Olalui Group Ranch v Tina & 11 others (Civil Appeal E021 of 2020)
[2026] KECA 646 (KLR) (25 March 2026) (Judgment)

Neutral citation: [2026] KECA 646 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPEAL E021 OF 2020

MA WARSAME, PM GACHOKA & JM MATIVO, JJA

MARCH 25, 2026

BETWEEN

OLALUI GROUP RANCH ..... APPELLANT

AND

HON. GIDEON KONCHELLA ..... 1ST RESPONDENT

BENJAMIN OLE TINA ..... 2ND RESPONDENT

JOHN ORETU OLE KANCHUEL ..... 3RD RESPONDENT

JOHN K. OLE SOSIO ..... 4TH RESPONDENT

LEPERS OLE KIPKURO ..... 5TH RESPONDENT

MATHEW OLE TWALA ..... 6TH RESPONDENT

CHRISTOPHER OLE KIRUI ..... 7TH RESPONDENT

LETUI OLE KANCHUEL ..... 8TH RESPONDENT

SARANKEL OLE MUNTET ..... 9TH RESPONDENT

JOHN OLE MUNTET ..... 10TH RESPONDENT

MATHEW B.O KONGONYE ..... 11TH RESPONDENT

COUNTY COUNCIL OF NAROK ..... 12TH RESPONDENT

(An appeal against the judgment and decree of the Environment and Land Court of Kenya at Narok (M. Kullow, J.) delivered on 30th July, 2020 in ELCC No. 335 of 2017)

JUDGMENT

1. By further amended plaint dated 19th January 2011, nine officials of the appellant averred that on 16th April 1980, it became the registered owner of all that parcel of land namely Narok/Trans- Mara/Olalui/1 measuring approximately 7241Ha. On that very same day, the 12th respondent became the registered proprietor of Narok/Trans-Mara/Olalui/2, 3, 4, 5, 6, 7, 8 and 9. That registration was allegedly done in cahoots with former group representatives of the appellant, namely the 4th – 11th respondents. In view of the appellant's officials, those actions amounted to fraud, whose particulars were set out in the plaint.

2. It was their further allegation that on 22nd July 1986, the 4th – 11th respondents, former committee members of the appellant, fraudulently and illegally colluded with the 1st respondent to subdivide the appellant's parcel no. 1 into parcel no. 10, measuring 5362Ha, in the name of the appellant, and parcel no. 11, measuring 607Ha, in the name of the 1st respondent. Additionally, on 28th February 1995, they subdivided parcel no. 10 into parcels no. 12, 13, and 14 transferring plot no. 12 to the 3rd respondent and plot no. 14 to the 2nd respondent on 10th May 1995 and 6th April 1995 respectively.

3. The appellant's officials contended that this information came to their attention in 2004. Thus, its prayer was to urge the trial court to revert the proprietary interests of Narok/Trans-Mara/Olalui/1 back to it. It further sought several declaratory orders.

4. The respondents entered appearance and filed their amended statement of defence dated 8th February 2011. They denied the allegations set out in the claim praying that the suit be dismissed with costs.

5. After hearing the parties, Kullow, J., in his judgment dated 30th July 2020 found that the appellant's case was unmerited. It was dismissed with costs in the following terms:

> " 16. There is no dispute that the suit land was registered in the name of the 1st to 3rd defendants, as per the evidence that was tendered by both the parties. However, it is the plaintiff (sic) contention that despite the 1st to 3rd defendants being the owners of the suit there is no proper adjudication and demarcation of the said parcel of land and that the subsequent registration of the land in favour of the plaintiff was obtained fraudulently. In his evidence in chief, PW1 contended that there was no notice of the adjudication process. The 1st defendant on his part stated that he was a member of the plaintiff group ranch, the 2nd defendant also stated that he was allocated the share of his father who was also a registered member of the group ranch. Even though the plaintiffs allege that there was no adjudication process to warrant the registration of the suit land they have not endeavoured to even call the land adjudication office to confirm that position. The process of Land Adjudication is a robust process that provides for the manner in which the rights of the respective land owners is determined and where irregularities are citied it provides for the manner in which the said irregularities could be addressed.
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> The plaintiff despite asserting that he was favoured there was no evidence to point at the defendant that they either instigated or participated in the said irregularities. The only person who could fortify the said assertion were only the Land Adjudication officer and the Land Registrar whom unfortunately

were never called to assist the court in determination of the extent of the alleged fraud. The issue of fraud is a serious one in which the person alleging must be prepared to provide full proof of the same and in the instant case I find that the plaintiff has not been able to discharge that particular burden the defendants have stated in their defence that they were members of the plaintiff group ranch and in support of the above they have shown that indeed they were members of the group ranch a fact which has not been controverted by the plaintiff.

