



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ELCC NO. E012 OF 2023

DR. BEN RABAN KOISABA.....
PLAINTIFF

-VERSUS-

ELIZABETH NAIGU SIRONKA 1st
DEFENDANT

EPHANTUS NJOGU NJUGUNA.....2ND
DEFENDANT

KISERIAN SUSTAINABLE.....3RD
DEFENDANT

BOMA SURVEYOR.....4TH
DEFENDANT

LAND REGISTRAR, NAROK.....5TH
DEFENDANT

THE ATTORNEY GENERAL.....6TH
DEFENDANT

JUDGMENT

1. By a Plaint dated **17th May 2023**, the Plaintiff herein **Dr Ben Raban Koisaba**, seeks for Judgment against the Defendants herein jointly and severally for the following orders; -

- i. A declaration that land parcel known as Suswa-Kitet on Beacon Certificate No.2148 belongs to Ben Raban Koisaba.***

- ii. A cancellation of the title deeds Cis-Mara/Suswa-Kitet/3339, 3340 & 3341 that the 1st, 2nd and 3rd Defendants hold that were excised from parcel of land known as Suswa -Kitet on Beacon Certificate No.2148.**
- iii. The District Land Registrar, Narok North/East be ordered to amend and/or rectify his records to register the Ben Raban Koisaba as the registered owner of land parcel No. Suswa-Kitet on Beacon Certificate No.2148.**
- iv. An order of permanent injunction restraining the defendants from interference with parcel of land Suswa-Kitet on Beacon Certificate No. 2148 the suit land.**
- v. Any other relief that the court may deem fit to grant in the circumstances.**

2. It was the Plaintiff's claim that he was member **No.878** of **Suswa-Kitet Group Ranch**, and was rightfully allocated land parcel contained in **Beacon Certificate No.2148**, which he was shown on **14th September 2003**. That he took possession and occupation of the said parcel of land, and commenced excavation of a water dam at a cost of **Ksh. 1,500,000/=** for his domestic and agricultural purposes.

3. The Plaintiff further claimed that on **5th July 2019**, he deposited **ksh 25,000/=** in the Group Ranch bank account as facilitation fees for processing of the title deed, and on **3rd May 2021**, he was made to pay **Ksh.30,000/=** to **Boma Surveys**, the 4th Defendant herein, for the processing of title deed. The Plaintiff contended that now, the said parcel of land has been subdivided into land parcels **Nos. Cis Mara/Suswa-Kitet/3339, 3340 & 3341**, without his consent, and title deeds issued to 1st to 3rd Defendants herein, who are total strangers and non-members of the said Group Ranch.
4. Further, that on **10th June 2022**, the Land Adjudication Committee Members resolved that land parcel **No. 2148**, as indicated in the **Beacon Certificate** belongs entirely to the Plaintiff. Therefore, the acquisition of land parcels Nos **Cis Mara/Suswa-Kitet/3339, 3340 & 3341**, by 1st to 3rd Defendants is **suspect, irregular, fraudulent** and is not supported by adjudication records from **Suswa-Kitet Group Ranch Section**.
5. It was the Plaintiff's allegations that the Defendants have effectively deprived him off of his land, and have also interfered with his quiet and peaceful enjoyment of land parcel **No. 2148**.
6. The Plaintiff also alleged that the Defendants' action is **unlawful, wrongful and amounts to actual dispossession of** his property and have no colour of rights, any legal justification or any authority to excise and take away the Plaintiff's land.

7. Therefore, the Plaintiff's claim against the Defendants, their agents and servants are for; *a permanent order of injunction restraining them from entering, remaining on or in any other way dealing with, or interfering with the Plaintiff's parcel No. **Suswa-Kitet Beacon 2148** and **cancellation of title deeds** for land parcels Nos. **Cis-Mara/Suswa-Kitet/3339, 3340 and 3341.***
8. The suit is vehemently denied by the Defendants herein, who filed their respective Defenses on diverse dates.
9. The 1st Defendant, **Elizabeth Naigu Sironka**, filed her Defence dated **26th October 2023**, and denied all the allegation contained in Plaint. The 1st Defendant denied that the Plaintiff was a member **of Suswa-Kikwet Group Ranch** and stated that **Beacon Certificate No. 2148**, was given to the late **Maseenke Ole Koisaba Lendapana** (husband to 1st Defendant), who was a member of **Suswa Kitet Group Ranch** since 1992.
10. Further, the 1st Defendant averred that the Plaintiff herein is her step son, and after the death of her husband **Maseenke Ole Koisaba Lendapana**, she decided to subdivide the said parcel of land into three equal parts with an intention of allocating the same to the deceased's sons, that is the Plaintiff herein, and her two sons namely **Peter Sironka and Isaac Salaashi Koisaba.**
11. That after the subdivision **Isaac Salaash Koisaba** sold part of his share of **7 acres** to the 2nd Defendant, while

Peter Sironka also sold a portion of his share, but the Plaintiff did not sell his **9 acres** of the land allocated to him. That the other remaining portion belongs to 1st Defendant's **two sons**, and were registered in the 1st Defendant's name.

12. The 1st Defendant further stated that the Plaintiff construction of the dam is not on the entire land, but on his side constituting the **9 acres**. She averred that the Plaintiff never owned the impugned land, and this case is motivated by **selfishness** and an urge to **disinherit** the other two sons of the deceased from their father's estate.
13. The 2nd Defendant filed his Defence dated **23rd June 2023**, and denied all the allegations contained in the Plaint, and contended that he is **a bona fide purchaser** for value in good faith of **Cis-Mara/Suswa Kitet/3339**, and that he bought five (**5**) **acres** from 1st Defendant's Son **Isaak Salaashi Koisaba**, and was registered as the proprietor.
14. The 2nd Defendant further alleged that he acquired land parcel **No. Cis Mara/Suswa-Kitet/3339**, through due process having done due diligence on the said parcel of land, which was being subdivided. He denied the particulars of **fraud or misrepresentation**, on his part, and also denied that the plaintiff would suffer any damage, if the suit is not allowed.
15. The 3rd Defendant too filed his Defence dated **27th November 2023**, and denied all the allegations set out in the Plaint. He contended that he bought **8 Acres** on **21st**

April 2021, from 1st Defendant (**Elizabeth Naigu Sironka**) at **Ksh.440,000/=**, after carrying out due diligence, and was shown and advised that **Beacon Certificate No.2148**, from Suswa Kitet Group Ranch, and title deed for **Narok/Cis-Mara/Suswa/Kitet/1848**, belonged to **Maseenke Ole Koisaba Lendapana**, who was husband to the 1st Defendant.

16. The 4th Defendant filed its Defence dated **9th November 2023**, through **Kiptoo K& Co. Advocates**, and denied all the allegations set out in the Plaint, but admitted that it was contracted by the **Allocation Committee of Suswa Kitet Group Ranch** to carry out subdivision and processing of title deeds to members as directed in accordance with the area list of the Group Ranch.
17. The 4th Defendant also denied that having received any further instructions from the said **Group Ranch Land Allocation Committee** in resolving the matter, and further, denied particulars of interference and meddling, and /or damages suffered, **fraud and misrepresentation**. Being a Survey Company, it claimed that it followed the instructions of **Suswa Kitet Group Ranch Land Allocation Committee**.
18. The 5th and 6th Defendants filed their statement of Defence dated **31st August 2023**, through **Lynn Ngira, Litigation State Counsel**, at the Attorney General's Office and contended that they were not aware of any dispossession of suit property as alleged in the Plaint.

19. It was their contention that the **transfer, subdivision and registration** of the suit property was based on documents presented before the **Land Registrar, Narok**, who exercised **due diligence** upon believing that the said documents were genuine, and thus the parcels of land were registered.
20. Further, the 5th and 6th Defendants contended that the suit herein does not disclose any reasonable cause of action against them. They further claimed that they were strangers to the particulars of fraud and misrepresentation as alleged by the plaintiff.
21. They urged the court to dismiss the Plaintiff's suit with costs.
22. After the **Pre-trial conferences**, the suit proceeded for hearing via viva voce evidence. The Plaintiff gave evidence for himself and called no witness. The 1st and 3rd Defendants gave evidence for themselves and called no extra witness, whereas the 2nd Defendant gave evidence for himself and called one witness to support his case. The 4th Defendant called one witness and the 5th and 6th Defendants gave evidence through the Land Registrar, Narok.

PLAINTIFF'S CASE.

23. **PWI BEN RABAN KOISABA**, the plaintiff herein adopted his witness statement dated **17th May 2023**, as his

evidence in chief, and produced the list of documents as his exhibits in court to support his evidence.

