



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ELC CIVIL SUIT NO. 25 OF 2020**  
**(CONSOLIDATED WITH NAROK ELC CIVIL CASE ELC NO.**  
**E009**  
**OF 2022**

**KAPSET TEA FACTORY**

**LIMITED.....**

**PLAINTIFF**

**VERSUS**

**JOHNSON KIMUTAI CHERUIYOT alias ALFRED LANGAT alias**

**JOHNSON KIPTUMAI**

**CHERUIYOT.....DEFENDAN**

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## **JUDGMENT**

1. Vide an Amended Plaint dated **28<sup>th</sup> August 2023**, the Plaintiff herein **Kapset Tea Factory** sought the following reliefs against the Defendant herein

- a) A permanent injunction restraining the Defendant, his servants and/or agents from trespassing on, constructing on, alienating, obstructing, or undertaking any form of**

***developments or otherwise interfering or dealing with all those parcels of land known as L.R. No. CIS MARA/OLOLULUNGA/17306 and L.R No.CIS MARA/OLOLULUNGA/17055.***

***b)A mandatory injunction compelling the Defendants to demolish or pull down forthwith any construction that they had put up in all those parcels of land known as L.R No.CIS MARA/OLOLULUNGA/17306 and L.R No.CIS MARA/OLOLULUNGA/17055 owned by Kapset Tea Factory Company Limited.***

***c) General damages for trespass.***

***d) Special damages for Kshs.5,461,612/=***

***e) Costs of the suit***

***f) Interest of the suit***

***g)Any other relief as the Court may deem just to grant.***

2. Pursuant to directions issued on ***19th October, 2023*** in ***ELC NO. E009 of 2022***), this matter was consolidated with ***NAROK ELC CIVIL SUIT NO. E009 OF 2022***, wherein the Defendant herein, alongside eleven others therein also sought similar reliefs albeit over land parcel known as ***TITLE NO.CIS MARA/OLOLULUNGA/360***, and the titles resultants from the sub-division of ***TITLE NO.CIS MARA/OLOLULUNGA/197*** ,which titles include but are not

limited to the ones in the instant matter that is, **TITLE NOS CIS MARA/OLOLULUNGA/17055 & 17306.**

3. According to the directions of the Court aforesaid, this matter, **NAROK ELC NO. 25 OF 2020** became the lead file.
4. The parties filed their respective Defences in both matters. In this regard, the Defendant herein filed a Defence dated **9th November, 2020.**
5. In response to **NAROK ELC CIVIL SUIT NO. E009 OF 2022**, the Defendant herein filed a Statement of Defence dated **28th August, 2023**, inter-alia citing the pendency of this matter and **NAROK ELC CIVIL SUIT NO. 270 OF 2017.**
6. It is, however, noteworthy that the Plaintiff in the said suit, that is **NAROK ELC CIVIL SUIT NO. 270 of 2017**, withdrew his claim, leaving the Defendant's Counterclaim for determination. However, the Plaintiff died on **22nd September 2023**, and the said suit was accordingly marked as abated on **22<sup>nd</sup> May 2025.**
7. The Plaintiff's claim is premised on an assertion that it is the registered proprietor of all those parcels of land known as **TITLE NOS CIS MARA/OLOLULUNGA/17055 & 17306**, which it acquired by way of purchase from **NOONYUAT SANKEI, POLOLET SANKEI, and FELIX M. SANKEI** pursuant to Sale Agreements dated **26<sup>th</sup> April 2018.**

8. The Plaintiff claimed that the Defendant and the Plaintiffs in **ELC NO E009 OF 2022**, (consolidated herewith), are trespassers on the suit parcels of land and thus seek to have them permanently restrained from ever entering into possession of the subject parcels of land.
9. On their part, the Defendant herein and the Plaintiffs in **NAROK ELC NO. E009 of 2022** alleged that they are proprietors of land parcel **TITLE NO. CIS MARA/OLOLULUNGA/360**, whose acreage they contended was reduced in unclear circumstances from **238.8 Ha.** to **161.9 Ha.**
10. The Plaintiffs in **E009 of 2022** further claimed that the Defendants in the said suit colluded to cause the **illegal subdivision** of the said parcel of land into **TITLE NOS CIS MARA/OLOLULUNGA/17305, 17306, 17052** and **17055**, among others. They also contended that the Defendants also colluded to register a similar group to defeat their interest thereof.
11. The Plaintiffs in **ELC No. E009 of 2022** sought for the following reliefs against the Defendant;

**a) A declaration that the Plaintiffs are the absolute and indefeasible proprietors of all that parcel of land known as Cis-Mara.Ololulunga/360, specifically comprising**

**plot serial numbers 1 to 154, as delineated and demarcated in the approved Part Development Plan(PDP) subdivision map.**

**b)A declaration that the title to land parcel numbers Cis-Mara/Ololunga/197 and 360, together with the accompanying mutation forms and Land Control Board (LCB) consents, as used by the 1<sup>st</sup> to 4<sup>th</sup> Defendants to procure and register the following subdivisions, namely Cis-Mara/Ololulunga/17305, 17306, 17052, 17055, 17056, 17059 and 17330 to 17643, were unlawfully and fraudulently obtained, and thus null and void ab initio, warranting the immediate cancellation and expunging of the said parcel numbers from the records held at the Land Registry.**