17. Having considered the plaintiffs evidence in its totality on the alleged acquisition of the suit land fraudulently by the defendants, the plaintiff (sic) despite the verbal assertion have not produced any record, minutes or maps in respect of the suit land to support the same. In the absence of such evidence, am (sic) satisfied that the suit property is a product of an adjudication and demarcation process. The defendant has produced minutes of their allocation of the land, and the requisite consent by the land control board and the title to the land. the Plaintiffs had admitted that indeed the 1st to 3rd defendants were members of the group ranch and the minutes of the plaintiff own demarcation committee produced by the Defendants have remained uncontroverted and in the circumstances, I find that the 1st to 3rd defendants had acquired the suit land lawfully and legally. The plaintiffs merely threw out allegations in respect of which they offered no evidence in support thereof and I am satisfied that the defendants have controverted each and every allegation made by the plaintiffs.

Having held hereinabove the suit land was legally and lawfully allocated to the Defendants, I find that the plaintiff (sic) failed to establish the elements of fraud as alleged and thus conclusively proof their case on a balance of probabilities and therefore I find that the plaintiffs are not entitled to any of the reliefs sought in the amended paint dated 19th January 2011 and I accordingly dismiss the Plaintiffs suit with costs to the defendants."

6. The appellant is aggrieved by those findings. It filed its notice of appeal dated 3rd August 2020. The appellant also filed its memorandum of appeal dated 21st August 2020 that raised a long- winded 27 grounds impugning the findings of the learned judge. We have summarized those grounds as follows: the appellant complained that trial court was wrong to find that it was not the owner of the suit land on the basis that it did not call the Land Adjudication Officer and the Land Registrar to persuade the trial court that the allegations of fraud were true yet it had adduced oral and documentary evidence to that effect; it contended that it had met the threshold for proof of fraud to the required standard; that the trial learned judge erred in finding that no documents were produced to support its case when it had indeed produced records, minutes and maps; and in its view, the morphed properties were not the product of an adjudication process.

7. The appellant continued that the trial court failed to appreciate that the minutes of the appellant's own demarcation committee, produced by the respondent, were not controverted; that the respondent acquired the suit land unlawfully and illegally; that its submissions were not considered; and that the respondents failed to adduce evidence or prove that they had obtained consent from the Land Control Board and also approval from a general meeting or annual general meeting of the appellant thereby nullifying and approving their actions to subdivide, register and transfer the suit parcel of land.

8. The appellants were further aggrieved that the trial court failed to interrogate the veracity, proprietary and legality of the minutes of 24th January 1985 as they were not signed by the 3rd respondent; that

further, those minutes were not reflective of a quorum, legal or proper as there was no list of attendees; that there was apparent evidence from the Registry Index Map showing that the 1st respondent's title was issued ten years before subdivision and registration; the 2nd respondent did not conclusively prove acquisition of the property within the legal parameters; the minutes of 29th March 1986 were never adduced in evidence; there was no justification on the award of acreage to DW2; and the trial court ignored crucial evidence adduced by DW3.

9. For those reasons, the appellant prayed that the appeal be allowed by setting aside the entire judgment of the trial court. It further prayed for costs of the suit at the superior court and in this appeal.

10. When this appeal was heard virtually on 26th January 2026, learned counsel Mr. Ogolla appeared for the appellant, while the 1st – 3rd respondents were represented by learned counsel Mr. Nyakundi who had instructions to hold Mr. Koceyo's brief. The Court was satisfied that the 4th – 12th respondents were duly served with the hearing notice but on their own volition, failed to represent their interests at the hearing of the appeal. The parties present relied on their respective written submissions that were orally highlighted.