24. It was his evidence that he is a registered member of **Suswa Kitet Group Ranch**, as member **No 878**, as per the Register produced as his exhibit No1. Further, that the Group Ranch issued and allocated land to its members, and he was issued with **Beacon Certificate** No **2148 SR NO.396**. That this **No 2148** is for the suit land in issue herein.
25. Further, that the said plot was issued on **14th September 2003**, in his name, which Beacon Certificate was signed by the three officials of the Group Ranch, being the Chairman, Secretary and Treasurer. The Surveyor of Boma Surveys also counter-signed the said Beacon Certificate, which he produced as **PEXHBT NO 2**.
26. It was his further evidence that immediately after he was shown the land, he started to excavate a dam as was evident from the photographs produced as **exhibits No 3**, as he had been shown the four corners of his land. However, another Beacon Certificate emerged with a different **Serial No 397**, for the same plot **No 2148**, in the name of **Maseenke Ole Lendapana**, who was his late father, issued on the same date **14th September 2003**. This Beacon Certificate had one signature, of the secretary only.

27. The Plaintiff further testified that he was the owner of this suit land, and in **2019**, he paid **ksh 25, 000/=** through Equity Bank for this Suswa Kitet Group Ranch, and later paid **ksh 30, 000/=** to the 4th Defendant for procession of the title deed. He produced the receipts for payment to **Boma Surveys as PEXH 6**. That he later learnt that this **Beacon Certificate** that had one signature was used to process a title deed for the suit land in the name of **Elizabeth Naigu Sironka**, the 1st Defendant, which parcel of land was later subdivided into three parcels of land being **land parcels Nos 3339 to 3341**, as is evident from the sale agreements produced in court as exhibits.
28. According to his evidence, land parcel **No 3339**, was in the name of **Ephantus Njogu Njuguna**, while parcel **No.3340**, was in the name of **Elizabeth Naigu Sironka**, and parcel **No.3341** was in the name of **Kiserian Sustainable**, the 3rd Defendant herein.
29. That when he visited the Group Ranch and a meeting was held to resolve the issue, it was resolved that the land parcel **No 2148**, belonged to him, and the said resolution was passed through the minutes that he produced as **PEXH NO 7**, and the committee was obligated to allocate **Maseenke Ole Lendapana**, another parcel of land, as he was recognized as the owner of the suit land.
30. He produced a Death Certificate as **PEXH NO 9**, to confirm that his father **Maseenke Ole Lendapana**, was deceased, and no succession proceedings have been undertaken. He

urged the court to revert the suit land to him, and the title deeds issued should be **cancelled**, and the land be registered his name.

31. On cross examination by **Mr. Ombasa** for 1st and 3rd Defendants, he admitted that the 1st Defendant is his step mother, who was married to his father in **1975**. Further, that the Beacon Certificates were issued in **2003**, while he was in Kenya, and he left for USA, in **2009**. He confirmed that the title deed issued in respect of the Beacon Certificate held by 1st Defendant was **Cis Mara/ Suswa Kitet / 1848**, in the name of **Elizabeth Naigu Sironka**. Further that though the 1st Defendant allegedly gave him a title for **9 acres**, he has never seen the said title.
32. He also confirmed that his father had another land in **Nairegia Enkare**, but they have not filed for Letters of Administration over his estate, and the title deed for **Nairegia Enkare** is in his custody. He denied that his Beacon Certificate was replaced, and also denied that he was a beneficiary of any other land from the Group Ranch, and his intention is not to disinherit the 1st Defendants and her sons.
33. Upon being cross examined by **Mr. Njogu Njuguna** for the 2nd Defendant, he confirmed that the Beacon Certificate No 397, was in the name of **Sironka Lendapana**, and the one produced in court was in the name of **Masenkee Ole Koisaba Lendapana**, whereas Beacon No 396, is in the name of **Ben Raban Koisaba**.

34. He also confirmed that he is member **No 878**, as per the Register, but the documents produced were not certified by the officials of Group Ranch. He testified that Beacon Certificate **No 397**, was signed by one official, while Beacon Certificate **No 396**, was signed by all the officials of the Group Ranch.
35. Further, though he paid **ksh 25, 000/=** through Equity Bank, he was not aware that it did not reflect the account name of **Suswa Kitet Group Ranch**. He also testified that though he paid **ksh 30, 000/=** to Boma Survey, for title **No 2148**, the receipt does not show the payment was for what title. Further, that the surveyor did not process his title, and so did not get value for his money.
36. He could not tell whether the Surveyor received any money from the 1st Defendant, and he did not know who commissioned the subdivision of the Group Ranch. However, he confirmed that his late father was not shown the piece of land by the Group Ranch, but the plaintiff was shown the suit land using **Beacon Certificate No 376**. He also confirmed that in Beacon Certificate No 396, there is alteration of figure **8** in 2148.
37. On cross examination by **Mr. Kiptoo** for the 4th Defendant, he confirmed that he is a member of **Suswa Kitet Group Ranch, Member No 878**, and his father was also a member, but he did not know his membership number.

38. That **Suswa Kitet Group Ranch** appointed its surveyor; Boma Surveyors, who took instructions from the Group Ranch Executive Committee. That when he paid **ksh 30,000/=** to Boma Surveyors, he was issued with receipts, and he paid twice because he needed an expedited process, as he was going back to USA. He also testified that he paid **ksh 6000/=** for Beacon Certificate, but he did not have a receipt for that payment, since he could not keep it for long.
39. He denied having any title in his name from the Group Ranch- Suswa Kitet, and he was not in good terms with the surveyors, as they fell out due to this matter. Though he identified a title deed dated **10th May 2022**, in his name, he testified that he was not aware of the said title deed. Further, he identified another title deed for **15.56Ha**, which is in his name, but not in his custody, as he never picked them from the surveyor.
40. Upon being cross examined by **Mr. Mwambonu** for the 5th and 6th Defendants, he stated that though his father was a member of **Suswa Kitet Group Ranch**, he only knew of one Beacon Certificate **No 396**, and not **No 397**. Further, he confirmed that registration of ownership is by Group Ranch, and the officials keep the record of the members, and any complaint is to the Group Ranch. He confirmed that he brought his complaint to the Group Ranch since his land was allocated to his Step Mother, who is not a member of the Group Ranch, and did not go through succession proceedings.

41. That when he carried out a search for land parcel **No 1848**, which is the mother title, he found out that it was registered in the name of the 1st Defendant, whereas he was supposed to own the suit land, and the resultant title deeds were allocated to other people. He claimed the resultants titles, and further denied that he was aware of any title in his name.

42. It was his further evidence that he did not pick the title deed for land parcel **No. 4321**, which as indicated in the Green card was issued in his name and that of his wife. Further that land parcel **No 3342**, which is in his name was transferred from the 1st Defendant to himself, and he was not aware of the two titles in name.

43. Although there was attempt to resolve the matter at the Group Ranch as per the minutes of the Group Ranch produced as exhibits, he decided to file this suit as there was no progress at the Group Ranch process.

44. On re-exam, the Plaintiff testified that plot **No 2148**, which is on Beacon Certificate No. 397 is registered in the name of 1st Defendant as land parcel No 1848, and that is the reasons for this case. That the title ought to have been issued in his name, and that even if it was to be issued in another name, it ought to be that of his father, and the family has not subjected his estate to succession proceedings. He denied that land parcel **No 3342**, was given to him.

45. He also denied that he was given a replacement for his parcel of land, and that his land was subdivided without his consent or having relinquished it. He obtained the record of the Group Ranch such as the Register from adjudication committee. He denied that his father was allocated any parcel of land, and that he is claiming land parcel **No 2148**.

DEFENCE CASE

46. **DW1 Philip Mathew Odidah**, the Land Registrar Narok adopted his witness statement dated as part of his evidence. He also produced the list of documents as his exhibits in court. It was his evidence that the land in dispute is in **Suswa Kitet Group Ranch**.

47. He also testified that the Group Ranch allocate land to its members through the **Allocation Register**, and once allocated, the Register is forwarded to **District Land Adjudication Officer** for confirmation that the individuals allocated are indeed members and were allocated the particular parcel of land. Once that confirmation is done, a transfer of land is prepared for allocation of the parcel of land to the members, and processing of title deeds.

48. It was his evidence that in this process, there is no involvement of the District Surveyor, as he has no input hereon. Following the above process, the Suswa Kitet Group Ranch was subdivided into various parcels of land

and **Cis Mara/Suswa Kitet/1848**, was one of them, and it measures **11.56Ha**.

49. Further, that the said parcel of land was registered **on 8th August 2016**, in the name of Suswa Kitet Group Ranch, and later transferred to **Elizabeth Naigu Sironka** on **24th March 2021**, and a title deed was issued.

50. Later, the suit land was subdivided into four parcels of land on **23rd March 2022**, and the resultants subdivisions were land parcels **No. 3339 to 3342**. It was his further evidence that from the history, **Elizabeth Naigu** was the wife of **Maseenke ole Koisaba**, who was an original member of **Suswa Kitet Group Ranch**. That upon his demise, the said land was allocated to **Elizabeth** his wife by the Group Ranch.

51. Further, that after the subdivision, the land was distributed to various sons of **Maseenke Ole Koisaba**. Land parcel No **3339**, was transferred to **Ephantus Njogu Njuguna**, and a title deed was issued, while land parcel **No 3340**, remained in the name of **Elizabeth Naigu**, and land parcel **No 3341**, was transferred to **Kiserian Sustainable Self Help Group**, and land parcel **No 3342** was transferred to **Ben Raban Koisaba and Josephine Santetos**.