**c)A declaration that the original title deed for Cis-Mara/Ololulunga/360, which was unlawfully and prematurely closed and alleged subdivision, be forthwith reinstated and restored to its original status in the name of the Plaintiffs.**

**d)A permanent injunction do issue restraining the 1<sup>st</sup> to 5<sup>th</sup> Defendants whether by themselves, their agents, servants, employees or anyone else claiming authority from them from claiming, entering, trespassing, planting**

***eucalyptus trees, demolishing members houses, grazing of livestock, farming, doing illegal fencing and building structures or in any manner howsoever interfering with land parcel number Cis-Mara/Ololulunga/17305, 17306, 17052, 17055, 17056, 17058, 17059 and 17330 to 17643.***

***e) Cost of this suit.***

12. After several applications and Pre Trial Conferences, the matter proceeded for hearing via viva voice evidence, wherein the evidence was adduced as follows;

### **PLAINTIFF'S CASE**

13. ***PW1 - Geoffrey Chepkwony*** testified that he is the Wood Fuel Development Manager at Kenya Tea Development Authority(KTDA) and previously served as the manager of ***Kapset Tea Factory*** the Plaintiff herein in Bomet County, where he resides. He recorded his Witness Statement on ***20 November 2022***, which he adopted in full as part of his evidence in chief. He also produced two lists of documents: the first dated ***25 September 2020***, marked as ***P Exhibits 1-12***, and the second dated ***7 July 2023***, marked as ***P Exhibits 13-28***.

14. He testified that the Plaintiff herein instituted the present suit against the Defendant for encroachment onto parcels of land known as **CIS MARA/LOLOLULUNGA/17055** and **17306**. According to him, the defendant unlawfully entered into the land on **9 June 2020**, and caused destruction to trees valued at **Kshs. 5.6 million**, as evidenced by a **Forester's report** produced as **P Exhibit 11**. He asserted that the Defendant herein, Johnson, was never in occupation of the land at the time the plaintiff purchased it, and that the land is duly registered in the plaintiff's name, with a title deed confirming ownership.
15. PW1 denied the Defendant's claims entirely, maintaining that the suit land was never allocated to the Defendant by any land-buying company, and that the Plaintiff has no dispute with any Cooperative Society. He described the defendant as merely a neighbor with no lawful claim to the land and urged the court to dismiss the defendant's assertions and allow the plaintiff's prayers as set out in the plaint.
16. He further testified that he was an employee of the Plaintiff until **June 2024**, and had been duly authorized to testify on its behalf. At the time of the dispute, he was the administrator of the tea factory. He stated that the Plaintiff's land measures approximately **312 acres**, of which the defendant has encroached upon about half. The defendant

has interfered with the plaintiff's tree plantations, despite the presence of security personnel guarding the property.

17. PW1 confirmed that the Defendant herein had previously been charged in court with trespass in **Criminal Case No. 262 of 2020**, although he was unaware of its outcome. He also acknowledged the existence of other related suits, including **ELC Case No. 270 of 2017**, and **ELC No. 9 of 2023**, noting that the plaintiff purchased the suit land in 2018 when earlier litigation was already pending.
18. He explained that the suit property is a subdivision of **CIS MARA/OLOLULUNGA/197**, and **360**. He reiterated that the defendant destroyed eucalyptus trees planted on approximately 15 acres and constructed a house on about half an acre after clearing the trees. He maintained that the defendant is responsible for the destruction and encroachment.
19. PW1 further referred to a **Kenya Forest Service Report** dated **17 June 2020**, which confirmed that the encroachment occurred on **9 June 2020**. He also testified that prior to the plaintiff reinforcing security on the land, there had been no evidence of encroachment. He emphasized that the defendant is not a member of the relevant farmers' group and that the land in question originated from parcel number **197**, not **360**.

20. **PW2 - Livingstone Kipkemoi Bii**, the Secretary of **Botoret Farmers Group**, testified that he recorded a witness statement which he adopted as his evidence in chief. He stated that the group is registered under number **NSD/DSS/054** and is distinct from another similarly named group.
21. He explained that the group acquired land long before its formal registration, specifically parcel number **CIS MARA/OLOLULUNGA/360**, which was registered in the group's name. He produced documentary evidence, including P Exhibit 4, to support this claim. He stated that the land was later subdivided and allocated to individual members.
22. PW2 also testified that the Defendant herein was never a member of their group, and that the suit land has never belonged to him. He referred to correspondence from the Ministry of Lands, including a letter dated **September 2009**, confirming that land parcel **No. 360** belongs to **Botoret Farmers Group (No. 054)**. He added that the group has no dispute with **Kapset Tea Factory** and that their relationship has been peaceful.
23. He traced the origin of the land to a mother title, **CIS MARA/OLOLULUNGA/197**, previously registered in the name of **Tita mai Tsankeu**, who is not a party to the suit. He further stated that Land parcel **No 360**, had been purchased from **Samuel Ole Koliet** in **1985**.

24. During cross-examination, **PW2** confirmed that there exist two groups with similar names, but maintained that his group, registered under **No. 054**, is the legitimate owner of land parcel **No. 360**. He acknowledged that he had not produced certain minutes authorizing his testimony but insisted he had authority to testify.
25. He also admitted knowledge of a criminal case involving allegations of forgery, in which the accused was acquitted, though he was unaware of the reasons for acquittal. He stated that the defendant claims membership in a different group (**No. 11012**), which he could not confirm or dispute.
26. On re-examination, PW2 reaffirmed that the title deed for Land parcel **360** belongs to **Botoret Farmers Group No. 054**, supported by letters from the Ministry of Lands and Social Services, including the one dated **17 August 2011**. He explained that the group was initially registered in Kericho before relocating registration to Narok due to the location of its members and the need to subdivide the land.