11. The appellant confirmed that it had filed written submissions and a list of authorities, both dated 31st October 2023. In persuading this Court to allow the appeal, the appellant framed five issues for determination. On the first issue, the appellant submitted that it had been proved on a balance of probabilities that there was no proper adjudication in respect to the suit land. Learned Counsel for the appellant explained that property no. L.R. No. Trans-Mara/Olalui/1 was initially owned by the appellant before its subdivision and closure on 22nd July 1986 to create parcels no. 10 and 11.

12. He continued that parcel no. 10 was on 28th February 1995 subdivided into parcels no. 12, 13 and 14. It was submitted that this was improper as the appellant's articles of association were not complied with to the extent that the subdivision ought to have been done equally and shared amongst its members. Arguing as such, learned counsel urged this Court to reconsider the following exhibits: letters dated 19th November 1983, 9th March 1989, 30th March 1989, 16th May 1989, 27th September 1989, 19th November 1989, 30th March 1990, 5th August 1998 and a copy of minutes of a meeting held on 25th June 1997, 15th August 1999 and 22nd August 2001.

13. Turning to the second issue, the appellant's counsel submitted that the respondents were not the lawful proprietors of the subsequent subdivided properties, particularly those emanating from L.R. No. Trans-Mara/Olalui/10. This is because they were neither members of the appellant nor allocated their parcels equally.

14. He argued that the property was allocated against the precincts of section 26 (1) of the *Land Registration Act* as there was no due process. Additionally, the 2nd respondent failed to prove with supporting evidence that he was the proprietor of the parcel of land given to him. It was also submitted that in the absence of consent from the Land Control Board, the transfer was null and void by dint of sections 6 and 7 of the *Land Control Act*.

15. On the third issue as framed, that is whether it ought to be faulted for not summoning the Land Adjudication Officer, learned counsel submitted that in fact, credible documentary evidence in support of their claim was adduced, rendering the appearance of the officer gratuitous. In any event, it was contended that the officer was unreachable on account of the fact that the appellant accused him of committing fraudulent acts. The appellant's advocate further opined that be that as it may, Article 159 (2) of *the Constitution* ought to be invoked as to administer justice without undue regard to procedural technicalities.

16. On whether the suit properties were part of an adjudication and demarcation process, learned counsel submitted in the affirmative since the suit land originally belonged to the appellant. That the said process was illegal and therefore nullified the subsequent subdivisions and transfers. Lastly, on the allegations of fraud, it was submitted that it was proved that there was fraudulent transfer of the subdivided properties to the respondents because they were not members of the appellant, the owner of the suit land. They were therefore not entitled to acquire ownership arising from the subdivision of that land.

17. The appellant further condemned the evidence of the respondents for adducing defective minutes dated 24th January 1985 to support the registration of the subdivided properties as no such meeting took place. It contended withal that those minutes were not signed by the 3rd respondent, the appellant's secretary at that time. Furthermore, there was no meeting that sanctioned the subdivision and allocation of the property, thereby rendering the process illegal and fraudulent. That there was also no resolution produced in evidence as to justify the transfer of parcels 2 – 9 on 16th April 1980.

18. Learned Counsel for the appellant continued that the trial court failed to interrogate the minutes of 28th July 1985 which were unaccompanied by a list of attendees. In his view, those minutes were similarly defective because of no proof of quorum. He also pointed out fraudulent activity on parcel no. 13 since it was closed for subdivision on 28th February 1995 yet the Land Control Board consent was issued on 22nd November 2001. He explained that the consent from the Land Control Board ought to have preceded the subdivision. As a result, that process was flawed.

19. It was complained on behalf of the appellant that the Registry Index Map tendered revealed that the 1st respondent's title was issued ten years before registration and subdivision. Further, the minutes of 29th March 1986, relied on by the respondents, were never adduced in evidence. Ultimately, the appellant urged this Court to uphold its right to ownership of property as envisaged in Article 40 of *the Constitution*. It prayed that its appeal be allowed as prayed with costs.

20. The 1st – 3rd respondents opposed the appeal. They filed written submissions dated 14th April 2021. Learned Counsel for the respondents firstly challenged the competency of the appeal by arguing that the appellant was never a party to the proceedings at trial. That since it was not an aggrieved party, it lacked the locus standi to institute the present proceedings. Secondly, it was submitted that the appellant could not sue as it ceased to operate as a legal entity upon its dissolution as an entity on 30th August 2021. Be that as it may, it was not capable of suing on its own behalf but through its registered officials.