52. He also testified that some of the sons of **Maseenke Ole Koisaba** had sold their shares even before the registration and subdivision was done. It was his evidence that another land parcel **No 4321**, in favour of **Josephine Santetua Kindi**, was the share that was supposed to be owned by

Ben Raban Koisaba, who claimed was a member of Suswa-Kitet Group Ranch, and it measures 15.56 Ha. It was his further evidence that the plaintiff, **Dr Ben Raban** was allocated this parcel of land **No 4321**, and that the suit land, **1848** does not belong to him.

53. He claimed that though a title deed was issued, he did not have record of when it was issued and collected, but only received one Beacon Certificate in favor of **Maseenke Ole Koisaba Lendapana**.
54. On cross examination by **Mr. Kamwaro** for the Plaintiff, he confirmed that he was familiar with demarcation of the Group Ranch Land, and that a member Register was crucial. He also confirmed that a Beacon Certificate is issued upon a member being allocated land, and the Beacon Certificate is ordinarily signed by the three officials.
55. It was his evidence that the **Beacon Certificate No 396**, in the name of **Ben Raban Koisaba** was issued on **14th September 2003**, and was signed by the three officials. However, **Beacon Certificate No 397**, in respect of land parcel **No 2148** is signed by one official; the secretary. He also confirmed that the original owner of land parcel No 1848, was **Maseenke Ole Koisaba**, which parcel of land was later subdivided into land parcels **Nos 3339 to 3342**. Land parcel No 1848, was originally in the name of **Elizabeth Naigu**, but he did not have minutes of the Group Ranch to support that registration.

56. Though he testified that Elizabeth was the wife of **Maseenke Ole Koisaba**, now deceased, he did not have any documents to confirm that Elizabeth was the wife of **Maseenke Ole Koisaba**. He also did not have any Letters of Administration over the estate of **Maseenke Ole Koisaba Lendapana**. He stated that Elizabeth was to distribute the land to the sons of Maseenke, but he was not aware whether there were daughters.
57. He also confirmed that some of the sales were done before subdivision was done, although that was irregular. To him, title for land parcel **No 4321**, was in the name of **Ben Raban Koisaba**, and he did not have transfer documents in favour of **Dr. Ben Raban Koisaba**. He also did not have the area list to show that the land was allocated to **Ben Raban Koisaba**. He could not confirm whether **Ben Koisaba** collected the title deed, as he did not have the book that is normally signed when titles are collected.
58. Though he did not have minutes from the Group Ranch to confirm that **Dr Ben Raban** was allocated land parcel No **4321**, he had minutes of **Suswa Kitet Group Ranch** for 3rd October 2022, which stated that **Maseenke ole Koisaba** was to be allocated land elsewhere. He also confirmed that **Beacon Certificate No 396**, was issued earlier than **397**, and in equity, the first in time prevails. To him, he was not aware that land parcel **No. 4321** does not exist on the ground.

59. Upon being cross examined by **Mr. Ombasa** for the 1st and 3rd Defendants, he confirmed that their office received documents advising that they transfer the suit land to **Elizabeth Naigu Sironka**. He confirmed that the documents received were Mutation Forms, a letter from Suswa Kitet Group Ranch, and his office was not informed of any dispute. The Group Ranch instructed them to issue the title deed in the name of **Elizabeth Naigu**, which the office issued, and therefore the said title is a valid title. By the time of issuing the title deed, **Maseenke Ole Koisaba Lendapana** was deceased, and registration was done directly to **Elizabeth**, though he did not know if Maseenke had issued such instructions.
60. Upon being cross examined by **Mr. Njuguna** for the 2nd Defendant, he confirmed having been shown **Beacon Certificates Nos 396 and 397**, but **Beacon Certificate No 397**, was signed by one person, and **No 396**, was signed by all the officials. The Beacon Certificates were for land Parcel **No. 2148**, but for Beacon Certificate **No 396**, there is alteration of **No 8**, which is not there in **No 397**.
61. It was his evidence that **Beacon Certificates** are signed by the officials of the Group Ranch, but he was not aware of the happenings at the Group Ranch, although they received instructions to register the land in the name of **Elizabeth Naigu**. He also confirmed that the sale of a portion of land parcel **No 1848**, was done before subdivision as the owners knew their portions before registration.

62. It was his further evidence that Elizabeth was the wife of **Maseenke Ole Koisaba**, and the parcel of land **No 1848**, was subdivided into four parcels. That the dispute between the family of **Maseenke Ole Lendapana** was resolved at the Group Ranch, and titles were issued for the subdivisions of land parcel **No 1848**.
63. Upon being cross examined by **Mr. Kiptoo** for the 4th Defendant, he confirmed that his office received the Area list, which is prepared by the Group Ranch Officials together with adjudication officer, with the input of survey department. That for **Suswa Kitet Group Ranch**, the survey was done by Boma Surveyors, which is a private entity, and the survey office was only supposed to survey the land, as allocation is done by the Group Ranch, and the surveyor shows the physical area.
64. Further, though the **Beacon certificates** are issued by the Surveyor who surveyed the ground, they have to be confirmed by the officials of the Group Ranch. It was his evidence that he was given **Beacon Certificate No 397**, which was supplied to their office by the Officials of the Group Ranch. He stated that he only saw **Beacon Certificate No 396**, in court, and is not in their office record.
65. On re exam by **Mr. Mwambonu**, he confirmed that he was not supplied with minutes of the Group Ranch, and also not supplied with any documents in favour of **Ben Raban Koisaba**, and to him, the legitimate owner of the suit land

was **Maseenke Ole Koisaba Lendapana**, and is supported by Beacon certificate **No 397**.

66. **DW2 Elizabeth Naigu Sironka** the 1st Defendant adopted her witness statement dated **20th October 2023**, as her evidence in chief. She also produced a list of documents as her exhibits, **DEXH 11 to 14**. She confirmed that the plaintiff is her step son, and thus a son to her. She also stated that she has her biological sons being **Salaashi** and **Lemayan**.
67. It was her further evidence that her deceased husband was known as **Sironka Ole Lendapana**, or **Masenkee Ole Koisaba**, who was a member of **Suswa Kitet Group Ranch**. That when he died, he left behind the land parcels at **Nairegia Enkare and Suswa Kitet**. That for Suswa Kitet land, her husband left her behind with the receipts for payment and Beacon Certificate.
68. Further, that the family of **Koisaba** met and decided that **Ben**, the Plaintiff was to keep the **Nairegia Enkare** title deed, and she kept the Beacon Certificate for the Suswa Kitet Land. That when she took the Beacon Certificate to the Group Ranch, she was issued with the title deed, after she paid the requisite money.
69. Later, she subdivided the land into three parcels of land for her sons, wherein each was to get 9 acres. Thereafter, her two sons, **Salaashi** and **Peter Lemayan** sold their portions of land, and she uses the remaining. She denied

that the Beacon Certificate was for Ben, and the said land was also not for Ben, and she denied that Ben has built a dam on the suit land.

70. It was her further evidence that Ben complained to the Group Ranch and reported the matter to the Police, and he was given another parcel of land. She insisted that the suit land, Parcel **No 1848** belonged to her late husband, and Ben was given apportion of the said parcel of land, and has a title deed for his portion of land. She urged the court to dismiss the plaintiff's suit with costs.
71. When cross examined by **Mr. Kamwaro** for the Plaintiff, she confirmed that land parcel **No 1848**, belonged to her late husband **Maseenke Ole Koisaba**, and that she was initially not a member of the **Group Ranch-Suswa Kitet**, and only became a member by virtue of being a wife of a deceased member.
72. She also confirmed that she did not file for letters of administration over the estate of her husband, but she did not have the said letters of administration in court. She also did not have the land transfer form, and that she subdivided the land, after obtaining consent to subdivide the said land, though he said consent was not in court.
73. It was her evidence that when she obtained the title deed for land parcel **No 1848**, she subdivided it into three portions, and one of them was transferred to **Ephantus Njuguna**, after obtaining **Land Control Board Consent**

to transfer. The other land parcel **No 3341**, was transferred to **Kiserian Sustainable**, and she also had authority to transfer.

74. When cross examined by **Mr. Njuguna** for the 2nd Defendant, she testified that the land was transmitted from her late husband to herself, and she later distributed to her sons, **Ben Koisaba, Salaashi and Lemayan**. Then Salaashi sold his share to **Ephantus Njuguna**, after obtaining **LCB Consent**. It was her evidence that Ephantus Njuguna bought 5 acres from Salaashi, and the remaining 4 acres are in her name.
75. Upon cross exam by **Mr. Kiptoo** for the 4th Defendant, she testified that the said parcel of land was subdivided by the Surveyor, whom she could not recall by name. However, she confirmed that the surveyors went to the ground, and the subdivided land was given to her by the officials of the Group Ranch Committee, and the surveyor showed her the land on the ground.
76. On being cross examined by **Mr. Mwambonu** for the AG, she testified that her husband died before allocation of the land was began and/ or completed. However, at the time of his death, the **Beacon Certificate** was in his name, but the officials of the Group Ranch changed it to her name. That when they filed for succession, **Ben Raban Koisaba** was present, and they agreed to distribute the estate as they have done, and Ben got his share.