### **DEFENDANT'S CASE**

27. *DW1 - Kennedy Too* (Land Registrar), the Land Registrar based in Narok County, testified as for 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in ELC No.E009 of 2022 and stated that he signed a witness statement dated **18 February 2025**, which he

adopted as his evidence. He also produced a bundle of documents dated **29<sup>th</sup> March 2023** as defence exhibits.

28. He confirmed that Land parcel No. **CIS MARA/OLOLULUNGA/360**, was closed upon subdivision, resulting in new parcels allocated to various individuals, most of whom were members of a farmers' group. He acknowledged that there were competing claims between **two groups** but stated that the records recognize **Botoret Farmers Group No. 054** as the legitimate owner.
29. He testified that **Land parcel No360**, measures approximately **161.9 hectares** and originated as a subdivision of **Land parcel No 109**. It was his further evidence that there was no evidence of any lawful amalgamation of Land parcels beyond what is reflected in official records.
30. **DW2 - Alfred Langat,-** who also testified as Defendant in **ELC 25 of 2020** and **PW1** in **ELC No. E009 of 2022**, stated that he is the Chairman of **Botoret Farmers Group (Registration No. NRK/DSS/11012)**, elected in **2007**. He further testified that the group purchased Land parcel **No. 360** from **Samuel Koliet** between **1993 and 1997**. He produced a sale agreement to that effect, as an exhibit to support this claim.
31. He explained that the said land initially measured approximately **400 acres (161.9 hectares)**, but disputes

arose during consolidation and subdivision, resulting in adjustments. He further testified that part of the land was surrendered following a tribunal decision, leaving the said Group with approximately **59 hectares**.

32. It was his further testimony that the said Group combined Land parcels **Nos 197 and 360**, though discrepancies arose between the Mutation forms and the actual acreage on the ground. He confirmed that he had previously been charged with fraudulent acquisition of land but was acquitted.
33. DW2 maintained that his Group is the legitimate owner of the suit land and described **Botoret Farmers Group No. 054** as a splinter group. He urged the court to dismiss the plaintiff's claim and allow the Defence and Counterclaim, including rectification of the land register.
34. During cross-examination, **DW2** admitted using the name alias **Johnson Kimutai Cheruiyot** and acknowledged inconsistencies in documentation regarding acreage and payments. He also conceded that he was unaware of whether the plaintiff held a valid title.
35. The other Witnesses in support of **ELC No. E009 of 2022** were **(PW3-PW6); PW3 - David Tonui , PW4 - Joseph Maritim , PW5 - David Kipkosgei Kerich, PW6 - James Kiptoo Korir and PW7-Simon Chebotibik**, while testifying in Court adopted their witness statements in support of their

claim in **ELC No. E009 of 2022**, and produced list of documents as their exhibits.

36. These witnesses, PW3 to PW7, all testified that they are members of **Botoret Farmers Group** and presented a broadly consistent account regarding the suit land. They stated that the group purchased the land in the **1990s** and that its members have occupied and resided on the said parcel of land for a considerable period, with some claiming occupation dating back as early as **1987**, and others from around **1993**. According to their testimony, the land was subsequently subdivided and allocated among members of the said Group. However, these witnesses acknowledged that most of the members, including themselves, do not hold individual title deeds to their respective portions.
37. The witnesses further alleged that **Kapset Tea Factory** later entered unto the suit land, around the **year 2012**, or thereafter, and forcefully displaced them. They claimed that during this period, their homes were destroyed and their crops and trees uprooted. The witnesses maintained that these incidents were reported to the relevant authorities and they also asserted that they had photographic evidence documenting the destruction, although such evidence was not consistently produced before the court.
38. Under cross-examination, notable weaknesses emerged in their testimony. Several of the witnesses conceded that they

lacked documentary evidence to substantiate their claims of **ownership**, membership in the Group, or payment for the land. Additionally, they were unable to provide clear or consistent details regarding key aspects of the alleged purchase, including the exact terms of acquisition, the process of subdivision, and the formal registration of the land. These inconsistencies and evidentiary gaps cast doubt on the reliability and coherence of their claims.

39. After viva voce evidence, the court directed the parties to file written submissions in support of their cases, which directions were complied with, by the parties.

**PLAINTIFF'S SUBMISSIONS (IN ELC 25 OF 2020)**

40. In their submissions, the Plaintiff set out the following as issues for determination;
- i. Whether the Defendant and his counterparts have any bona fide interest in the suit properties;***
  - ii. Whether they are trespassers***
  - iii. and what remedies are available.***
41. On the question of whether the Defendant has any bona fide interest in the suit properties, the Plaintiff submitted that the Defendant's claim is fundamentally defective both in fact and in law. The Plaintiff argued that the Defendant's case is premised on an alleged entitlement to Title No. **CIS**

**MARA/OLOLULUNGA/360** through membership in **Botoret Farmers Group (Registration No. NRK/DSS/11012)**.

However, the Plaintiff submitted that this alleged root of title was neither properly pleaded nor proved, thereby rendering the Defendant's case legally untenable.