21. Counsel then submitted that by dint of section 7 of the *Limitation of Actions Act*, the suit was barred by limitation of time having been instituted 18 years after the 1st respondent obtained his title deed in 2004. He pointed out that from the evidence at trial, the appellant witness all along knew the fact of ownership having disputed the same through letters dating as far back to 1989. They prayed that the appeal be struck out for those reasons.

22. Continuing, learned counsel submitted that the superior court properly concluded that the respondents were the legal and rightful owners of the properties. This conclusion was properly arrived at from the oral and documentary evidence adduced at trial. He summarized that evidence regarding the subdivision, amalgamation and demarcation process in justification of his conclusion. He chronologically set out how the respondents acquired the different parcels of land. That regardless of the legal process of land acquisition, the appellant has continually continued to trespass onto the 1st, 2nd and 3rd respondents' parcels of land leading to the lodging of a complaint and a subsequent suit. The respondent urged this Court to uphold their proprietary interests.

23. It was further submitted that the appellant ought to have sued or called as witnesses, the Registrar of Lands and the Director of Land Adjudication, who were instrumental in the process of acquisition of the parcels of land by the 1st, 2nd and 3rd respondents. They urged this Court to pay close attention to the analysis of the trial court when it stated that the said respondents were not proved to have conducted themselves in acts of fraud. That the allegations of fraud were not proved to the required standard as could be seen from the witness testimonies, particularly that of PW2 at trial.

24. The 1st, 2nd and 3rd respondents' advocate urged this Court to uphold their title documents as envisaged in section 25 (1) of the *Land Registration Act* as the appellant failed to qualify that their title documents were extinguishable by dint of section 26 of the said statute. Further, that following the completion of the mutation process, the Olalui Group Register was opened for a 60-day inspection pursuant to section 25 and 26 of the *Land Adjudication Act*. It stated that the appellant failed to object to the process in line with the dispute resolution mechanism set out in that Act.

25. Turning to the legality, proprietary and veracity of the minutes of 24th January 1985, 28th July 1985 and 29th March 2016, counsel gave a brief synopsis of what was captured therein and relied on DW3's evidence testifying that the committee minutes were tabled before the general meeting where the 1st respondent's request for allocation of property was granted. That those allegations of impropriety were not substantiated as the 3rd respondent executed the minutes in his capacity as secretary of the appellant. For the above reasons, the 1st, 2nd and 3rd respondents prayed that the present appeal be dismissed with costs.

26. We have anxiously considered the parties' rival submissions, examined the record of appeal and analyzed the law. As a first appellate court, an appeal is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and thus should make due allowances in this respect. (See Gitobu Imanyara & 2 others vs. Attorney General [2016] eKLR).

27. From the record before us, the following facts are not disputed: According to the green card for parcel no. 12, it was opened on 28th February 1995 and registered in the name of the appellant and later transferred to the 3rd respondent and a title deed issued. The search certificate dated 25th March 2004 confirmed that the property was in the 3rd respondent's name. The green card for parcel no. 11 shows that the green card was opened on 22nd July 1986 and registered in the name of the appellant. It was transferred to the 1st respondent on the same day and a land certificate issued. This was confirmed from the search certificate dated 25th March 2004. Thereafter, a restriction was entered on 30th September 1986 and removed on 7th April 1987.

28. Parcel no. 13, according to its green card, was opened on 23rd February 1995 and registered on 28th February 1995 in the name of the appellant. This position was confirmed in the certificate of search dated 25th March 2004. From the green card on parcel no. 14, the same was opened on 28th February 1995. It was registered in the name of the appellant. A title deed was issued to on 6th April 1995 to the 2nd respondent as per the search certificate dated 25th March 2004. There is also an illegible entry made on the green card dated 25th October 1996.

29. The information in the green card relating to parcel no. 1 revealed that the same was opened on 16th April 1980 in the name of the appellant. It was subsequently closed on 22nd July 1986 on subdivision into parcels no. 10 and 11.