77. That when they tried an out of court settlement and it failed, the officials of the Group Ranch decided to give Ben land elsewhere. It was her evidence that Ben portion of land is land parcel **No. 3342**, and that is where the Dam is, and this Dam was dug and fenced by the family **of Koisaba**, and not Ben alone.
78. On re-exam, she testified that when her husband died, she gave **Ben** the title deed for **Nairegia Enkare land**, and she further clarified that she never filed for succession proceedings, and she did not have any confirmed grant over the estate of her husband. However, it was her evidence that from land parcel **No 1848**, she gave Ben, the plaintiff **9 acres**, and also the same amount of acreage to her other two sons, **Peter and Salaashi**, who sold a portion of their shares to 2nd and 3rd Defendants.
79. **DW3 Patrick Turanta Ole Toris**, from Suswa Kitet Group Ranch, told the court that he is a member of the said Group Ranch, and he knows both the Plaintiff and the 1st Defendant as members of one family.
80. He informed the court that one becomes a member of the Group Ranch by virtue of birth or registration as a member. After becoming a member, one acquires land through allocation by the demarcation committee, which is elected by members. It was his evidence that **Ben Koisaba** is a member of **Suswa Kitet Group Ranch** and was allocated **30 acres** of land by the Group Ranch.

81. He also confirmed that the late **Maseenke Ole Koisaba** was also a member of the Suswa Kitet Group Ranch, and was allocated **30 acres** of land too by the Group Ranch, after paying the requisite fees. However, he died before the land had been transferred to him, and his family followed up the transfer and registration. It was his evidence that the family of **Maseenke Ole Koisaba** followed the right protocol, and had the land registered accordingly.
82. Upon being cross examined by **Mr. Kamwaro** for the Plaintiff, he testified that **Ben Koisaba** was also a member of Suswa Kitet Group Ranch, and was allocated a parcel of land through his Beacon Certificate, which had been signed by officials of the Group Ranch.
83. It was his evidence that once a Beacon Certificate is signed by the surveyor, it is authentic, and a Beacon Certificate cannot be issued over two parcels of land, or two persons over the same parcel of land.
84. When he was shown the **Beacon Certificate** for Ben Koisaba, he confirmed that it was signed by all the three officials of the Group Ranch. However, he confirmed that the Beacon Certificate for **Maseenke Ole Koisaba** was only signed by one official, and there was a dispute over this parcel of land.
85. He was also shown minutes of **10th June 2022**, where it was decided that the land in dispute was to go to **Ben Koisaba**, and 1st Defendant was to be given another parcel

of land, but to him, the 1st Defendant was the automatic heir of **Maseenke Ole Koisaba**, and **Maseenke** was the one entitled to be allocated the suit land.

86. On cross exam by the 2nd Defendant, he testified that he was shown **two Beacon Certificates**, over the suit land, but one Beacon Certificate had alteration, but the chairman had not signed in one of them.
87. Upon being cross examined by **Mr. Kiptoo** for the 4th Defendant, he testified that he knew Boma Surveyors who had been contracted to survey the land for **Suswa Kitet Group Ranch**, and had no power to allocate land to anyone, since they were only given instructions by the Group Ranch through the chairman.
88. On re-exam. he testified that he did not have the original minutes as shown to him by the plaintiff, and at the time of those minutes, **Maseenke Ole Koisaba** was deceased, and he did not know where the Beacon Certificate without the signatures of the officials originated from.
89. **DW4 Ephantus Njogu Njuguna**, the 2nd Defendant herein who is an advocate of the Kenya High of Court practicing as **Njogu Njuguna & Co Advocates**, adopted his witness statement as his evidence in court. He also produced his list of documents as **DEXIHIBITS** to support his case.
90. It was his testimony that he purchased land parcel **No Cis Mara/ Suswa Kitet/ 3339**, from **Isaack Koisaba** for

ksh **215,000/=**, who is a son to the 1st Defendant. He was shown the Beacon Certificate, and after due diligence, they entered into a sale agreement on **1st Feb 2021**. He paid the land in two instalments. He confirmed having seen the title deed for the suit land, which was in the name of the 1st Defendant for **Suswa Kitet/1848**.

91. It was his further evidence that after purchase of the 5 acres from the son of 1st Defendant, the land was subdivided into three portions. His purchased portion of land became **Cis Mara/ Suswa Kitet/ 3339**, and he was issued with the said title deed. He insisted that he was a bona fide purchaser for value.
92. Upon being cross examined by **Mr. Kamwaro** for the Plaintiff, he confirmed that his parcel of Land **Cis Mara/ Suswa Kitet/3339**, is a resultant subdivision of land parcel **No 1848**, which emanated from **Beacon Certificate No 397**, in the name of **Maseenke Ole Koisaba**. He also confirmed that from the Land Registrar, Plot **No 2148**, was registered as land parcel No 1848.
93. He also testified that he did not have Beacon Certificate in the name of the 1st Defendant. He also did not have letters of administration over the estate of **Maseenke Ole Koisaba**. Though he entered into sale agreement with **Isaack Salaashi Ole Koisaba**, he had not taken out 3rd party's proceedings against the said **Isaack Salaashi**.

94. Upon being cross examined by **Ms. Njuguna** for the 1st and 3rd Defendants, he testified that he followed the due process, and also conducted due diligence before purchasing the suit land.
95. **DW5 Isaack Salaashi Ole Koisaba**, a witness for the 2nd Defendant confirmed that he sold the land to 2nd Defendant, which land initially belonged to his father. He also testified that the 1st Defendant was his mother, and the plaintiff is his step brother. Further, he claimed that the suit land belonged to his late father. That he sold a portion of his land from land parcel **No 1848**, which had been registered in the name of their mother 1st Defendant. However, the beacon Certificate was in the name of their father **Masenkee Ole Koisaba**.
96. He adopted his witness statement as his evidence in chief, and confirmed that his mother had inherited the suit land from their late father. Though the beacon certificate was in the name of their father, they agreed to have the land registered in the name of their mother.
97. Further, that their mother subdivided the land among the three sons, that is the Plaintiff got **9 acres**, and the other two each got **9 acres**. After the subdivision, he sold his **5 acres** to 2nd Defendant, and his other brother Pater sold his **8 acres** to 3rd Defendant. He claimed that the land was subdivided according to the wishes of his father.

98. Upon being cross examined by **Mr. Kamwaro** for the Plaintiff, he testified that he is a member of **Suswa Kitet Group Ranch**, and the **Beacon Certificate** was signed by all the officials of the Group Ranch. He also testified that his mother was not a member of the Group Ranch, but their late was, and their mother got the land by virtue of being a wife of their late father.
99. It was his further evidence that their father died in **2005**, and also confirmed that the land parcel **No 1848**, has another Beacon certificate in the name of Ben Raban Koisaba. Further, that they have not filed for letters of administration, and his father's other assets have not been distributed. He confirmed having sold his share of land from parcel No 1848 to 2nd Defendant.
100. Upon cross exam by **Ms. Njuguna** for 1st and 3rd Defendants, he testified that the 1st Defendant is his mother, and that their father died before the title deeds were processed. He also confirmed that from land parcel **No 1848**, the Plaintiff was also given **9 acres**, and his title deed is still at the land's office. Further, after complaining, the plaintiff was given a further **30 acres**, so that he can leave the suit land to the 1st Defendant.
101. **Mr. Kiptoo** for 4th Defendant, and **Ms. Ngira** for 5th and 6th Defendants did not cross exam him, and in re-exam, he confirmed that though the Beacon Certificate had one signature, it was accepted by the officials of the Group Ranch, and they paid for it. Thereafter, the title deed was

processed using the said Beacon certificate. He also testified that the family of **Maseenke** has not filed for letters of administration for the estate of their father.

102. **DW6 Henry Olouch Nyaema**, a surveyor by profession adopted his witness statement dated **9th November 2023**, as his evidence in chief. He also testified that he is known to both the plaintiff and 1st Defendant, and he works for Boma Surveys, the 4th Defendant.

103. That **Suswa Kitet Group Ranch** contracted their company to carry out survey work (subdivisions) as per the map given to them. After surveying and subdivisions, the Group Ranch was supposed to allocate the land to its members.

104. Later, the 1st Defendant approached them with a **Beacon Certificate No 397**, to identify the plot, and it was duly signed by the committee officials. That after paying for the Beacon Certificate, they identified the plot as **Cis Mara/ Suswa Kitet/ 1848**. They verified the Beacon Certificate, and they processed the title deed for her.