42. The Plaintiff further pointed out the glaring inconsistencies in the Defendant's evidence, particularly the production of two conflicting sale agreements both dated **5<sup>th</sup> May 1997**, which sale agreements indicate different acreages and terms, thus casting doubt on their authenticity. Additionally, the Defendant's witnesses gave contradictory evidence regarding the purchase price and acreage of their alleged shares, but they failed to produce any documentary proof of payment despite alleging that the land was acquired for a substantial sum of **Kshs. 80 million**.

43. The Plaintiff further submitted that credible documentary and official evidence establishes that Title No. **CIS MARA/OLOLULUNGA/360** belonged to a different entity, namely **Botoret Farmers Group (Registration No. NRK/DSS/054)**, and not the Defendant's Group. In this regard, reliance is placed on the testimony of the Land Registrar and documentary exhibits including the certified register and official correspondence from the **Narok South District Social Development Office and the Land Registry**. The Land Registrar confirmed that the said land

parcel had been lawfully subdivided among members of the legitimate Group and that the Defendant's group had no valid claim thereto. The Plaintiff therefore characterizes the Defendant's claim as speculative, unfounded, and tainted with illegality.

44. In response to the Defendant's allegations of **fraud** in the acquisition of the Plaintiff's titles, the Plaintiff submitted that such allegations are wholly unsubstantiated and fall short of the strict legal standard required. The Plaintiff relied on the well-established principle that fraud must not only be specifically pleaded but must also be strictly proved. In this regard, reliance is placed on the decision in **R.G. Patel v Lalji Makanji [1957] EA 314**, where the Court held that allegations of fraud must be strictly proved, though not beyond reasonable doubt.
45. Further, the Plaintiff also cited the case of **Gladys Wanjiru Ngacha vs Teresa Chepsaat & 4 others [2013] eKLR**, where the Court reaffirmed that the burden of proof in fraud cases is higher than on a balance of probabilities. Further reliance was placed on the case of **Muchai v Kinuthia (Environment and Land Appeal E017 of 2022) [2023] KEELC 19183 (KLR) (27 July 2023)**, where the Court emphasized that allegations of fraud are serious in nature and must be supported by cogent evidence. The Plaintiff further submitted that the Defendant failed to discharge this

burden, having adduced no evidence whatsoever to support the pleaded particulars of fraud.

46. It was the Plaintiff further submissions that there is **no nexus** between the Defendant's and Plaintiffs in ELC No. E009 of 2022 alleged claim over **Title No. 360** and the suit properties. It was also submitted that the suit properties have distinct root titles, with **Title No. 17055** arising from the subdivision of **Title No. 197** and **Title No. 17306** arising from the subdivision of **Title No. 17060**, as evidenced by certified extracts of the register. Consequently, the Defendant's reliance on **Title No. 360** is misplaced and legally irrelevant.
47. On the issue of trespass, the Plaintiff submitted that it is the registered proprietor of the suit properties, and is therefore entitled to exclusive possession and use thereof. It relied on **Sections 24(a) and 26(1) of the Land Registration Act, 2012**, which vest **absolute ownership** in a registered proprietor and provide that a certificate of title is prima facie evidence of ownership, subject only to limited exceptions such as fraud or illegality, which must be proved. The Plaintiff also invoked the provisions of **Article 40** of the **Constitution of Kenya, 2010**, which guarantees the right to property.
48. In support of this position, the Plaintiff relied on the case of **EWM (suing as Guardian ad litem & Next Friend to**

***EWM) v County Government of Laikipia [2019] eKLR***, where the Court held that *a registered proprietor is entitled to protection of their proprietary rights against unlawful interference*. The Plaintiff argues that since the Defendant has failed to establish any lawful interest in the suit land, his continued occupation constitutes trespass.

49. With regard to remedies, the Plaintiff submits that it is entitled to both **General** and **Special damages**. It argued that trespass is actionable per se and does not require proof of actual damage, and that the Defendant's unlawful occupation has deprived it of quiet possession and use of its land. The Plaintiff, therefore, urged the court to award it **General damages** for trespass. In addition, the Plaintiff claims special damages in the sum **of Kshs. 5,456,612/=** for the destruction of trees on the suit property, as supported by an **assessment report** prepared by the **Kenya Forest Service**. The Plaintiff emphasized that these damages were specifically pleaded and strictly proved, in line with the legal requirement.

50. In support of this submissions, reliance was placed in the case of **John Chumia Ngunga v Attorney General & another [2019] eKLR**, where the Court held that special damages must be specifically pleaded and proved, and awarded damages upon production of supporting evidence.

51. In conclusion, the Plaintiff submitted that it has established its case on a balance of probabilities by demonstrating valid ownership of the suit properties, the absence of any lawful claim by the Defendant, and the occurrence of trespass and damage. Therefore, the Plaintiff urged the Court to dismiss the Defendant's claims, and uphold its proprietary rights, and grant the Plaintiff the reliefs sought in the Amended Plaint, including permanent and mandatory injunctions, general and special damages, and costs of the suit.