30. From the search certificates dated 31st March 2004, parcels no. 3, 4, 5, 6, 7, 8 and 9 were issued to the 12th respondent. This information is synonymous with the green cards for parcels no. 2, 3, 4, 6, 7, 8 and 9; opened on 16th April 1980 while parcel no. 5 was opened on 15th April 1980. As for parcel no. 10, the green cards shows that the property was assigned to the appellant on 22nd July 1986. In a letter dated 9th July 2003, the appellant lodged a complaint to the Director of Criminal Investigations on the grounds that the suit land was acquired by influential members and intruders.

31. PW1 Salim Lemoto Konkoi, a son of the appellant, Lemoto Konkoi, testified that he had lived on the group ranch since birth. He recalled that the appellant officials had changed overtime with the latest officials being elected in 1997. The appellant was incorporated in 1972 pursuant to a certificate of incorporation. A dispute was filed in the Kilgoris Magistrate's Court RMCC No. 33 of 2002 and appealed in the Kisii High Court. That decision legitimized the coming into office of the officials elected therein.

32. He confirmed that parcel no. Narok/Trans-Mara/Olalui/1, originally registered in the name of the appellant, underwent several subdivisions and transfers as shown in the green cards and search certificates. In his view, that was done by means of collusion and fraud to dispose of the members of the appellant from having proprietorship rights. Further, those subdivisions were never sanctioned by the appellant members.

33. He posited that the subdivision were nonetheless illegal since no consent had been obtained from the Land Control Board. He also pointed out that the land was declared an adjudication area in 1979 but adjudication had never taken place. Accordingly, no subdivision ought to have taken place.

34. PW1 was emphatic that they only became aware of these subdivisions and transfers when their officials conducted a search on the property. Galvanized, the officials complained to the Commissioner of Lands but no positive action had been taken. His evidence was that the purported subdivision of parcel no. 1 was illegal as the meeting giving rise to the resolution for its subdivision had only 15 officials and not the 198 appellant members. Thus, no valid resolution was passed for want of a quorum.

35. PW1 observed that the 1st, 2nd and 3rd respondents were bona fide members of the appellant. The 3rd respondent became a member derivatively through his father. They were therefore entitled to equal shares and not the portions allocated to them. He confirmed that the 1st respondent filed a suit for eviction of members of the appellant, himself included, but was emphatic that the suit was filed in bad faith.

36. PW1 confirmed that as per minute 5 of the minutes of 24th February 1985, the committee resolved to give the 1st respondent land and his boundary was determined. The committee and the genuineness of the minutes were not contested. He added that the minutes of 28th July 1985, signed by the chairperson and secretary DW3, resolved to dissolve the appellant. That, per the minutes of 4th November 1983, members resolved to commence the adjudication process.

37. PW1 testified that the respondents were given their land on 22nd November 2001 leading to the dissolution of the appellant. Thereafter, they filed the suit. He went on to state at as at 1987, the appellant had not been dissolved. He further challenged the meeting subdividing the property on grounds that it was done in the absence of a government official. His conclusion was that it was illegal.

38. PW2 Michael Lekishone Risa, the current chairperson of the appellant, elected on 25th June 1997, testified that he had lived on the suit land since 1948. He recalled that in 1997, the Land Registrar advised the members of the appellant to convene a meeting in order to avoid clannism. That did not take place and instead, the 5th respondent, who was the chairman at that time, elected to subdivide

the land to the exclusion of some members. This prompted members to lodge a complaint with the Director of Land Adjudication and Settlement vide a letter dated 30th March 1989 complaining illegal adjudication absent the members' knowledge.

39. On 9th March 1989, the Registrar wrote to the Divisional Land Adjudication & Settlement Officer advising him to call a meeting to iron out the issues arising amongst members. This took into account that on 4th November 1987, members agreed to dissolve the appellant and subdivide the group ranch among its members. On 25th August 1989, members wrote to the District Officer, raising concerns that demarcation was continuing without the participation of the members.

40. In his letter dated 16th May 1989, the Land Adjudication Officer wrote to the appellant chairperson advising him not to subdivide the land before the general meeting and that every work relating to the property should be held in abeyance. On 19th November 1989, another letter was written by the same officer to the appellant's chairperson informing him of the closure of Olalui section. This came after a complaint was lodged by the Moitanik Group vide a letter dated 30th March 1989.