105. After sometime, another member by the name of **Ben Raban Koisaba** approached them with a Beacon Certificate bearing the same Plot number, but there was alteration of **number 8**. He therefore referred the matter to the Committee to resolve, and the Committee decided to allocate **Ben Koisaba** another land parcel **No Cis**

Mara/ Suswa Kitet/4321, which measures **15.68Ha**. He produced the title deeds as **DEXHBTS 35** to **37**.

106. Further, that he received instructions from the 1st Defendant to subdivide the land parcel **No 1848**, that had been allocated to her. She had obtained consent to subdivide the land, and the said land was subdivided into **three portions** of land for her sons. That the plaintiff got a share of **9 acres**, and the title deed is still in their offices as he has not collected it.

107. He clarified that their work was only to survey and subdivide the land, and any other dispute ought to have been sorted out at the Committee level.

108. Upon being cross examined by **Mr. Kamwaro** for the Plaintiff, he testified that the 1st Defendant was not in the **Area list** which was a primary document in confirming one is a member of Group Ranch. He confirmed that he only relied on the Beacon Certificate and not the **Area list**, and the Beacon Certificates are issued by the committee.

109. He identified two Beacon Certificates which were all for plot No 2148, being **Beacon Certificates No 396 and 397**. He confirmed that **Beacon Certificate No 396**, was issued to **Ben Koisaba**, for plot No 2148, and **Beacon Certificate No 397**, was issued to **Maseenke Ole Koisaba** for plot No 2148. Further, he clarified that **Beacon Certificate No 396**, was signed by all the officials of the Group Ranch, and **Beacon Certificate No**

397 was only signed by one official of the Group Ranch-Secretary!

110. To him, the absence of the signature meant that the document might not be genuine. He also confirmed that he did not have the minutes of the Group Ranch instructing him to process the title deed in the name of the 1st Defendant. It was his evidence that **Ben Koisaba** had been allocated another parcel of land, as indicated in the minutes produced as **exhibit No 37**.

111. Upon being cross examined by **Ms. Njuguna** for the 1st and 3rd Defendants, he confirmed that **Boma Surveys** was contracted by **Suswa Kitet Group Ranch** to subdivide its land, and thereafter, they processed the titles. He was aware of the subdivision of plot **No 2148**, wherein due process was followed, and the plaintiff was given a share thereon.

112. Further, he testified that the **Beacon Certificate** availed by the Plaintiff had anomalies, and the 1st Defendant was allocated the land that belonged to her late husband. Later Ben Koisaba was given another land measuring about **15.68ha**.

113. On cross exam by **Mr. Njuguna**, the 2nd Defendant, he testified that there was alteration on **Beacon Certificate** held by **Ben Koisaba No 396**, and the number altered was **No 8**, to read **2148** instead **2142**. However, there was no alteration on **Beacon Certificate No 397**.

114. **Ms. Ngira** for the 5th and 6th Defendants did not cross exam this witness, but in re-exam, the witness testified that he did not require any minutes to process the title deeds, and Beacon Certificates are taken to their offices by the allottees. However, they do not attend the meetings of the Group Ranch, while issuing the Beacon Certificates. He testified that he had no reasons to doubt the Beacon Certificate held by the 1st Defendant.

115. After the close of viva voce evidence, parties filed and exchanged written submissions, which this court has carefully read and considered together with the cited authorities.

116. The Plaintiff filed his written submissions dated **28th July 2025**, through **Kamwaro & Co Advocates**, and urged the court to allow the Plaintiff's case with costs.

117. It was the Plaintiff's submissions that he was a member of **Suswa -Kitet Group Ranch**, and was issued with **Beacon Certificate No 396, for plot No 2148**, which was later registered as land parcel No **Cis Mara/ Suswa Kitet/1848**. That upon being shown the said land, he took possession of the same and began digging a Dam thereon.

118. However, the said parcel of land was later subdivided into three parcels of land being **Nos 3339, 3340 and 3341**, without his consent, and the said parcels of land were sold to 1st to 3rd Defendants, who are total strangers to him and non-members of the Group Ranch.

119. The plaintiff identified three issues for determination being;

- i) ***Whether the transfer and registration of the suit property Cis Mara/ Suswa-Kitet/ 1848, to the 1st Defendant was irregular, null and void;***
- ii) ***Whether the court can order the rectification of the register;***
- iii) ***Who bears costs of the suit.***

120. On whether the transfer and registration of the suit property to the 1st Defendant was *irregular, null and void*, the plaintiff relied on **section 26** of the **Land Registration Act**, the cases of ***Munyu Maina vs Gathiha Maina(2013)eklr; R vs Minister for Transport & Communication & 5 Others Exparte Waa Ship Garbage Collector & 15 Others Mbsa HCMA No. 617 of 2003(2006) 1 KLR (E&L) 563; Alberta Mae Gacci vs Attorney General & 4 Others(2006) eklr;*** and submitted that Courts should nullify titles by land grabbers, who stare at your face and wave a title of land grabbed and plead the principle of indefeasibility of title deed.

121. He further submitted that even if the 1st Defendant was to inherit the parcel of land from her deceased husband, the process ought to have been subjected to succession proceedings, which was not done, and the presence of a title deed cannot salvage the fact that the 1st Defendant grabbed the land from the Plaintiff.

122. Further reliance was sought in the cases of ***Elijah Makeri Nyangw'ra vs Stephen Mungai Njuguna & Another (2013) eklr; Chemei Investment Ltd vs The Attorney General & Others Nairobi Petition No 94 of 2005;*** and submitted that the 1st Defendant right to the suit property cannot be upheld pursuant to **Article 40(6)** of the **Constitution** , since the right does not extend to any property that has been found to have been unlawfully acquired, and that to uphold such title could encourage illegality.

123. On whether the court should order for the rectification of the register, reliance was sought in **section 80** of the **Land Registration Act**, wherein the court has power to revoke and cancel title that has been proven to have been acquired illegally;

124. Reliance was sought in the cases of ***Alice Chemutai Too vs Nickson Kipkurui Korir & 2 Others (2015) eklr; Koilel & 47 others vs Ntiyia & 2 others (2022) KLR; Arthi Highway Developers Ltd Vs West End Butchery Ltd & 6 Others CA No. 246 of 2013(2015) eklr; Funzi Development Ltd & Others vs County Council of Kwale Mbsa CA No. 252 of 2005(2014) eklr;*** where the court held that a registered proprietor acquire an **absolute** and **indefeasible title** if and only if the allocation was *legal , proper and regular*.

125. It was his further submissions that the persons who sold the parcels of land to 2nd and 3rd Defendants had no good titles to pass to the purchasers since succession had not been done to the estate of **Maseenke Ole Lendapana**, and thus the doctrine of innocent purchaser for value cannot apply.

126. For the above submissions, reliance was sought in the case of **Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No. 28 of 2005(2015) eklr; Said vs Shume & 2 Others (Civil Appeal No E050 of 2023(2024) KECA 866(KLR)** , which reaffirmed the importance of due diligence in land transactions, and urged the court to allow his case.

127. The 2nd Defendant filed his written submissions through **Njogu Njuguna & Co Advocates** , and urged the court to dismiss the Plaintiff's suit with costs to the Defendants . The 2nd Defendant identified several issues for determination being;

- i) **Whether the 1st Defendant duly acquired the suit property from the Group Ranch procedurally;**
- ii) **Whether the 1st Defendant was duly registered as the beneficial owner of Cis Mara/ Suswa Kitet/1848;**
- iii) **Whether the 2nd Defendant acquired Cis Mara/ Suswa Kitet/ 3339, procedurally and for value;**

- iv) **Whether the plaintiff is entitled to the relief sought;**
- v) **Who should bear costs of the suit.**

128. On whether the 1st Defendant was duly registered as the owner of the suit land, the 2nd Defendant relied on the available evidence, and further submitted that contrary to the impression created by the plaintiff that **Beacon Certificate No 396**, for plot **No 2148**, was registered as **Cis Mara/ Suswa Kitet /1848**, the record shows that this suit land was registered from **Beacon Certificate No 307**, which was in the name of **Maseenke Ole Koisaba**, the father to the Plaintiff and late husband to the 1st Defendant.

129. Further, when a dispute arose as to the registration of this suit land between the plaintiff and 1st Defendant, the Group Ranch resolved the dispute by substituting the name of **Maseenke Ole Koisaba** with that of the 1st Defendant, his wife. Therefore, the **Members Register** forwarded to 4th Defendant had the name of the 1st Defendant, and title deed was issued in her name. Therefore, the 1st Defendant was properly registered as the owner of the suit land.

130. In support of all the other issues, the 2nd Defendant relied on the decided case of; **Tokoin (Suing as the legal representative of Tokoin Ole Maison vs Land Registrar Kajiado & 2 Others(2023) KEELC(2014) 1 KLR;** and distinguished the cases cited by the Plaintiff as only dealing with title acquired through **fraud, unlawful**

and/ or illegally, whereas the title issued to the 1st Defendant was acquired legally.