**DEFENDANT'S SUBMISSIONS (DEFENDANT IN  
ELC NO. 25 OF 2020 AND PLAINTIFF IN ELC  
NO. E009 OF 2022)**

52. The Defendant's submissions, filed on behalf of **Botoret Farmers Group (Reg. No. NRK/DSS/11012)**, presented a comprehensive challenge to the Plaintiff's claim in the primary suit while advancing a competing proprietary claim in the consolidated cross-suit (**Narok ELC Case No. E009 of 2022**). The Defendant framed the dispute as one involving competing claims of ownership over land parcels **CIS MARA/OLOLULUNGA/197** and **CIS MARA/OLOLULUNGA/360**, and their resultant subdivisions, with the Plaintiff's suit being characterized as an action for trespass founded on allegedly fraudulent titles.

53. At the outset, the Defendant/Plaintiffs in **ELC No. E009/2022** contextualized the dispute as transcending a mere contest

over land, portraying it as a historical, and equitable claim rooted in long-standing occupation, lawful acquisition, and collective ownership by members of **Botoret Farmers Group**. The Defendant/Plaintiffs in ELC No. E009/2022 submitted that the said Group was established as early as **1990**, and was formally registered in Bomet and later in Narok, with continuity of membership and leadership duly documented. It also submitted that between **1997** and **1998**, the said Group lawfully acquired a land parcel **CIS MARA/LOLOLULUNGA/360**, measuring approximately **23.8 hectares** and an additional 216 hectares excised from **CIS MARA/LOLOLULUNGA/197**, from the then registered proprietors, **Samuel Sotoinae Koriata and Titame Ole Sankei**, through valid sale agreements executed for valuable consideration.

54. The Defendant in **ELC No. 25 of 2020** and/or Plaintiffs in ELC No. E009 of 2022 further submitted that the excised portion from land parcel **No. 197** was lawfully amalgamated with land parcel **No. 360** to form an enlarged parcel measuring **approximately 239.8 hectares**, which was subsequently transferred to **Botoret Farmers Group**. This process, it is contended, complied with all legal requirements, including obtaining **Land Control Board Consent**, Survey approval, preparation of a **Part Development Plan (PDP)**, and subdivision into **154 plots** allocated to its members. The Defendant emphasized that these processes **were**

**transparent, regular, and sanctioned by law**, thereby vesting both legal and equitable ownership in their group.

55. The Defendant also submitted that the Plaintiff's claim is tainted **with fraud and illegality** arising from the actions of a **splinter Group** allegedly registered in **2009** under a different registration number (**NSD/DSS/054**), which is said to have impersonated the genuine **Botoret Farmers Group**. It was further submitted that this splinter group, in collusion with the sons of the original proprietor of land parcel **No. 197, unlawfully procured titles** and initiated subdivisions, ultimately leading to the creation of the Plaintiff's titles, including **CIS MARA/OLOLULUNGA/17055 and 17306**. The Defendant characterizes these actions as a fraudulent scheme designed to dispossess the rightful owners.
56. In challenging the validity of the Plaintiff's titles, the Defendant/Plaintiffs in **ELC No. E009/2022** relied on **Section 26(1) of the Land Registration Act, 2012**, which provides that a Certificate of title is **a prima facie evidence of ownership**, but may be impeached where it is shown to have been acquired through fraud, misrepresentation, or an illegal or unprocedural process. The Defendant further submitted that the Plaintiff's titles fall within these exceptions. In support of this submission, reliance was placed in the case of **Alice Chemutai Too v Nickson Kipkurui Korir & Another [2014] eKLR**, where the Court held that a fraudulent title cannot be allowed to stand.

57. Further reliance was placed on the Court of Appeal decision in the case of **Arthi Highway Developers Ltd v West End Butchery Ltd & Others [2015] eKLR**, where the Court held that parties who participate in or benefit from fraudulent transactions cannot seek protection of the law, particularly where they act with knowledge of irregularities. The Defendant argued that the Plaintiff either had actual knowledge of defects in the title or was willfully blind, particularly in light of an existing caution and ongoing litigation in **(Narok ELC No. 270 of 2017)**, at the time of the alleged purchase in **2018**.
58. The Defendant/Plaintiffs in **ELC No. E009/2022** also invoked the Supreme Court decision in the case of **Dina Management Limited v County Government of Mombasa & 5 Others [2023] KLR**, which underscored the duty of a purchaser to **conduct due diligence** and **establish a valid root of title** before acquisition. It also submitted that the Plaintiff failed to discharge this obligation, thereby disentitling itself from the protection accorded to bona fide purchasers. Similarly, the Defendant cited the case of **Harcharan Singh Sehmi & Another v Tarabana Company Limited & Others [2023] eKLR**, where the Court held that a purchaser cannot rely on the doctrine of bona fide purchaser where the root of title is tainted by illegality.

59. The Defendant/Plaintiffs in **ELC No. E009/2022**, further submitted that the subdivision of land parcel **No. 197** and the resultant titles were undertaken in violation of **statutory procedures**, including failure to comply with **Section 142(1)(c)** of the **Land Registration Act** regarding amendment of the Registry Index Map (RIM). A court-commissioned Survey report dated **14th April 2021** is cited as having confirmed discrepancies between the registry records and the actual ground position, including encroachment by the Plaintiff onto parcel **No. 360**.
60. On the issue of trespass, the Defendant/Plaintiffs in **ELC No. E009/2022** strongly disputed the Plaintiff's characterization of their occupation as unlawful. It was submitted that the Defendant and members of **Botoret Farmers Group** have been in **open, continuous, and peaceful possession** of land parcel **No. 360** since the **1990s**, having **developed, subdivided, and occupied** the said land for over three decades. The Defendant relied on the definition of trespass as an unjustifiable intrusion upon land in possession of another and argues that its possession is lawful and historically grounded.
61. In this regard, reliance was placed on the case of **Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR**, where the Court held that possession is a matter of fact and may, in appropriate circumstances, give rise to enforceable rights. The Defendant also cited the case of **Kweyu v Omuto**