41. On 28th September 1989, the Land Adjudication Department wrote to the Land Adjudication & Settlement Officer advising its suspension of demarcation in the group ranch until the appellant members met. It also advised to withdraw members of the settlement from the Olalui section and put them in the nearest group section. The officer also wrote on 10th March 1990 to the District Land & Adjudication Settlement Officer to call for a general meeting to be held on 27th April 1990 to discuss six thematic areas. However, that meeting did not take place.

42. Come 14th November 1996, a meeting was held appointing new officials. The appellant was given a certificate of incorporation dated 9th September 1997. The 5th and 6th respondents, elected secretary and chairperson respectively in 1996, were asked by the District Officer on 27th October 1997, to surrender the appellant's documents.

43. In a meeting held on 22nd August 2001, it was decided that the land was to be divided equally and a private surveyor be appointed to demarcate the land. Issues concerning illegally acquired titles were raised by members who rejected the circumstances under which they were obtained, absent a general meeting to dissolve the group and subdivide the group ranch.

44. PW2 recalled that they applied for dissolution of the group on 30th August 2001. That application was granted on 3rd September 2001. They were further advised that the group would dissolve after signing the necessary documents, subdivision and transfer as well as issuance of title deeds. They have yet to finalize the dissolution process. They applied for a consent from the Land Control Board on 17th October 2001 that was granted on 22nd November 2001.

45. Upon commencement of procuring a surveyor, PW2 was sued with other officials that was ultimately dismissed. He complained that the subdivision of the parcel of land to the respondents was illegal and fraudulent as it did not follow procedure. Further, they deprived the appellant's members of their rightful acquisition of the land as subdivision never took place in a manner ratified by the members. He confirmed that some of the parcels are owned by public utilities. He added that he sold parcel no. 16 for Kshs. 150,000.00 to Mary Naini Njinu without having title to the said land requesting a cancellation of that title. Finally, the group ranch was subdivided before he was elected chair.

46. PW3 John Mwaniki Ole Rongo and PW4, Kimone Olobure, members of the appellant residing on the group ranch, corroborated the evidence of PW1 and PW2 to the extent that the suit land was illegally and fraudulently subdivided as it was not approved by the members. They maintained that they were

yet to be issued with parcels of land and title deeds as the adjudication process was yet to take place. Further, that the 1st respondent sought eviction orders against them from his parcel of land.

47. PW3 confirmed that they did not lodge a complaint at the police station on allegations of fraud. He testified that PW2 was never a chairperson but just a committee members. On his part, PW4 testified that he was elected a committee member in 1997. That the committee in 1985 demarcated the land without the members' approval.

48. It is seen from the proceedings that on 25th January 2019, when the matter was at its hearing stage, counsel for the appellant's officials applied for summons to call the District Land Registrar and the District Land Adjudication Officer. It appears that the summons were either not issued or taken by the appellant's officials. Though counsel indicated that he intended to call the Land Registrar as a witness on 24th April 2019, he peculiarly closed the plaintiffs' case without calling any of those two officers on 12th November 2019. This paved way for the hearing of the respondents' case.

49. DW1, the 1st respondent, testified that he was allocated parcel no. Narok/Trans Mara/Olalui/11 while serving as a military officer in charge of resources. He was issued with a title deed on 22nd July 1986. That the committee demarcated the group ranch in 1974 and identified public utility land prior to his allocation. To date, they are being used by the public.

50. Explaining the circumstances leading up to acquisition of that parcel of land, the 1st respondent explained that he was present when the president visited the group ranch and the church on 13th February 1985. The president called the appellant committee and urged them to hasten the allocation of the 1st respondent's land as he was away most of the time. He therefore denied influencing the committee. He applied for the property leading to a mutation and his documents being processed. The committee met and the land was allocated to him.

51. The 1st respondent's evidence was that he was the 78th member of the group as shown in the adjudication record. He stated that he was registered as Tawari Sitenu Ole Tina, which are also his names and the signature therein was his. Following the allocation and demarcation process, the respondent was shown the boundaries of the land as defined in minute 5/2/85 in the minutes of the meeting held on 24th February 1985. Subsequently, there was a resolution vide minutes of 3rd February 1985 that allocated him the parcel of land referring to the president's decree. He was given vacant possession of the suit land and moved onto it.