131. In conclusion, the 2nd Defendant submitted that he was an innocent purchaser for value since the 1st Defendant could rightly trace the root of her title, which was subdivided to give rise to **Cis Mara/ Suswa Kitet/3339**. He urged the court to dismiss the Plaintiff's case with costs since, it is clear that **"He who comes to equity, must come with clean hands"**, and Plaintiff had none.

132. The 4th Defendant filed its written submissions dated **20th August 2025**, through **Kiptoo & Co Advocates**, and after laying the background of the case set out four issues for determination being ;

- i) Whether the 4th Defendant was contracted by Suswa Kitet Group Ranch to facilitate subdivision and tilting of Members' parcels of land;**
- ii) Whether the 4th Defendant exercised independent discretion in determining land allocation or ownership;**
- iii) Whether inclusion of the 4th Defendant in these proceedings is unjustified and constitutes abuse of process;**
- iv) Who should bear costs of the suit.**

133. On whether the 4th Defendant was contracted by the Group Ranch to facilitate subdivision, it was submitted that the 4th Defendant was solely engaged to execute technical

tasks of subdivision and title processing by **Suswa Kitet Group Ranch Allocation Committee**. Reliance was sought in **section 21** of the **Survey Act, Cap 299**, wherein a surveyor is bound to act within the scope of instructions issued by the client.

134. For this submissions, the 4th Defendant relied on these cases; **Hart Vs Large (2021) EWCA Civ 24, the UK Court of Appeal; Nassoro vs Lukio & Another KEELC 16122(KLR)** where the court held that the surveyors appointed to implement subdivision orders could not be held liable for disputes arising from the underlying allocation unless there was evidence of collusion or independent misconduct , and none of which is alleged against the 4th Defendant herein.

135. Further, it was the 4th Defendant's submissions that the inclusion of **Boma Surveyors** in the suit was **misconceived, vexatious** and **an abuse of the court process** and offends the principles laid down in the case of **Kenya Commercial Bank Ltd vs Osebe(1982) KLR 296**, where the court held that a party should not be dragged into litigation absent of clear cause of action.

136. On whether the 4th Defendant exercised independent discretion in discharge of its duties, it was submitted that the **Boma Surveyors** was retained solely to implement the subdivision and title processing instructions that were issued by **Suswa Kitet Group Ranch Allocation Committee**.

137. For the above submissions, reliance was sought in the cases of ***Henry Muthee Kathurima vs Commissioner of Land & Another (2015) KECA 892 (KLR) ; R vs National Land Commission Ex Parte Elijah Kipngetich Bett(2021) eklr;*** and further submitted that the Plaintiff's inclusion of Boma Surveyors in this suit was a misdirection of liability, as its role was mechanical, not discretionary, executive, not adjudicative, but procedural.

138. On whether the inclusion of the 4th Defendant to this suit was justified, it was submitted that its inclusion was not only legally unfounded, but also amount to misuse of judicial process, and thus abuse of the court process, as its role was purely technical, confined to surveying and processing titles as per the express instructions of its client.

139. Reliance was sought in the case of ***Satya Bhama Gadhi vs DPP& 3 Others(2018) KEHC 6100(KLR); Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & Others(2009) eklr; Isaac Alouch Polo Aluochier vs IEBC & 17 Others (2022) CS Petition No 20(E023)***, where the court reaffirmed that courts must guard against proceedings that are instituted for collateral purposes or that seek to harass parties who are not properly liable.

140. On who should bear costs of this suit, reliance was sought in ***section 27*** of the ***Civil Procedure Act***, and further

submitted that since the 4th Defendant was unprocedurally included in the suit, and therefore, the plaintiff should bear costs of the suit. Reliance was sought in the case of ***Rvs Rosemary Wairimu Munene (JR No. 6 of 2014)***, where the court held that costs are not meant to penalize the losing party but to compensate the successful party for the trouble taken in prosecuting or defending the case.

141. In conclusion, the 4th Defendant submitted that since it was wrongful joined in the suit, the Plaintiff's suit against it should be struck out with costs.

142. The 5th and 6th Defendants filed their written submissions dated ***2nd October 2025***, through ***Lynn Ngira, Senior State Counsel***, in the office of the ***AG***, and submitted that the Plaintiff has not proved his case against them, and this case should be dismissed with costs.

143. The 5th and 6th Defendants identified two issues for determination;

- i) Whether there was fraud on the part of the 5th and 6th Defendants;***
- ii) Whether the plaintiff is entitled to the orders sought.***

144. On whether there was fraud on the part of the 5th and 6th Defendants, it was submitted that the Plaintiff did not prove that allegations on the required standard of balance of probabilities. That though the plaintiff alleged that the registration of 1st and later 2nd and 3rd Defendants was

marred with fraud, the particulars of such illegalities were not given.

145. Reliance was sought in the case of ***Gudka vs Dodhia Civil Appeal No 21 of 1980; RG Patel vs Lalji Makanji (1957) EA 314; Kinyanjui Kamau vs George Kamau (2015) eklr;*** where the court held that allegations of fraud must be pleaded and strictly proved.

146. On whether the plaintiff is entitled to the orders sought, it was submitted that the plaintiff is not entitled to ***land parcels No Cis Mara/ Suswa Kitet/ 3339, 3340 and 3341 or 2148,*** because he has no legal right or interest in the said properties, which has been infringed or unlawfully withheld, since the Land Registrar who is the custodian of land records with a duty to ensure that entries of any subdivisions and transfer were properly done, testified in court and confirmed that the plaintiff was not entitled to the said parcels of land. Therefore, such claim was without basis. However, it was submitted that the Plaintiff is lawfully entitled to land parcel No ***Cis Mara/ Suswa Kite/ 4321,*** from the Group Ranch.

147. Further, it was submitted that land parcel ***No Cis Mara/ Suswa Kitet/1848,*** was closed on subdivision vide a mutation dated ***10th March 2022,*** and the resultant subdivisions were ***Cis Mara/ Suswa Kitet/ 3339, 3340, 3341 and 3342,*** and transfers were done legally.

148. It was also submitted that the dispute that arose between the Plaintiff and 1st Defendant was resolved and the

Plaintiff was given another parcel of land being **Cis Mara/ Suswa Kitet/ 4321**, which is registered in his name and that of **Josephine Santetua Kindi**, his wife. Therefore, the prayers sought by the Plaintiff are misguided, as he has no entitlement over **land parcel No 2148**, registered as **Cis Mara/ Suswa Kitet/1848**, but his entitlement is in **Land parcel No 4321**.

149. The 5th and 6th Defendants urged the court to dismiss the Plaintiff's suit with costs, as the prayers sought are **untenable, frivolous and misguided**.

150. The above are the Pleadings by the parties herein, the evidence in support of, and against this suit, exhibits produced and the respective written submissions which this court has carefully read and considered.

151. From the available evidence, there is no doubt that the dispute herein is over the ownership of the original land parcel No **CIS Mara/ Suswa Kitet/ 1848**, which was initially registered in the name of the 1st Defendant, **Elizabeth Naigu Sironka** on **24th March 2021**, but was later subdivided into various parcels of land, and two of the subdivisions were sold to 2nd and 3rd Defendants herein.

152. There is also no doubt that this suit land was one of the subdivisions of the larger parcel of land **Cis Mara/Suswa Kitet/1**, owned by **Suswa Kitet Group Ranch**, which the Group Ranch subdivided and allocated to its members.

153. Further, it is not in doubt that the late **Maseenke Ole Koisaba**, who was the father to the plaintiff and husband to the 1st Defendant was a member of **Suswa Kitet Group Ranch**, and he died before the **Group Ranch** had subdivided and registered the subdivided land to its members. It is not in doubt that land parcel No **Cis Mara/ Suswa Kitet/ 1848**, initially plot **No 2148**, has two Beacon Certificates.

154. The first Beacon Certificate is **Serial No 396** for **Plot 2148**, held by the Plaintiff herein **Ben Raban Ole Koisaba**, and the second one is **Serial No 397** for plot **No 2148**, in the name of **Maseenke Ole Koisaba**, and later issued to the 1st Defendant. This second Beacon Certificate was used to have the land registered in the name of the 1st Defendant, being **Cis Mara/ Suswa Kitet/ 1848**, which land was later subdivided into land parcels **No 3339, 3340, 3341 and 3342**.

155. The Plaintiff alleged that the suit land belongs solely to him, and that the 1st Defendant used a forged Beacon certificate to have the said land registered in her name, whereas she was not even a member of **Suswa Kitet Group Ranch**. The Plaintiff urged the court to cancel the existing titles emanating from the subdivision of the original land parcel **No Cis Mara/ Suswa Kitet/ 1848**, and reverting the title and the suit land to him.

156. On her part, the 1st Defendant alleged that she is the lawful owner of the original land parcel No **Cis Mara/**

Suswa Kitet/ 1848, which she was registered as the owner by virtue of being the wife of the late **Maseenke Ole Koisaba**, who died before subdivision and registration of the land from the Group Ranch, though he had **Beacon Certificate No 397**, which the allocation committee used to register the land to her name.