- [1990] eKLR, which recognized **long, uninterrupted possession as prima facie** evidence of ownership. The Defendant argued that its **long-standing occupation** predates the Plaintiff's alleged acquisition and cannot be displaced by titles obtained through questionable processes.
62. The Defendant/Plaintiffs in **ELC No. E009/2022**, further points to previous criminal proceedings (**Narok CM Criminal Cases Nos. 625 of 2009, 464 of 2010, and 262 of 2020**), wherein allegations of trespass and fraud were dismissed, with courts allegedly affirming that the Defendant's occupation was lawful. These decisions are relied upon to demonstrate that the Plaintiff's claims of trespass have been repeatedly litigated and rejected.
63. The Defendant/Plaintiffs in **ELC No. E009/2022** also invoked the holding in the case of **Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another [2013] eKLR**, where the Court held that even an innocent purchaser's title may be impeached if it is shown that the title was **acquired illegally, unprocedurally, or through a corrupt scheme**. The Defendant further submitted that this principle applies squarely to the Plaintiff's titles.
64. With respect to the cross-suit, the Defendant (and Plaintiffs therein) maintained that they are the lawful and registered proprietors of land parcel **No. CIS MARA/OLOLULUNGA/360**, having acquired it through valid transactions and having maintained possession and control

over the land for decades. Reliance was sought on **Sections 24 and 25** of the **Land Registration Act**, which vest absolute ownership and rights in a registered proprietor, subject only to legally recognized exceptions. The Defendant/Plaintiffs in E009 of 2022 also submitted that the competing claims by the alleged splinter Group are unsupported by any documentary evidence of ownership, participation in acquisition, or lawful occupation.

65. On the issue of damages, the Defendant challenged the Plaintiff's claim for special damages amounting to **Kshs. 5,461,612/=**, arguing that the claim was not proved, and the available evidence did not meet the strict legal threshold. Reliance was placed on the case of **Hahn v Singh [1985] KLR 716**, where the Court of Appeal held that special damages must be specifically pleaded and strictly proved through cogent evidence such as receipts or expert reports. The Defendant submits that the Plaintiff has failed to produce such evidence and that the claim is therefore speculative and unsustainable.
66. The Defendant/Plaintiffs in **ELC No. E009/2022**, further argued that the claim for damages is premised on alleged trespass, which has not been established, and is contradicted by the **Survey report** and prior judicial findings. It was also submitted that, on the contrary, it is the Plaintiff who unlawfully entered and caused damage to the Defendant's land, including the destruction of fences and property.

67. In conclusion, the Defendant/Plaintiffs in **ELC No. E009/2022** urged the Court to dismiss the Plaintiff's suit in its entirety with costs, on the basis that the Plaintiff's titles are fraudulent and its claims unproven. Conversely, the Defendant prayed that the **Cross-suit** be allowed, with declarations affirming its ownership of parcel **CIS MARA/OLOLULUNGA/360**, cancellation of the impugned subdivisions and titles, and issuance of injunctive orders to restrain further interference. The Defendant further prays for costs, invoking the principle that costs follow the event.

### **ISSUES FOR DETERMINATION**

68. Having carefully considered the pleadings, the evidence tendered by the parties herein, and the rival written submissions by the respective parties and the Court finds the dispute is summarized into six key issues for determination.

- i. Who between the Plaintiff and the Defendant (and the parties in the consolidated suit) has established a valid and lawful root of title to the suit properties, namely L.R. Nos. CIS MARA/OLOLULUNGA/17055 and 17306, and the mother titles CIS MARA/OLOLULUNGA/197 and 360.***
- ii. Whether the Plaintiff's titles are impeachable under Section 26(1) of the Land Registration***

***Act on grounds of fraud, illegality, or procedural impropriety.***

- iii. Whether the Defendant and members of Botoret Farmers Group are trespassers on the suit properties.***
- iv. Whether the Defendant has established any lawful or equitable interest, including through long possession or occupation, over the suit properties.***
- v. Whether the Plaintiff is entitled to the reliefs sought, including permanent and mandatory injunctions, and general and special damages.***
- vi. Who should bear the costs of the suit.***

#### **ANALYSIS AND DETERMINATION**

**69. *Issue 1 & 2: Validity of Title and Whether the Plaintiff's Titles are Impeachable***

The starting point in resolving disputes relating to ownership of land is the land register. **Sections 24(a) and 25(1)** of the **Land Registration Act, 2012** confer upon a registered proprietor absolute ownership of land together with all rights and privileges appurtenant thereto. This statutory protection is, however, not absolute.

- 70. *Section 26(1)*** of the same Act provides that a Certificate of title is to be taken as prima facie evidence of proprietorship, subject to two well-defined exceptions: where the title is

obtained through **fraud or misrepresentation** to which the proprietor is a party, or where the title is acquired illegally, unprocedurally, or through a corrupt scheme.