52. Come 14th June 1990, the 1st respondent instructed his advocates to take measures to evict individuals from his parcel of land. On 4th September 1992, he wrote to the District Officer Kilgoris complaining that several people had been grazing on his land hampering his efforts to develop the land. He later discovered that when he was out of the country in 1998, more people had moved onto his parcel of land. This prompted him to file suit in Kisii HCCC No. 58 of 2006 seeking to evict them from the suit premises.

53. The 1st respondent observed that the appellant's officials only filed suit 18 years after the dispute arose. Upon his allocation of the land, he left the membership in 1986 and never participated in any meetings thereafter. However, his name still forms part of the membership list. He maintained that he obtained the suit land through the adjudication process.

54. DW2, the 2nd respondent, testified that he is the lawful proprietor of Narok/Trans Mara/Olalui/14 as per the Registry Index Map, measuring 120Ha. A title deed was issued on 6th April 1995. He took over his father's share from the appellant and became a member in 1992. His father was member number 70, Tina Ole Nawangas. He recalled that in 1994, some of the appellant's members and himself requested for an annual general meeting to consider allocating land in order to own them individually.

55. In the meeting held on 15th July 1992, the chairperson at that time, that is the 5th respondent, tabled that proposition. In the presence of 60% of the membership, his application, together with that of John Orety Ole Kanchuel, was allowed under minute 4/92. Members further consented to allocating land to whoever was interested. This information was relayed to the District Land Adjudication and Settlement Officer vide a letter dated 15th February 1992.

56. Thereafter, the 2nd respondent was by letter from the Ministry of Lands, advised to pay the requisite fees for registration of his parcel of land. He complied. As per the search certificate, the title was issued on 6th April 1995. Upon allocation, the 2nd respondent was shown the boundaries, moved onto the property and remained in quiet possession of the suit land until the suit, the subject of this appeal, was filed.

57. PW2 complained that trespassers entered upon his parcel of land in 1999. They even burned down his house and forcefully evicted him in 2006. He maintained that he followed due process by undergoing the adjudication process and having the property transferred with consent from the Land Control Board. He observed that in any event, no allegations of fraud were made against him. He urged the court to dismiss the claim as he obtained the property lawfully with the resolution of the members. That process did not attract any objections.

58. The 2nd respondent continued that in 1987, the land in which the group complained about was dissolved. By the letter dated 9th March 1989, members agreed to not have dissolution until subdivision of the land took place and several meetings had been held. The chairman was further told to stop the adjudication process. He later learned that each member was to get 20 shares of the land.

59. DW3, the 5th respondent, testified that he was the appellant's secretary from 1971 to 1985 and became its chair from 1985 until its dissolution in 2005 when title deeds were issued. He confirmed that the 1st respondent requested for land in 1985 following approval from members and subsequently the Land Control Board. That he had been in office since 2005 and later handed over the documents relating to the adjudication process to the lands office. He signed the minutes dated 11th August 1985.

60. He testified that he wrote the letter dated 4th March 1986 stating that the appellant would hold a general meeting at 10:00 a.m. on 29th March 1986 within the group ranch area to consider inter alia the six members who had applied to move from the group and have their own individual shambas. Vide a letter dated 15th February 1993 addressed to the Director of Lands, the 5th respondent wrote that following a meeting held on 15th July 1992 of the appellant members which minutes were also produced in evidence, land allocation and subdivision was allowed to the 1st, 2nd and 5th respondents and were shown boundaries.

61. The 5th respondent maintained that the process duly complied with the law and procedure. He recalled that the Moitanik Group had been accommodated for issuance of parcels of land and was therefore surprised that they sued the respondents, as they were not entitled to allocation in the first place. That group members were issued parcels of land unequally as there was no provision for equal shares. That the meeting of 28th July 1985 was attended by 70 people accounting for 60% of the membership comprised of 198 members.

62. Later, he recalled that the Moitanik Group embarked on an exercise to forcefully occupy the parcel of land. These are the persons who sued them at trial. He was of the opinion that they were not entitled to the reliefs sought as they were not contemplated original members. The 5th respondent was emphatic that PW2 was never the chairperson of the appellant but was only a committee member. Further, no objections were raised on the subdivisions and allocations of different parcels of land.