157. The 1st Defendant averred that the subdivisions that followed were legal and lawful, and that her two sons rightfully sold their shares to 2nd and 3rd Defendants, and so the court should not cancel any of the titles herein.

158. There is no doubt that there was a dispute over the ownership of land parcel **No Cis Mara/ Suswa Kitet/ 1848**, between the Plaintiff and 1st Defendant, who are mother and son, and wife and son of the late **Maseenke Ole Koisaba**, who was a member of **Suswa Kitet Group Ranch**.

159. There is also no doubt that the Plaintiff is a **Co-registered** owner of land parcel **No Cis Mara/ Suswa-Kitet /4321**, which was also allocated to him by **Suswa Kitet Group Ranch**. The 1st and 5th Defendants testified that the Plaintiff was given this parcel of land by the Group Ranch to resolve the ownership dispute over the suit land. The Plaintiff on his part claimed that he was allocated the suit land, as of right, being a member of **Suswa- Kitet Group Ranch**, but not as compensation so that he can forgo his claim over the suit land.

160. Further, it is not in doubt that land parcel **No Cis Mara/Suswa Kitet/ 1848**, ceased being in existence upon its subdivisions on **23rd March 2022**, and there are now four resultant titles from the said subdivision. The 2nd and 3rd Defendants are purchasers of two of this subdivision. The plaintiff is claiming the whole land parcel **No Cis Mara/Suswa Kitet/ 1848**, and cancellation of the subdivisions, and reversion of the original title to him. The Defendants are vehemently opposed to this claim.

161. Considering the evidence on record, and the rival written submissions, and the above undisputed facts, the court finds the issues for determination are;

- i) ***Whether the Plaintiff is entitled to the relief sought in his claim;***
- ii) ***Who should bear costs of the suit.***

162. In answering the above issues, the court will consider the issues raised by the parties herein in their respective submissions.

1) Whether the plaintiff is entitled to the reliefs/prayers sought in his claim?

163. The plaintiff is the one who has alleged, and therefore the burden of proof is upon him. The Plaintiff had a duty to call sufficient evidence to prove his case on the required standard of balance of probabilities as provided by **sections 107, 108 and 109** of the **Evidence Act**.

164. The legal and evidential burden of proof was stated out by the Court of Appeal in the case of **Anne Wambui**

Ndiritu v Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, where it observed as follows;

“As a general proposition under Section 107 (1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

165. Did the Plaintiff herein discharge the above onerous duty?
The court will analyze the claim herein, the rebuttals as contained in the respective Defenses, together with the available evidence, and then come up with a determination.
166. It is the Plaintiff’s claim that being a member of **Suswa Kitet Group Ranch** member **No 878**, he was allocated **Beacon Certificate No 2148, Serial No 376**, and shown the land on **14th September 2003**. He further alleged that he paid **ksh 25, 000/=** to the Group Ranch Account on **5th July 2019**, and **ksh 30, 000/=** on **3rd May 2021**, to **Boma Surveyors**, the 4th Defendant herein. He also testified that later he dug a Dam on the said parcel of land as a mark of ownership.

167. However, the 1st Defendant used a forged **Beacon Certificate Serial No 397**, to have the land registered in her name, and later subdivided the said parcel of land into other portions to give rise to parcels **No 3339, 3340 and 3341**. Further land parcels **Nos 3339 and 3341**, have **illegally** been sold to 2nd and 3rd Defendants, and thus this suit. The plaintiff urges the court to cancel the title deed issued to the 1st Defendant, and the resultant subdivisions, and then revert the land to him.

168. Being the one who has alleged, and given that the burden of proof was indeed upon him, the Plaintiff needed to avail sufficient and cogent evidence to support his case. However, the legal burden could shift in the event there are allegations made against the Defendants, which allegations needed rebuttals, and no evidence is called or availed to rebut the said allegations, then the court can decide against the person who has failed to call such evidence.

169. See the case of **Raila Amolo Odinga & Another vs IEBC & 2 Others(2017) ekr**, where the Supreme Court held;

“Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and remains constant through out a trial with the Plaintiff, however depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and

its position at any time is determined by answering the question as to who would lose if no further evidence is adduced”

170. What is not in doubt herein is that the 1st Defendant was issued with title deed for ***Cis Mara/Suswa Kitet/ 1848***, on ***24th March 2021***, and as provided by ***section 24*** of the Land Registration Act, she had all rights and privileges appurtenant thereto. Further, as provided by ***section 26*** of the said Act, she was the absolute and indefeasible proprietor of the said parcel of land, and she could deal with it as she so wished. Subdivision and transferring to 3rd parties were some of such rights.

171. However, the 1st Defendant's ownership could be impeached if the same was acquired through ***fraud, misrepresentation*** or ***through corrupt scheme***, as provided by section ***26(1)(a)(b)*** of the ***Land Registration Act***, which provides

“26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the

certificate, and the title of that proprietor shall not be subject to challenge, except—

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

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

172. Courts have severally held that when one’s title is under challenge, such a person cannot wave it as prove of ownership, as the root of the title has to be investigated. See the case of ***Munyu Maina vs Hiram Gathiha Maina Civil Appeal No 239 of 2009, eklr***, where the Court of Appeal held;

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

173. Further, **section 80(1)** of the **Land Registration Act**, provides for instances when the court can order for rectification and or cancellation of the Certificate of title, if

the court is satisfied that such registration was obtained, made, and/or omitted by fraud or mistake.

174. The plaintiff has sought for rectification or cancellation of the titles held by the 1st, 2nd and 3rd Defendants, based on the fact that the initial registration of land Parcel **No Cis Mara/ Suswa Kitet/ 1848**, which gave rise to the four subdivisions was acquired through **fraud** and or **misrepresentation**, as the **Beacon Certificate** that was used to have the land registered in the name of the 1st Defendant was acquired fraudulently, and did not have the signatures of all the officials of **Suswa Kitet Allocation Committee**, but his Beacon Certificate had all the signatures.

175. The Plaintiff also alleged that even if the Beacon Certificate used by the 1st Defendant was a genuine one, it could not pass to the 1st Defendant as it was initially issued to their late father **Maseenke Ole Koisaba**, who is now deceased, and no succession proceedings have been undertaken over his estate.

176. What is not in doubt is that after the land parcel **No Cis Mara/ Suswa Kitet/ 1848**, was allocated and registered in the name of **Elizabeth Naigu Sironka**, the 1st Defendant herein, who is a step mother to the Plaintiff, she caused the said land to be subdivided into four portions being **land parcels No 3339, 3340, 3341 and 3342**.

177. From the evidence of the 2nd, 3rd and 5th Defendants, land **parcels No 3339, and 3341** were sold to 2nd and 3rd Defendants by the other sons of the 1st Defendant, who were also beneficiaries of this parcel of land. However, land parcel **No 3342**, measuring **9 Acres** was registered in the name of the Plaintiff and his wife Josephine. The 1st Defendant testified that the Dam dug by the family is on the parcel of land registered in the name of the Plaintiff.

178. From the exhibits produced by the Land Registrar Narok, Dw1, the court has seen a certificate of title for **Cis Mara/ Suswa Kitet/ 3342**, in the name of the Plaintiff and Josephine Kindi, dated **10th May 2022**, and which is a subdivision of **land parcel No 1848**. Therefore, it is evident that the plaintiff is a beneficiary of a portion of land from the initial land parcel **No 1848**.

179. The Plaintiff alleged that this land parcel **No 1848**, which emanated from **Beacon Certificate No 2148, serial No 396**, was solely owned by himself, by virtue of being a member of Suswa Kitet Group Ranch. However, the 1st Defendant rebutted that allegation and contended that the suit land belonged to her late husband **Maseenke Ole Koisaba**, and the same was supposed to be subdivided among the three sons of **Maseenke Ole Koisaba**, the plaintiff being one of them.

180. The 1st Defendant further clarified that once her two sons **Peter Lemayan and Isaack Salaashi** got their shares, they sold to 2nd and 3rd Defendants. According to 1st

Defendant, the plaintiff has brought this suit to court out of selfishness and urge to grab the whole land, and disinherit his brothers.

181. The court will examine the two Beacons Certificates which are the foundation of the suit land to determine whether the 4th, and 5th Defendants erred in using the **Beacon Certificate Serial No 397**, held by the 1st Defendant in the name of **Maseenke Ole Koisaba** to have the land registered in the name of the 1st Defendant, and later have it subdivided into four parcels of land.

182. From the exhibits produced in court, the Plaintiff was **Member No 878**, but this membership does not show which Beacon Certificate serial Number was issued to or attached to, and this court cannot hold that the Plaintiff being member No 878, held Beacon Certificate Serial No 396, for plot No 2148, from the Area list. This Beacon Certificate for Plot No 2148, Serial Bo 396, in name of the Plaintiff dated 14th September 2003, was produced as an exhibit, but was there enough evidence to link this Beacon Certificate to the suit land?