71. The jurisprudence of the superior courts has consistently affirmed these principles. In the case of ***Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another [2013] eKLR***, the Court held that a title may be impeached even where the registered proprietor is innocent, provided that the process of acquisition is tainted by illegality or procedural impropriety. Similarly, the Court of Appeal in the case of ***Arthi Highway Developers Ltd v West End Butchery Ltd & Others [2015] eKLR*** emphasized that the law does not shield titles founded on fraud or illegality. More recently, the Supreme Court in the case of ***Dina Management Limited v County Government of Mombasa & 5 Others [2023] KLR***, underscored that a party must go beyond mere production of a title deed and demonstrate a lawful root of title where the same is challenged.
72. In the instant suit, the Plaintiff produced title deeds for land parcels ***CIS MARA/OLOLULUNGA/17055*** and ***17306***, and traced their origin to subdivisions arising from the mother titles ***CIS MARA/OLOLULUNGA/197 and 360***. This documentary evidence was corroborated by oral testimony, including that of ***PW1 and PW2***, as well as the evidence of

**the Land Registrar (DW1)**, who confirmed that Land parcel **No. 360** was registered in the name of **Bomet Farmers Group No. 054** and was lawfully subdivided.

73. Conversely, the Defendant's /Plaintiffs in **ELC No. E009/2022** claim is premised on alleged ownership through **Botoret Farmers Group**. However, the evidentiary foundation of this claim is fraught with inconsistencies and gaps. The sale agreements relied upon are inconsistent in material particulars, including acreage and terms, despite bearing the same date. There was no credible proof of payment of the purchase price, nor was there any documentary evidence linking the Defendant's Group to the registered title. The Defendant/Plaintiffs in **ELC No. E009/2022** witnesses, including **DW2**, made material admissions that undermined the coherence of their case, while the testimonies of **DW3 to DW7**, were not supported by documentary proof.
74. Most significantly, the **Land Registrar's** testimony established that official land records recognizes **Bomet Farmers Group No. 054**, not the Defendant/Plaintiffs in **ELC No. E009/2022** Group—as the lawful proprietor of Land parcel **No. 360**. This evidence is both independent and authoritative, and was not controverted.
75. On the allegation of fraud, the law is settled that **fraud** must not only be specifically pleaded but also strictly proved. In

the case of ***R.G. Patel v Lalji Makanji [1957] EA 314***, the Court held that allegations of fraud require a standard of proof higher than a balance of probabilities. This principle was also reiterated in the case of ***Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 Others [2013] eKLR***.

76. In the instant case, although the Defendant/Plaintiffs in ***ELC No. E009/2022*** alleged fraud, no cogent evidence was tendered to demonstrate any ***collusion, forgery, illegal subdivision, or procedural impropriety*** in the issuance of the Plaintiff's titles. The allegations remained speculative and unsupported by evidence. See the case of ***Edward Muriga suing through Stanley Muriga v Nathaniel D. Schulter, Civil Appeal No. 23 of 1997*** on the issue of allegation not supported by evidence remains mere allegations.
77. Having considered the available evidence, this Court is satisfied that the Plaintiff has established a valid and lawful root of title to the suit properties. The Defendant/Plaintiffs in E009 of 2022 failed to prove any ***fraud, illegality, or procedural impropriety capable*** of impeaching the Plaintiff's titles under Section 26(1) of the Land Registration Act.
78. ***Issue 3 & 4: Whether the Defendant is a Trespasser and Whether He Has Any Lawful or Equitable Interest***  
Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another. As stated in

Clerk & Lindsell on Torts (21st Edition), trespass is actionable upon proof of intrusion without lawful justification.

79. In the case of ***Park Towers Limited v John Mithamo Njika & 7 Others [2014] eKLR***, the Court held that once a plaintiff proves ownership of land, any unauthorized entry by another person constitutes trespass. Likewise, in the case of ***EWM (suing as Guardian ad litem & Next Friend to EWM) v County Government of Laikipia [2019] eKLR***, the Court affirmed the right of a registered proprietor to exclusive possession and protection against unlawful interference.
80. In the present case, the Plaintiff has proved ownership through valid title documents. However, the Defendant/Plaintiffs in ***ELC No. E009/2022***, on his part, admitted being in occupation of the suit land, but failed to demonstrate any legal or equitable basis for such occupation.
81. The Defendant sought to rely on long occupation. However, the doctrine of adverse possession was neither pleaded nor proved. In the case of ***Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR***, the Court of Appeal emphasized that adverse possession must be specifically pleaded and strictly proved. Similarly, in the case of ***Kweyu v Omuto [1990] eKLR***, the Court held that mere long possession

does not suffice absent proof of the essential elements of adverse possession.

82. In this case, there was no pleading invoking **adverse possession**, nor was there evidence demonstrating exclusive, continuous, open, and hostile occupation for the statutory period.

83. Therefore, this court finds and holds that the Defendant's occupation of the suit properties **is unlawful and amounts to trespass**. The Defendant/Plaintiffs in E009 of 2022 have failed to establish any lawful or equitable interest in the suit land.

84. **Issue 5: Whether the Plaintiff is Entitled to the Reliefs Sought**

With respect to injunctive relief, the applicable principles are well settled in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**. The Plaintiff, having established ownership of the suit land and proved trespass, is entitled to protection of its proprietary rights through both permanent and mandatory injunctions. See also the case of **Kenya Power & Lighting Co Ltd v Benzene Holdings Ltd t/a Wyco Paints [2016] eKLR**

85. On **General damages**, the law recognizes that trespass is actionable per se and does not require proof of actual damage. As held in the case of **Park Towers Limited v**

**John Mithamo Njika & 7 Others [2014] eKLR**, damages may be awarded upon proof of unlawful entry. The Plaintiff is therefore entitled to General damages for trespass.

86. With regard to **Special damages**, the principle is that such damages must be specifically pleaded and strictly proved. This was authoritatively stated in the case of **Hahn v Singh [1985] KLR 716**. In the instant case, the Plaintiff pleaded Special damages in the sum of **Kshs. 5,461,612/=** and supported the said claim with documentary evidence, including a report from the **Kenya Forest Service** detailing the destruction of trees. Therefore, considering the available evidence, this Court is satisfied that this claim was both specifically pleaded and strictly proved.
87. Consequently, the court finds and holds that the Plaintiff herein in **ELC No. 25 of 2020** is entitled to the prayers sought in its claim, being orders of; permanent and mandatory injunctions, General damages for trespass, and Special damages as pleaded and proved.
88. In regard to **E009 of 2022**, the Plaintiffs alleged that they purchased land parcel **No. Cis-Mara/Ololulunga/360** as members of **Botoret Farmers Group Registration No. NRK/DSS/11012**. They further alleged **fraud** on the subdivision and issuance of the Plaintiff's title.

89. However, it is evident that the Plaintiff in **ELC No. 25 of 2020** holds registered titles for **Cis-Mara/Ololulunga/17055** and **17306**, and there was no evidence of **fraud** or **illegality** of that registration. The Plaintiffs claim in **E009 of 2022** arose from **Cis-Mara/Ololulunga/360** which was closed upon subdivision and therefore does not exist. The Land Registrar testified that this land belonged to **Botoret Farmers Group** registration **No. NRK/DSS/054**, which is a different entity from that claimed by Plaintiffs in **ELC NO. E009 of 2022**, being **NRK/DSS/11012**. The Land Registrar through documentary trail established that this Group bearing **NRK/DSS/11012** is a district entity from **NRK/DSS/054**. Therefore, **NRK/DSS/11012** had not lawful **nexus** to the Plaintiff's title.
90. Having considered the available evidence and the rival written submissions, the court finds that the Plaintiffs in **ELC NO. E009 of 2022**, alleged fraud on the part of the Defendants therein. However, allegations of fraud were not proved on the required standard of balance of probabilities as no cogent evidence was produced or availed by the said Plaintiffs through the witnesses called to testify in court.
91. Therefore, the court finds and holds that the Plaintiffs in **ELC NO. E009 of 2022**, have **no bonafide interest** in the 1<sup>st</sup> Defendant's parcels of land and their claim cannot succeed. Thus the Plaintiffs claim in **ELC NO. E009 of 2022**, has not

been proved on the required standard and is thus dismissed entirely.

92. **Issue 6: Costs**

The general principle governing costs is that costs follow the event, unless the Court, for good reason, orders otherwise. This principle is codified under **Section 27** of the **Civil Procedure Act** and was affirmed in the case of **Party of Independent Candidate of Kenya & Another v Mutula Kilonzo & 2 Others [2013] eKLR**.

93. The Plaintiff in **ELC No. 25 OF 2020** having succeeded in its claim, and there being no exceptional circumstances demonstrated to warrant departure from this principle, this court finds that the Plaintiff is entitled to costs of this suit.

94. Having considered the available evidence, the court finds and holds that the Plaintiff in **ELC No. 25 of 2020**, has proved its case on the required standard of balance of probabilities and is therefore entitled to the prayers sought in its claim. However, the Defendant's/Plaintiffs' claim in **ELC No. E009 of 2022** is found not proven on the required standard of balance of probabilities and is thus found **Not Merited**, and is consequently **dismissed** entirely with costs to the Defendants and/or Plaintiff in **ELC No. 25 of 2020**.

**FINAL DETERMINATION**

95. For the foregoing reasons, the Court enters judgement for the Plaintiff in **ELC No. 25 of 2020**, against the Defendant herein on the following terms:

- i. A permanent injunction is hereby issued restraining the Defendant, his agents, or servants from trespassing upon or interfering with L.R. Nos. CIS MARA/OLOLULUNGA/17055 and 17306.***
- ii. A mandatory injunction is hereby issued compelling the Defendant to vacate the suit properties and demolish any structures erected thereon.***
- iii. The Plaintiff is also awarded:***
  - a) General damages for trespass of ksh 1000,000/=***
  - b) Special damages of Kshs. 5,461,612/=.***
- iv. The Defendant's Claims as contained in the Counterclaims are hereby dismissed in their entirety.***
- v. The Plaintiff shall have costs of the suit and Counter-claim with interest, from the date of judgment to payment in full.***
- vi. The Plaintiffs' claim in ELC No. E009 of 2022 is dismissed entirely with costs to the Defendant.***

***It is so ordered.***

***Dated, signed, and delivered at virtually this 9<sup>th</sup> day of April 2026***

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

***Delivered online in the presence of  
Elijah Meyoki, Court Assistant***

***Mr Caleb Koech for the Plaintiff in ELC No. 25 of 2020  
Alfred Langat Defendant/ Plaintiff in the consolidated  
suit in ELC No. E009 of 2022  
Kibet Tonui the Plaintiff in ELC No. E009 of 2022.***

***L. Gacheru  
Judge***