. DR. IUR F. NYAGAKA  
JUDGE**

**From 11:36 AM, in the presence of:**

Ms. Chelogoi Advocate for the Plaintiff  
Mr. Wainaina Advocate holding brief Momanyi Advocate for the 1<sup>st</sup> and 5<sup>th</sup> Defendant  
Mr. Ogongo, State Counsel for the 3<sup>rd</sup>  
Mr. Ketter N. K. Advocate for the 4<sup>th</sup> Defendant.