183. As alleged by the Defendants, and confirmed by the plaintiff during cross exam, the Beacon Certificate Serial No 396, for plot No 2148, has alteration of **No 8**, and it is not clear whether this **Beacon Certificate Serial No 396**, was indeed for plot No 2148, or another plot number, and then the last number was altered to read number 8. The plaintiff who had alleged, needed to call evidence from

the **Suswa Kitet Group Ranch** to confirm that indeed, the said Group Ranch issued this Beacon Certificate, and the alteration was by themselves, and not another person.

184. The court has also seen the payments receipts to Boma Surveys dated **3rd May 2021**, by the Plaintiff and Josephine, for Title deed. The said receipt is not for title deed for plot No 2148. It could be for any other plot, given that Plaintiff is also a beneficiary of land parcel No 4321, from the same **Suswa Kitet Group Ranch**.

185. From the available evidence, it is evident that there was a dispute over ownership of this parcel of land, and vide the minutes of **10th June 2022**, the meeting of the Group Ranch and the **Koisabas Family** concluded that the suit land belongs to the Plaintiff. However, by that time, this suit land **Cis Mara/ Suswa Kitet/ 1848**, which had earlier on been registered in the name of 1st Defendant had long been closed after subdivision, and resultant subdivisions were registered in the names of other parties. There was no evidence from those minutes that **Maseenke Ole Koisaba** was not entitled to a portion of land from the Group Ranch. Indeed, the Plaintiff who was a member of the Group Ranch was later allocated Land parcel **No. Cis Mara/ Suswa Kitet/4321**, and there is a title deed in his name and Josephine Kindi, his wife, though he alleged that he has not collected it from the lands office.

186. It is evident that **Beacon Certificate Serial No 397**, which had no alteration of any Number was used to

register the suit land, and this Beacon Certificate was in the name of **Maseenke Ole Koisaba**, who died in 2005, and the said Beacon Certificate was issued in 2003. Though **this Beacon Certificate Serial No 397** was not signed by all the officials of the allocation committee, there was no evidence of fraud or forgery adduced by the Plaintiff.

187. It is evident that allegations of fraud must be pleaded and proved through evidence. See the case of **Vijay Morjaria vs Nansingh Madhusingh Darbar & Another (2000) eKlr**, where the court held;

“it is well established that fraud must be specifically pleaded and that particulars of that fraud alleged must be stated on the face of the pleadings. That acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently.” See also the case of Kinyanjui Kamau vs George Kamau (2015) eKLR, the Court of Appeal outlined the following as the threshold that a party alleging fraud must satisfy; “It is trite law that any allegation of fraud must be pleaded and strictly proved..... to succeed in the claim for fraud, the appellant needed to not only plead and particularize it, but also lay a

basis by way of evidence, upon which the court would make a finding.”

188. The mere allegations that the Beacon Certificate was not signed by all the officials, and thus prove of forgery, remained as mere allegations, as tangible evidence needed to be availed. See the case ***of Janet Kaphiphe Ouma & Another v Maries Stopes International (Kenya), Kisumu HCCC No. 68 of 2007***, which cited the decision in ***Edward Muriga suing through Stanley Muriga v Nathaniel D. Schulter, Civil Appeal No. 23 of 1997*** held that:

“In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence.”

189. The 4th and 5th Defendants availed evidence to confirm that out of the dispute between the Plaintiff and his step Mother, 1st Defendant, the allocation Committee of ***Suswa Kitet Group Ranch*** allocated the Plaintiff an alternative Land being ***Cis Mara/ Suswa Kitet/ 4321***, measuring approx. 15.56 ha in the name of the Plaintiff and Josephine S. Kindi dated ***4th August 2023***. There is an

accompanying note to that effect dated **28th April 2023**, from Suswa Group Ranch.

190. Therefore, what is clear from the available evidence is that from the suit land, which initially belonged to Maseenke Ole Koisaba the father to the Plaintiff and husband to the 1st Defendant, the Plaintiff was allocated and registered as proprietor of 9 acres from the said suit land. A title deed in the names of **Ben Raban Koisaba and Josephine S. Kindi**, for these **9 acres** was issued, and the Land Registrar (DW1), testified that the Plaintiff is yet to collect his title deed from the Lands office.

191. The step brothers of the Plaintiff also got their shares of 9 acres each, and later sold portions of their shares to 2nd and 3rd Defendants. There was no evidence adduced that the registration of land parcel **No 1848**, to 1st Defendant was fraudulent, as she was a wife of the original Group Ranch Member. The 1st Defendant rightly subdivided the original suit land to the three sons of the late **Maseenke Ole Koisaba**, the Plaintiff included, and he has a title to his portion of land.

192. Further, the beneficiaries of the resultant subdivisions sold their shares to 2nd and 3rd Defendants, and the root of these titles are clearly traceable. Therefore, the 2nd and 3rd Defendants are bona fide purchasers for value without any notice of fraud. There was no fraud at all in the registration and subdivision of the suit land.

193. The 4th Defendant, being the surveyors, were instructed by their client, and dutifully carried their assignment and cannot be faulted. See the case of ***Nassoro v Lukio & another (Environment and Land Appeal 26 of 2018) [2023] KEELC 16122 (KLR) (15 March 2023) (Ruling)***.
194. The 5th Defendant, is the land Registration, and after confirming that the Suswa Kitet Group Ranch had followed the due process of allocating parcels of land to its members, and being given the allocated parcels of land to different individuals as per the area list, and survey work done by 4th Defendant, had no option but to register the title deed as it did. Later, it carried out registration of the resultant subdivisions after the said portions were sold to the now registered owner.
195. Having considered the available evidence, this court finds and holds that the plaintiff is a beneficiary of the subdivision of the suit land that belonged to his late father, which land was shared with his step brothers. He is also a beneficiary of land parcel **No 4321**, allocated to him by the ***Suswa Kitet Group Ranch***, by virtue of being a member of the said Group Ranch, just like his late father ***Maseenke Ole Koisaba***.
196. The Beacon Certificate Serial No 376, allegedly for plot No 2148, has an altered **No 8**, which could even have been **No 2**, and without an explanation of this alteration, this court cannot hold and find that the Plaintiff held a genuine Beacon Certificate for Plot **No 2148**, which was later registered as land Parcel No **Cis Mara/**

Suswa-Kitet/1848, and that the said land is owned by the Plaintiff.

197. Having considered the available evidence and the rival written submissions, the court determines the issues raised by the parties as follows; On whether the Plaintiff has proved a legally enforceable interest capable of defeating registered titles, the court finds and holds under ***sections 24, 25, and 26*** of the ***Land Registration Act***, registration of a title confers ***absolute and Indefeasible ownership***, which can only be defeated through the provisions of the Act or the law, where ***fraud*** or ***impropriety*** in acquisition of the said title is proved.

198. The Plaintiff did not prove that the title deed initially issued to 1st Defendant was illegally acquired, and the subsequent subdivision were unlawful for them to be impeached. See the case of ***Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another, Eldoret ELC Case No. 609 B of 2012***. As a title may only be impeached for fraud or illegality proved to the required standard.

199. Having found that the subdivisions carried out on the original suit land were lawful, then the subsequent sale to 2nd and 3rd Defendants cannot be faulted, and this court finds and holds that the 2nd and 3rd Defendants are bonafide purchasers for value without notice of fraud, and their titles cannot be impeached. See the case of ***Katende***

- vs - Haridar and company Limited (2008) EA 173, Uganda.

200. For the above reasons, this court finds and holds that the Plaintiff has not proved his case against any of the Defendants herein, and consequently, the plaintiff's suit vide a plaint dated **17th May 2023** is dismissed entirely.

ii) Who should bear costs of this suit?

201. The court will be guided by the provisions of **sections 27** of the **Civil Procedure Act**, that costs are granted at the discretion of the court. However, ordinarily costs follow the event, and are awarded to the successful litigants. The Defendants are the successful litigants and are entitled to costs of this suit.

202. It is trite that Costs are awarded at the discretion of Courts. In the case of "**Reids Hewett & Company vs Joseph AIR 1918 cal. 717**" and "**Myres vs Defries (1880) 5 Ex. D. 180**", the House of the Lords noted:-

"The expression "Costs shall follow the events" means that the party who, on the whole succeeds in the action gets the general costs of the action, but where the action involves separate issues, whether arising under different causes of action or under one cause of action, the word 'event' should be read distributive and the

costs of any particular issue should go to the party who succeeds upon it.....”

203. Consequently, this ***Court dismisses*** the Plaintiff’s suit entirely with costs to the Defendants herein.

It is so ordered.

Dated, Signed and Delivered virtually this 9th Day of April 2026.

***L. Gacheru
Judge
9/04/ 2026***

***Delivered online in the presence of
Elijah Meyoki for Court Assistant
Mr. Kamwaro for the Plaintiff
N/A for 1st Defendant
Mr. Njuguna for 2nd Defendant
N/A for 3rd Defendant
N/A for 4th Defendant
N/A for 5th Defendant
N/A for 6th Defendant.***

***L. Gacheru
Judge***