63. We have painstakingly summarized the evidence before the trial court so that the issues in dispute can be clear. Clearly, to resolve this dispute, the critical determination is who the members of the ranch group are and how the adjudication process was conducted. We note that those serious questions were not addressed in the trial court. In addition, crucial witnesses were not summoned. Though there was an application by the appellants' officials to summon the Land Adjudication Officer and the Land Registrar, it is not clear from the record why they never testified. We are of the view that these issues so critical and central to the dispute that their absence was akin to the failure to turn the turbines on the wheels of justice. It is our finding that having analyzed the evidence as set out in the record, the Land Adjudication and Settlement Officer, as well as the Land Registrar, were and remain crucial witnesses to assist the trial court come to a just conclusion.

64. We are also flummoxed that in notwithstanding the powers vested in the trial judge, he did not proceed to exercise his discretion to call for these crucial witnesses in the spirit of administration of justice. As a Court, we are always reminded of our duty to transcend justice to the parties within the parameters of the law. This was the holding of the Supreme Court of India that held as follows in Rupa Ashok Hurra v Ashok Hurra; Writ Petition (Civil) 509 of 1997 and which position we adopt in its entirety:

> "...Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. The rule of stare decisis is adhered to for consistency, but it is not inflexible in Administrative Law as in Public Law.
>
> Even the law bends before justice...Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order, the courts culled out such power to avoid abuse of process or miscarriage of justice."

65. This is the fulcrum of the provisions of section 22 of the *Civil Procedure Act* which provides:

> "Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—
>
> a. make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
>
> b. issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
>
> c. order any fact to be proved by affidavit."

66. By calling for the witnesses, the trial court would have addressed its mind on the following questions: firstly, whether there was a member list capturing all members belonging to the appellant? secondly, whether any adjudication took place and if so, what was the procedure? thirdly, whether the appellant is still operational as per its adjudication records? fourthly, whether the adjudication office is in possession of all verifiable resolutions passed by the appellant and lastly, whether there is an updated list of officials and a chronology of previous officials?

67. In the circumstances, we find that absent a crucial interrogation of those questions, the appeal cannot be conclusively determined as the same would at this juncture be tantamount to a travesty of justice. We are of the view that the present circumstance dictate that this matter be heard afresh with inclusion of the issues raised in this judgment. Thus, we find that the dispute herein qualifies for a retrial within

the parameters set out by this Court in the case of AVH Legal LLP vs. Raballa & 8 others [2023] KECA 232 (KLR) that held as follows:

> "We join the long list of the above cited cases by affirming that this Court has residual jurisdiction to re-open a decided case in appropriate and exceptional cases such as when Judgment;
>
> a. was obtained by fraud or deceit;
>
> b. was a nullity
>
> c. was given under a mistaken belief that the parties consented to it;

d. was given in the absence of jurisdiction;

e. the proceedings adopted were such as to deprive the decision or Judgment of the character of a legitimate adjudication; orf.it was rendered with fundamental irregularity."

68. Explaining the relevance of a retrial, the persuasive decision of a three-judge bench of the South African High Court in Peter Semono vs. Municipal Manager Rand West Local Municipality (Appeal) [2025] ZAGPPHC 419 held as follows:

> " A court of appeal derives its powers from section 19 of the Superior Courts Act. Where a hearing of further evidence is required, remitting the case to the court of first instance is appropriate instead of a court of appeal performing the duties of a court of first instance. In view of the fact that the court of first instance did not conduct a proper trial of issues, it is appropriate to remit the matter back to the court of first instance for a proper trial."

69. In view of the foregoing, we direct that ELCC No. 335 of 2017 be heard before a judge of the Environment and Land Court, other than Kullow. J, for hearing and determination of the dispute as framed in this judgment. This is a very old dispute, and, regrettably, it must start afresh. Bearing this in mind, we direct that the suit should be heard on a priority basis with a clear timetable for proper planning within the next 6 months by the parties. As for costs, each party shall bear its own costs.

DATED AND DELIVERED AT NAKURU THIS 25TH DAY OF MARCH, 2026.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR