



Sangare v Sadera & 8 others; Seventh Day Adventist Church (East Africa) Limited (Interested Party) (Environment and Land Case E001 & E011 of 2023 (Consolidated)) [2026] KEELC 2313 (KLR) (14 April 2026) (Judgment)

Neutral citation: [2026] KEELC 2313 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE E001 & E011 OF 2023 (CONSOLIDATED)
LN GACHERU, J
APRIL 14, 2026

BETWEEN

KAIYONI OLE SANGARE PLAINTIFF

AND

LEPOSO SADERA 1ST DEFENDANT

SARUNI OLE NOOSE 2ND DEFENDANT

DISTRICT LAND REGISTRAR – NAROK 3RD DEFENDANT

DISTRICT SURVEYOR – NAROK 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

RASHA FARM LIMITED 6TH DEFENDANT

SHELMITH RIMANT NAIMODU 7TH DEFENDANT

LMAYA LOOKOUT SOLUTIONS LIMITED 8TH DEFENDANT

JAMES KOINET MUNCHA 9TH DEFENDANT

AND

SEVENTH DAY ADVENTIST CHURCH (EAST AFRICA) LIMITED INTERESTED PARTY

JUDGMENT

1. The suit is a consolidation of ELC EPCC No. E001 of 2023 and ELC No. E011 OF 2023 being: – Saruni Ole Noose vs Totiyio Stephen Sangare & 3 others and Kaiyoni Ole Sangare vs Leposo Sadera & 9 others and Interested Party/Cross Claimant.



2. In the first matter Plaintiff thereon Saruni Ole Noose vide a Plaint dated 4th July 2023, sought for Judgment against the Defendants for the following prayers: -
 - a. An order to the Registrar of Lands, Narok to cancel the title deed No.23038.
 - b. A declaration that Land parcel No. 201 is non-existent and therefore null and void ab initio.
 - c. An order to the Registrar of Lands, Narok to issue title deed of parcel of land number 199 to Saruni Ole Noose.
 - d. Award compensation of trespass by the 1st Defendant at Kshs. 1,000,000/=.
 - e. Award mesne profits
 - f. Court to award such orders as may appear to be just and convenient.

3. In the second suit being ELC No. E011 of 2023 – Kaiyioni Ole Sangare vs Leposo Ole Sadera & 9 others, by a Plaint dated 26th October 2023, the Plaintiff thereon sought for Judgment against the Defendants for orders;
 - a. That a declaration be issued that the Plaintiff is the initial/original allottee of Cis-Mara/Oleleshwa/201 measuring approximately 14.4ha having been a bonafide member of Nkairamram Group Ranch.
 - b. That the title deed for Cis-Mara/Oleleshwa/ 201, issued to the 1st Defendant on the 25th March 2019, was wrongly and un-procedurally issued hence null and void and that it be cancelled and the 3rd Defendant do re-issue the same in the name of the Plaintiff.
 - c. That the subdivision of land parcel number Cis-Mara/Oleleshwa/201, into five (5) parcels of land being Cis-Mara/Oleleshwa /25235 – 25239 was wrongly and un-procedurally done, hence null and void.
 - d. That a permanent injunction be issued restraining the 1st and 2nd Defendants and their agents, servants or any persons claiming under them from remaining upon, entering upon, or in any other way interfering with land parcel number Cis-Mara/Oleleshwa/201.
 - e. The Defendants be ordered to pay costs of this suit to the Plaintiff.
 - f. Any other relief the court may deem fit and just to grant.

4. In ELC PCC E001 of 2023, the Plaintiff, Saruni Ole Noose in his plaint averred that he was a member of Nkairamram Group Ranch, 2nd Defendant herein and was allocated Cis-Mara/Oleleshwa/199, measuring 15.65Ha by the said Group Ranch. It was his claim that he resides on the said parcel of land, and has built his matrimonial home thereon.

5. He also stated that he sold 4 acres of Cis-Mara/Oleleshwa/199, at Kshs.52,000/= to Charles Chege, Samuel Ngethe Muiruri and Kane Makumi under Tuinuane Self Help Group. The purchasers have already settled on the purchased land and are yet to be issued with title deeds.

6. Further, that on 5th December 2014, the District Land Registrar instructed the District Surveyor to carry out boundary verification on various parcels of land, among them being land parcels number



- 7599, belonging to Samuel Gekonge Miriteri, and No 199, belonging to the Plaintiff and land parcel No 201(disputed parcel) which is within Plaintiff's parcel No. 199, and labelled 'NO CARD', to ascertain boundaries for the concerned individuals.
7. After the verification of boundaries, on 22nd March 2022, the Plaintiff was handed a title deed reflecting his parcel of land as measuring 1.327ha, and not 15.67ha. On 16th December 2022, the Plaintiff (Saruni Ole Noose) through his advocates, Odhiambo & Odhiambo advocates requested to be furnished with certified copy of Green card, which Green card showed that the Plaintiff is the sole beneficiary of that whole title Number Cis-Mara/Oleleshwa/199, approximate area 15.65Ha.
 8. Saruni Ole Noose particularised fraud, misrepresentation, irregularity and illegality on the part of 1st, 3rd and 4th Defendants as follows; that the 1st defendant misrepresented himself as the owner of a non-existent Parcel of land No. 201, and conspired with 3rd and 4th Defendants to hive and insert the non-existent plot in the Plaintiff's Plot number 199; that the 3rd Defendant issued a part title deed of 1.327Ha to the Plaintiff instead of 15.65Ha, the whole parcel, deliberately creating non-existent land parcel No 201(no card) from the Plaintiff's parcel of land.
 9. This suit ELC No. E001 of 2023, is opposed by the Defendants vide their respective Defences.
 10. 1st and 2nd Defendants in their Statement of Defence and Counterclaim dated 11th June 2024, denied all the allegations made in the Plaint. The 1st and 2nd Defendants averred that the Plaintiff was allocated and registered as the owner of land parcel No. Cis-Mara/Oleleshwa/199, while the 1st Defendant was allocated and registered as owner of land parcel No. Cis-Mara/Oleleshwa/171, and the suit property Cis-Mara/Oleleshwa/201 was allocated and registered in the name of Kaiyioni Ole Sangare, who is brother to the 1st Defendant. That Kaiyioni Ole Sangare later authorized his brother, Totiyio Stephen Sangare, to undertake quarry activities on the suit land.
 11. The 2nd Defendant in its Defence dated 11th June 2024 confirmed that the Group Ranch did allocate to all members their parcels and the suit land was allocated to Kaiyioni Ole Sangare, and it is not "no man land" as alleged by the Plaintiff. He stated that the two parcels of land are independent and distinct, and just border each other. That the Plaintiff wants to create a narrative that land parcel number Cis-Mara/Oleleshwa/199, could have given rise to Cis-Mara/Oleleshwa/201.
 12. The 2nd Defendant averred that the Green card for Cis-Mara/Oleleshwa/201, was opened on 31st July 1996, and was allocated to Kaiyioni Ole Sangare, but the said Kaiyoni did not process his title deed to date.
 13. 3rd and 4th Defendants filed their Statement of Defence dated 10th August 2023, and denied every allegation contained in the Plaint. They denied that the Plaintiff was a member of the 2nd Defendant, and was allocated 15.65Ha, by the 2nd Defendant and that he has built his matrimonial home and resides on the said parcel of land.
 14. The 3rd and 4th Defendants also denied the particulars of fraud, misrepresentation, irregularity and illegality and stated that if any title deed was issued, same was based on documents lodged at their offices, and there was no wrong doing on their part.
 15. In ELC No. E011 of 2023, the Plaintiff, Kaiyioni Ole Sangare averred that at all material times, he was a bonafide member of Nkairamram Group Ranch under membership No 190. Further, that he was allocated land parcel Number Cis-Mara/Oleleshwa/201, measuring 14.41ha situated within Nkairamram Group Ranch within Narok County.



16. The Plaintiff (Kaiyioni Ole Sangare) further averred that the Green Card for this parcel of land was opened on 31st July 1996, but he has never processed his title deed because he relocated to Morijo; Loita in Narok South, but had authorized his brother – Stephen Tootio Sangare to undertake quarry activities on part of his land.
17. That around July 2023, the Plaintiff(Kaiyioni) received pleadings in ELC E001 of 2023, filed by Saruni Ole Noose claiming the Plaintiff's land, and purporting that it is “no man land”. The Plaintiff was advised by his advocate to do an official search, and obtain a copy of Green Card where he learnt that his parcel of land No. Cis-Mara/Oleleshwa/201, was fraudulently transferred to the name of Leposo Sadera on 25th March 2019.
18. The Plaintiff further averred that, the 1st Defendant fraudulently misrepresented himself as the owner of this land parcel number Cis-Mara/Oleleshwa/201, to the 3rd Defendant and cheated him to issue him with a title deed. That the 3rd Defendant fraudulently, illegally, unlawfully and un-procedurally entered entry No. 2 in the name of the Plaintiff(Kaiyioni Ole Sangare) on the 12/09/2018, without any transfer documents from the Nkairamram Group Ranch Officials. That the 3rd Defendant also entered entries Nos 3 and 4 on 25th March 2019, and issued the 1st Defendant a title deed without representing any transfer documents to the Plaintiff.
19. The 4th Defendant acting on misrepresentation by the 1st Defendant approved the fraudulent subdivision of Cis-Mara/Oleleshwa/201, into five (5) parcels of land, and issued new titles being Nos Cis-Mara/Oleleshwa 25235 – 25239.
20. The Plaintiff(Kayioni) further averred that his right to own and peacefully enjoy his property has been violated, since his property is now registered in the name of Leposo Sadera. He alleged that he has suffered loss, damage and incurred unnecessary costs and it is in the interest of justice and fairness that the court hear him and allows his claim.
21. The suit is vehemently opposed by the Defendants thereon through various Defences;
22. 1st Defendant(Leposo Sadera) filed his statement of Defence dated 24th October 2024, and denied all the contents of the Plaintiff's claim, particularly para 7, on the basis that the Plaintiff(Kaiyioni Ole Sangare) was never a member of Nkairamram Group Ranch, and he did not provide adequate evidence nor did he specify the number of acres he was entitled to.
23. The 1st Defendant argued that the Plaintiff did not mention who effected the adjudication, or when it occurred, and that the parcel of land mentioned as registered in the Plaintiff's name is a mere claim, that is not buttressed by any evidence. It was his allegation that even as the Plaintiff relies on a purported Green Card, he admitted that at the time of suit, the same land was not registered in his name, but that of a 3rd parties.
24. The 1st Defendant contested that the land parcel allegedly belonging to the Plaintiff's brother being Cis-Mara/Oleleshwa/171, is nowhere close to the suit land, thus , it is suspicious that the purported owner of such a far flung parcel of land would be tasked with overseeing the suit property.
25. The 1st Defendant also denied in toto all the particulars of misrepresentation, irregularity and illegality in para 13 (a) to (d), all-inclusive and did put the Plaintiff to strict proof thereof.
26. The 1st Defendant also denied allegations of fraud and misrepresentation regarding the transfer of ownership of parcel CIS-MARA/OLELESHWA/201 to Leposo Sadera, claiming that the plaintiff's assertions are unsubstantiated. He argued that the subdivision of the land into five parcels was not



- done fraudulently and unprocedurally. The 1st Defendants request the dismissal of the plaintiff's suit with costs.
27. On 23rd August 2024 the Interested Party/ Cross Claimant (Seventh Day Adventist Church- East Africa Ltd) filed a Notice of Motion Application, and urged the Court to allow it join the suits as Interested Party/ Cross Claimant, which Application was allowed on 7th October 2024.
 28. Further, the Interested Party/ Cross Claimant applied for joinder of 6th to 9th Defendants, who allegedly sold the suit land to it. The said Application was allowed, and the Plaint in ELC LC E011/2023, was amended to include the 6th to 9th Defendants herein.
 29. The Interested Party/Cross claimant, filed its Statement of Claim and averred that it purchased land parcels Nos CIS-MARA/OLELESHWA/25235, 25236, 25237, 25238, and 25239 between July and October 2023 from five different vendors, being the 1st, 6th, 7th, 8th and 9th Defendants herein for a total consideration of Kshs. 60,120,000/=
 30. The Interested Party averred that the said properties were intended for the development of offices and structures for the proposed South Kenya Union Conference (SKUC), a union under the East Kenya Union Conference (EKUC).
 31. The Interested Party further claimed that it conducted official searches through the District Land Registrar-Narok (3rd Defendant), and found no encumbrances, prohibitions, or adverse claims on the said titles held by the vendors.
 32. Subsequently, the Interested Party entered into various agreements for sale (sale agreements dated 31st October 2023), with the respective vendors, including Rasha Farm Limited, Shelmith Rimant Naimodu, Lmaya Lookout Solutions Limited, James Koinet Muncha, and Leposo Ole Sadera, and paid a total of Kshs. 60,120,000/= for the properties.
 33. It further claimed that the transactions were completed with the issuance of consents from the Narok-Central Land Control Board, and the registration of the transfers by the 3rd Defendant. The five properties were later amalgamated into one title, NO.CIS MARA/OLELESHWA/26162, which was registered in favour of the Interested Party.
 34. That on 25th July 2024, the representatives of EKUC visited the suit properties to organize a Fundraiser and were confronted by the wife of the 2nd Defendant, who claimed ownership of the properties, and alleged that they had not sold the said property. The 2nd Defendant later confirmed the existence of a court case and shared relevant documents and court orders with the Interested Party.
 35. The Interested Party contended that it was unaware of the ongoing legal proceedings and adverse claims at the time of the purchase and transfer of the properties. It argued that it acted as a bona fide purchaser for value without notice of any irregularities or defects in the titles, relying on official searches, consents, and valid titles provided by the vendors.
 36. The Interested Party urged the court to issue various declarations among them; a declaration that it is the rightful owner of the amalgamated title CIS MARA/OLELESHWA/26162; further, they urged the court to issue a declaration and lifting of all restrictions or cautions against the properties; a permanent injunction to prevent the Defendants from interfering with the suit properties.
 37. In the ALTERNATIVE, if the court was to find that the transactions were invalid, the Interested Party urged the court to order for a full refund of the purchase price from the vendors, along with 30% of the total purchase price as liquidated damages for breach of contract, General damages, and interest on the amounts owed.



38. The Interested Party distance itself from any wrong doing, and claimed that it was not involved in any fraud or misconduct and that it acted in good faith throughout the transactions.
39. The Plaintiff in ELC E011/ 2023(Kaiyioni) opposed prayers Nos1, 2, 3, and 4 in the Cross Claim, citing a court order issued on 26th October 2023, that restrained the 1st and 3rd Defendants from selling or transferring land parcels No CIS-MARA/OLELESIIWA/201 and/or CIS-MARA/OLELESHWA/25235-25239.
40. He claimed that despite the court order, the 1st Defendant sold the parcels of land; was later found guilty of contempt of court, and fined Kshs. 200,000/= or sentenced to three months in prison. The amalgamation of the five titles into CIS-MARA/OLELESHWA/26162, on March 1, 2024, was deemed a violation of court orders and should be declared null. The Plaintiff argued that the Interested Party/Cross Claimant cannot claim to be an innocent purchaser due to the timing of the amalgamation during contempt proceedings.
41. However, the Plaintiff had no objection to Prayers Nos 5-10 in the Cross Claim, allowing the Interested Party/Cross Claimant to seek appropriate remedies. The Plaintiff urged the court to maintain the status quo and issue the title for CIS-MARA/OLELESHWA/201, to the him, as that is the parcel number in the primary register for Nkairamram Group Ranch.
42. Additionally, the Plaintiff further claimed that the Land Control Board Consent dated 16th October 2024, for the sale and transfer of the parcels of land is invalid due to the existing court order.
43. The joined Defendants chose not to file Responses/Defences in response to the Cross Claim by the Interested Party, but the 6th and 9th Defendants appointed the Law Firm of Osur & Co Advocates, which represented the 1st Defendant to represent them too.
44. Further, one Gideon Lilasio Kitare, filed an Affidavit dated 30th October 2024, in response to the Interested Party/Cross Claimant. He addressed the allegations regarding the acquisition of land (CIS-MARA/OLELESHWA/25235) in the name of Rasha Farm Limited.
45. He averred that Rasha Farm Limited, is a private limited company incorporated on 9th July 2020, and has two Directors and Shareholders being; Oloishorua Lepore and himself. Mr. Lilasio categorically denied authorizing or participating in the alleged transaction, asserting that the said transaction was solely executed by Oloishorua Lepore, without his consent, without any formal Board meeting, or a Corporate Resolution.
46. He further stated that no Company funds were utilized for the transaction, deeming it unauthorized and void with respect to Rasha Farm Limited. Further, he dissociated himself and the company from any obligations or liabilities arising from the transaction, emphasizing that the Company, as a distinct legal entity, cannot be held vicariously liable for unilateral actions outside authorized corporate activities.
47. However, Rasha Farm, or the said deponent did not participate in any further proceedings, and the said Affidavit remained an allegation, as no further evidence was adduced to support the averments thereon. See the case of Edward Muriga suing through Stanley Muriga v Nathaniel D. Schulter, Civil Appeal No. 23 of 1997.
48. After various applications and Pre-trial conferences, the matter was set down for hearing via viva voce evidence.



Plaintiff's Case In ELC E001 OF 2023

49. PW1, Saruni Ole Noose adopted his witness statement as his evidence in chief, and also produced his list of documents as PEXHIBITS 1-5. It was his evidence that he started living on the suit land in 2000, but in the year 2022, he was informed by the family of Sangare that the land was not his. Consequently, he moved out of the suit land, and has been living in another parcel of land owned by him.
50. It was his further evidence that he moved out of the suit land with his family, as the family of Sangare wanted to sell the suit land. He claimed that the suit land was curved from land parcel No Cis Mara/Oleleshwa/199, which was his land, allocated to him by the Group Ranch. That when he reported to the treasurer of the Group Ranch, the treasurer told him he would investigate, but instead, PW1 learnt that the land had been sold to a 3rd party.
51. PW1 further testified that at one time a helicopter tried to land on the suit land, but it could not since the owner of the land was not known. He later instructed his advocate who filed this suit on his behalf.
52. Later, he learnt that the SDA Church had bought the suit land. He also testified that if the court was to find that the suit land does not belong to him, he would accept it, and allows the court to give the land to the owner, and if the court finds that the land is his, then it should make an order for the land to be returned to him.
53. It was his further testimony that there is a quarry on the suit land being operated by Totiyio Stephen Sangare, and he urged the court to allow his claim.
54. Upon being cross examined by Mr Masikonde for the 1st and 2nd Defendants, he confirmed that he was a member of Nkairamram Group Ranch, and that he was allocated land parcel No 199, which he was told was 47 acres, but according to the title, it is only 39 acres. He also reiterated that he moved into the suit land in 2000, and that he knows all his neighbours, According to the Area List, land parcel No 201, is for Kaiyioni Ole Sangare.
55. He also confirmed that in 2003, he sold part of his land parcel,(No. 199), and the title was closed for subdivision in 2011. It was his further evidence that his land parcel is No 23028, which is 1.327Ha, and it reduced after he sold part of it. He claimed that in the new numbers, land parcel No 201 does not exist, and his land could not give rise to land parcel No 201.
56. It was his further evidence that there was a boundary verification done by the Land Registrar, and his land parcel was indicated to be NO 199. He reiterated that if the court finds that the land is not his, he would have no problem with that finding.
57. Upon being cross examined by Mr. Biko for 1st Defendant in E011/2023(Leposa Sadera), he confirmed that he knew Leposo Sadera ,who comes from the family of Sadera, and he has known him for long. He also confirmed that he is married from the family of Sadera, and so they are related, through marriage.
58. It was his further evidence that when he saw the Helicopter, Leposo Sadera was not in it, although he knew him as a land Broker, and Sadera bought a parcel of land from the suit land. He confirmed that there is quarry excavation on the suit land, but not excavated by Sadera.
59. Upon being cross examined by Mr Rachuonyo for the Interested Party, he testified that he came to know that the SDA Church(Interested Party), had bought the suit land in 2023, but he did not participate in the transaction.
60. On re-exam, he testified that the Surveyor did not make a conclusion that land parcel No 201, is in Land parcel No 199.



1st and 2nd Defendants' Case/ Plaintiff's Case In E011/2023

61. DW1: Kaiyioni Ole Sangare, testified that he is the Plaintiff in ELC NO. E011/2023, and adopted his witness statement dated 26th October 2023, as his evidence in chief, and also produced a list of documents as DEXHIBITS 1- 8, and a Further list of documents as DEHIBITS 9-18.
62. It was his evidence that he is the owner of the suit land, which was allocated to him by Nkairamram Group Ranch. That after allocation of the suit land to him, he moved to Morijo in Loita area, and left the suit land under the care of his brother Toitio Stephen Sangare.
63. Later his brother informed him that some people had gone to inspect the suit land, and when he went to carry a search, he found the land was still in his name. That later he learnt that some people sold his land, and then Saruni Ole Noose, who is his neighbour sued him in ELC NO. E001/2023.
64. It was his evidence that Saruni's land is No 199, and not 201, which is the suit land. It was his testimony that he has never processed his title deed, since he moved to Loita, and left the said suit land under care of his brother. He also testified that the entries on the Green Card were not done by him, and he did not know Leposa Sadera, and he did not sell the suit land to him. It was his further evidence that Koinet Muncha was his neighbour, who did not have any right to sell his land, which he sold while the case was in court.
65. He urged the court to dismiss Saruni Ole Noose's case in ELC No E001/2023, and allow his claim in ELC LC E011/2023.
66. Upon being cross examined by Mr Okumu for the Plaintiff in E001/2023(Saruni Ole Noose), he confirmed that he is a member of Nkairamram Group Ranch, as member No 201. He further testified that Stephen Totiyio Sangare is his brother, who lives on the suit land. It was his further testimony that he has never lived on the suit land, and he did not know the boundaries of the suit land.
67. He also testified that he was shown the Beacons of the suit land by the Surveyor in year that he could not recall, and he was in company of his brother. Further, he testified that the land in Loita was given to him by another Group Ranch, and he is a member of two Group Ranches.
68. On being cross examined by Mr Biko for 1st Defendant in E011/2023, he confirmed that there is a quarry on the suit land, which is operated by his brother Totiyio Sangare, and he left this suit land under the care of Totiyio Sangare, his brother. Further, that he did not have title to the suit land since he did not transfer the land to his name, and he did not know if Leposa Sadera had a title deed for the suit land.
69. Though he left the land under the care of his brother, he did not have any documents to confirm that he indeed left the suit land under the care of his brother. He could not recall the name of the chairman of the Group Ranch, and he denied that he was related to any of the officials of the Group Ranch. Further, he could not recall when he entered into the suit land, though he had receipt for payment in court.
70. On being cross examined by Mr Rachuonyo for the Interested Party, he testified that the land was sold to the Interested Party when the case was going on in court. That he learnt about the sale at the land's office, and then he lodged a caution, and the order of the court was registered at the land's office, against the title.
71. In re-exam, he reiterated that he is a member of Nkairamram Group Ranch member No 201, and after the suit land was allocated to him, he left it under the care of his brother, and there was no need of



- Power of Attorney. He further reiterated that the suit land was sold when there was a valid court order in place.
72. DW2 Jackson Karino Sangare, adopted his witness statement dated 11th June 2024 as his evidence in chief. He further testified that he lives at Oleleshwa area, and is a step brother to Kaiyioni Ole Sangare. It was his evidence that he is a member of Nkairamram Group Ranch, and so is Kaiyioni and Totiyio. That Kaiyioni's land parcel is No 201, which was allocated to him by the Group Ranch, for being a member.
 73. That after allocation, they were shown the boundaries, and then Kaiyioni moved to Loita area, and left the suit land under the care of Stephen Totiyio Ole Sangare. Further, that Stephen Totiyio, operated a quarry until 2023, when he was served with a Demand Notice by Saruni Ole Noose.
 74. Then they informed Kaiyioni about the matter, and thereafter, they carried a search, and found that the land was in the name of Leposa Sadera, and thus they reported the matter to DCIO NAROK, and Kaiyioni, filed this suit, wherein he obtained temporary orders of injunction. That these orders were served upon the Land Registrar-Narok, but when the case was going on, the suit land was subdivided and sold to SDA Church, the Interested Party herein.
 75. Upon being cross examined by Mr Okumu for the Plaintiff in ELC LC No. E001/2023, he confirmed that he is a member of Nkairamram Group Ranch, as member No 15, and his land is No 15, and Kaiyioni is member No 201, and his land is No 201.
 76. It was his evidence that the Beacons were placed by the Government Surveyor around 1996, and all the neighbours were present including Saruni Ole Noose and Koinent Muncha.
 77. On being cross examined by Mr Biko, for the 1st Defendant in E011/2023, he confirmed the land parcel No 201, was for Kaiyioni, who took possession on a date he could not remember, but it was around 1996.
 78. It was his further evidence, that the suit land is for Kaiyioni and not Leposo Sadera, although he learnt that Leposo Sadera had a title deed for the suit land. He also confirmed that Totiyio Sangare was taking care of the land by carrying out quarry works on the suit land.
 79. Upon being cross examined by Mr Rachuonyo for the Interested Party, he testified that they registered a caution at the land's office, and the Land Registrar-Narok was served with the court order, but he was not sure whether the said order was registered or not.
 80. In re-exam, he testified that the survey work was done in 1996, and he was present when it was done, and he was sure of where the suit land was located on the ground.
 81. DW3 Meritei Ole Lanke, adopted his witness statement as his evidence in chief. He further testified that he lives at Kipangas area, and he was an official of Nkairamram Group Ranch, as the Vice Chairman. It was his testimony that Kaiyioni Ole Sangare, was a member of Nkairamram Group Ranch, and so was Totiyio Sangare and Saruni Ole Noose.
 82. He also confirmed that members of Nkairamram Group Ranch, were allocated land parcels within the Group Ranch land. That Saruni Ole Noose, was member No 199, and his land is Cis Mara/Oleleshwa/199, and Kaiyioni was member No 201, and his parcel of land was Cis Mara/Oleleshwa/201(the suit land). It was his further evidence that Leposa Sadera, was not a member of the Group Ranch, and he did not know him.
 83. The witness further testified that there was no land without any owner in the Group Ranch's Land, and that the Green Cards were all initially opened in the name of the Group Ranch and later transferred



to the allocated members. However, Kaiyioni Ole Sangare, never transferred his parcel of land to his name. He also stated that there was no transfer form in favour of Leposa Sadera, and therefore, the land in dispute is for Kayioni Ole Sangare, and not LEPOSO SADERA.

84. On being cross examined by Mr Okumu for Plaintiff in E001/2023, he confirmed that he is a member of Nkairamram Group Ranch, but he could not recall his number. He did not have with him the list of all the members of the Group Ranch. He also testified that Saruni Ole Noose, was number 199, and his land was also No. 199, and Saruni was not issued land parcel No 201. However, Kaiyioni Ole Sangare was given land parcel No 201, but he did not transfer it to his name.
85. Upon being cross examined by Mr Biko for 1st Defendant in E011/2023, he testified that they used Area List to allocate land to members. It was his further evidence that Jackson Ole Sangare was member No 15, and was given land parcel No 15. He could not recall his membership number.
86. It was his further evidence that the Chairman of the Group Ranch was Leposa Ole Langas, and he could not remember when the Group Ranch was formed, or registered. That all the parcels of land had Green Cards, and though he testified for the Group Ranch, he did not have authority to appear for it, but he appeared as a witness for Kaiyioni, and not for the Group Ranch.
87. He also testified that Kaiyioni has not taken title deed for his parcel of land, and he did not know why Kaiyioni did not transfer the land to his name, and further, he was confident that Leposa Sadera was not a member of the Group Ranch, although he could not recall all the members.
88. In re-exam, he testified that all Group Ranch Members were allocated land from the Area List for members, and he could not recall all the members of the Group Ranch. He reiterated that Leposa Sadera was not a member of Nkairamram Group Ranch.

Defence for 1st Defendant In E011 /2023

89. DW4 Leposa Ole Sadera, from Maji Moto area, and a businessman in Narok adopted his witness statement dated 24th October 2024, as his evidence in chief. He further told the court that though Kaiyioni Ole Sangare, has sued him, he did not know him, and he denied ever taking any land from him.
90. It was his further evidence that the suit land Cis Mara/ Oleleshwa/ 201, belongs to him, and he got the land from the Nkairamram Group Ranch. He also confirmed that the land was lawfully sold to SDA church, and that he sold his portion of land through Onduso Advocate. He further testified that he has no claim over the suit land, as he did all that was supposed to be done. He also confirmed that he had a title deed for the suit land, and that sold the said suit land to the SDA Church(Interested Party).
91. He denied knowing Saruni Ole Noose, and he urged the court to allow the church(Interested Party) to keep the suit land, and he denied having obtained the suit land fraudulently. Leposa Sadera b claimed that he sold the suit land legally to the Church.
92. Upon being cross examined by Mr Masikonde for the Plaintiff in E011/2023, he testified that he was given the suit land by Kipangas Group Ranch, also known as Nkairamram, and he is a member of the said Group Ranch, and the chairman of the Group Ranch was Leposo Langas.
93. He further testified that members of this Group Ranch were allocated parcels of land by the said Group Ranch in 1996, and he took his title deed in 2019, but he had not taken it from 1996, nor occupied the same.
94. When shown the Green Card for the suit land, he confirmed the entries made on 12th September 2018, in favour of Kaiyioni Ole Sangare, but it was his evidence that the said Kaiyioni did not sell the land



- to him. He insisted that he was allocated the parcel of land by the Group Ranch, and there was no transfer of land from Kaiyioni to himself.
95. It was his further evidence that he sold the suit land to the church, and his land was No 201, which was approx. 30 acres, and he sold 10 acres to the Church on 31st October 2023, after following all the due process, and he did not know about the court order, of 26th October 2023, though he was charged with contempt of court, arrested, brought to court and was fined ksh 200,000/=, which he paid.
 96. Though he identified the Land Control Board Consent dated 15th November 2023, he could not remember when he appeared before the said Land Control Board. He insisted that the Church (SDA) should get its share of 10 acres, as the land was his, he subdivided it into five portions, which parcels of land were later sold to the Interested party(the Church). He confirmed to having sold parcels of land to the other Defendants(6th, 7th, 8th and 9th),though he did not produce the sale agreements in court.
 97. On cross exam by Mr Okumu for Plaintiff in E001/2023, he reiterated that he is the owner of land parcel No 201, but he testified that he has never lived on it, though he used to graze on it. He knew his neighbours, but Saruni Ole Noose was not one of his neighbours.
 98. He confirmed that there is a quarry on the suit land, operated by him, and he has never been stopped by anyone from running the quarry. He denied having invaded the suit land, nor fraudulently having acquired it, and that the suit land never belonged to Kaiyioni Ole Sangare, nor Saruni Ole Noose.
 99. Mr Rachuonyo for the Interested Party did not cross exam him, but in re-exam, he told the court that Saruni Ole Noose has not sued him. He also confirmed to having sold the suit land to Lepore and Muncha, and the sale agreements are with his advocates, Mr Onduso. He reiterated that he sold the suit land to the SDA church, and that the Green card had no anomalies, and he never saw any title deed in favour of Kayioni Ole Sangare.
 100. DW5 James Ochengo Onduso, an advocate of the High Court practising in the Law Firm of Onduso & Co Advocates, testified that he prepared the sale agreements for land parcels No Cis Mara/ Oleleshwa/ 25235-25239, after being instructed by the 1st Defendant who was his client for long.
 101. That after the Land was sold, it was subdivided, and there was no caution then, and no court orders. He confirmed that the 1st Defendant sold parcels of land to 5th to 9th Defendants, and also to SDA Church, the Cross claimant herein. It was his further evidence that there was nothing wrong that he did together with his client, 1st Defendant, since they carried an official search, carried due diligence before proceeding on with the transactions.
 102. Upon being cross examined by Mr Masikonde for the Plaintiff in E011/2023, he confirmed that he handled the transactions for the sale of land by Leposo Sadera, who was the owner of the suit land, which he claimed that he obtained from Nkairamram Group Ranch.
 103. He further testified that when the land was being transferred by the Group Ranch to Leposo Sadera, he did not deal with it, but he confirmed that Leposo Sadera had a title deed for the suit land. He could not tell when Leposo Sadera obtained the title deed for the suit, however, he confirmed that he prepared the sale agreements.
 104. He also confirmed that the court issued temporary orders of injunction, but he was no aware of these court orders during the transactions, and only learnt about the said court orders after the suit land had been sold and transferred to SDA Church. That during the transactions, there was no court order or caution over the said parcel of land, and he did not know about the contempt proceedings before the transactions, and only heard about them after the transactions were finalised. It was his further



evidence that he did not know that Leposo Sadera had been convicted of contempt of court before the transactions, but only learnt about it after.

105. The witness was not cross examined by Mr Okumu and Mr Rachuonyo, and there was no Re-exam.

The Interested Party/ Cross Claimant's Case

106. IP Nehemiah Kipkurgat Maiya who works for South Adventist Church, adopted his witness statement dated 23rd August 2024, as his evidence in chief. He also produced his bundle of documents as exhibits in support of the Interested Party's case.
107. He confirmed that through the Resolution of the Executive Committee that in July/September 2023, the SDA Church decided to look for land in Narok to establish its Head Quarters. He was tasked with the duty of looking for land, and he identified the five parcels of land, the subject of this case.
108. Then he instructed the Law Firm of Onduso Advocates to carry out an official search and also carry out due diligence, which was done. Thereafter, he carried on with the transactions since the parcels of land had no encumbrances. He confirmed that the Interested Party(SDA CHURCH,) purchased the parcels of land as indicated in the sale agreements, which he had produced as exhibits.
109. He also confirmed that consents to transfer were obtained from the local Land Control Board, and thereafter the Interested Party, made payments to the vendors to the tune of ksh 60,120,000/=, and the purchased land was approx. 34 acres in total. That the Interested Party was consequently issued with title deeds for the five parcels of land, which were later amalgamated into one title being Cis Mara/ Oleleshwa/ 26162, which title is under the custody of the Interested Party.
110. It was his further evidence that the Church as the purchaser is not in occupation of the suit land, since there is a case pending in court, and the Church joined in as an Interested Party/ Cross claimant. He urged the court to validate their title, because the 3rd Defendant did not indicate to the Church as a purchaser that the land had issues, and/or those who sold the suit land be forced to refund the purchase price plus costs and interest thereon. He urged the court to give the Interested Party/Cross claimant the suit land so that it can develop it, as per its intention.
111. Upon being cross examined by Mr Masikonde for the Plaintiff in E011/2023, he confirmed that the Interested Party/Cross Claimant made payments as indicated in the sale agreements dated 31st October 2023, and that the Interested Party paid all the purchase price. He further testified even if there was a Court Order, the Interested Party, as a purchaser was not aware of it, though the said Court Order restrained the 1st and 3rd Defendants from selling land parcel No 201, pending the hearing and determination of the filed application, which Court Order was issued on 27th October 2023.
112. He insisted that the Interested Party, and himself were not aware of the said Court Order, which was received on 30th October 2023, and they appeared before the Land Control Board on 15th November 2023, and by then, he did not know that there was a case in court, and the Interested Party, was not a party to the said case. That he Church only came to know about the case when an application for contempt was filed in court.
113. He also confirmed in their Cross claim, they are seeking for cancellation of the titles held by other parties, since the Interested Party is an innocent purchaser for value, without notice, and the sale or purchase was valid. In the alternative, he urged the court to order for refund of their purchase price with costs and interest thereon.
114. Upon being cross examined by Mr Okumu for Plaintiff in E001/2023, he testified that as part of the due diligence the representatives of the Interested Party, including himself visited the parcels of land,



- and Leposo Sadera was not present. Further, that there was no one living on the suit land, and it was vacant, but there was quarry being operated thereon, and it was being operated by Leposo Sadera.
115. It was his further evidence that he did not know Saruni Ole Noose, as the land belonged to Leposo Sadera, and that information was gotten from the official search carried out from the land's registry, where the Interested Party, through its advocates, were given all the documents to confirm that the land belongs to Leposo Sadera. Further, he testified that he has not been to the suit land recently, and that the five titles were amalgamated into one title.
 116. On cross examination by Mr Biko for the 1st Defendant in E011/2023, he confirmed that they carried a search at the land's office, and that the Interested Party has not been sued by Saruni Ole Noose.
 117. Although their title has been challenged, the Interested Party did due diligence through their instructed advocate, and so there was no mistake by the said Interested party nor Leposo Sadera. He insisted that the Interested Party was not aware of the contempt of court proceedings, and they were not served with the Ruling of the Contempt of court Application. That when they carried a search, Saruni Ole Noose, was not in the title, nor Kaiyioni Ole Sangare, and thus the Plaintiffs have not answered their cross claim.
 118. After the close of viva voce evidence, parties filed and exchanged written submissions. The Plaintiff in E001/2023, Saruni Ole Noose filed his written submissions dated 5th December 2025, through Mayende & Busiega Advocates and urged the court to allow his claim.
 119. The Plaintiff in E011/2023, Kayioni Ole Sangare filed his written submissions dated 21st October 2023, through Masikonde & Co Advocates, and urged the court to allow his case. The 1st, 6th and 9th Defendants filed their written submissions dated 20th November 2025, through Osur & Co Advocates, and urged the court to dismiss the Plaintiffs' cases, and allow their Defence and Counter-claim with costs.
 120. The Interested Party/ Cross-claimant filed its written submissions dated 11th November 2025, through Rachuonyo & Rachuonyo Advocates, and urged the court to dismiss the Plaintiffs claims and allow their Cross claim with costs.
 121. In his submissions, Saruni Ole Noose, the Plaintiff in E001/2023, submitted that the claim by Kaiyioni Ole Sangare was contrived and lacked credibility. He relied on the cases of Dinah Chepchumba Kasitet vs Joseph Kiprop, Kitale HC Succ Cause No 142 of 2008; Eastern Produce (k)Ltd -Chemomi Tea Estate vs Bonface Shoya(2018) eklr; wherein he submitted that the burden of proof should always be on the Plaintiff.
 122. On the title held by Leposo Sadera, he submitted that the 2nd Defendant never signed any transfer in favour of the said owner and/ or any other person, and therefore the root of the title was fraudulent, thus the title is null and void. Reliance was sought in the case of Katana Kalume & Another vs Municipal Council of Mombasa & Another (2019) eklr.
 123. In regard to the claim by the Interested party, he submitted that Interested Party (Cross Claimant) was not a bona fide purchaser for value without NOTICE, since the Church purchased the suit land in December 2023, when ELC No E001/2023, was active in court, and the legal doctrine of Lis Pendens applied. That a search at the local court would have revealed the dispute, and therefore, the Church(Interested Party) failure to conduct proper due diligence and was negligent, which action vitiates the good faith aspect.
 124. He also submitted that the conduct of 3rd and 4th Defendants confirms fraud, as their swift action to cancel the titles of Leposo Sadera and SDA Church was an admission of fault and not genuine mistake,



- and failure to register a Court Order was conclusive admission that land parcel acquisition by Leposo Sadera was fraudulent.
125. Ultimately, he submitted that his claim was legitimate one, as the root of his title was a reality and official, with proper documentations. He also argued that his occupation has been open, continuous, exclusive and notorious for a number of years; and he holds a certified Green card dated 21st December 2022, and holds a title deed for land parcel No 199. He urged the court to allow his claim, with costs.
 126. In his submissions, Kayioni Ole Sangare, the Plaintiff in E011/2023, relied on section 26 (1) and section 80(1) of the Land Registration Act, sections 109 and 112 of the Evidence Act, and urged the court to allow his claim.
 127. He set out three issues for determination being;
 - i. Whether land parcels No Cis Mara/ Oleleshwa/199 and 201, are independent;
 - ii. Whether the sale of the subdivisions and transfer of land parcel No Cis Mara/ 201 to the Interested party/ Cross claimant was fraudulent, un-procedural and unlawful;
 - iii. Whether the 1st Defendant (Leposo Sadera) can pass any good title to the interested party/cross claimant.
 128. On the first issue, he submitted that the two parcels of land Nos 199 and 201, are different, independent and distinct as confirmed from the Green Cards produced in court as exhibits. He argued that from the Green Card Cis Mara/ Oleleshwa/ 199, was opened on 8th August 1997, measuring 15.65Ha, and was later subdivided on 23rd August 2011, to give rise to land parcels Nos 4413-4445.
 129. Further Cis Mara/ Oleleshwa/201, was opened on 31st July 1996 measuring approx. 14,4Ha, and an entry was made in the Green Card dated 12th September 2018, in favour of Kaiyioni Ole Sangare and later on 25th March 2019, in favour of Leposo Sadera, which entries were fraudulent
 130. On the second issue, Kayioni Ole Sangare, relied on the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another(2001) eklr; and submitted as the plaintiff, he has proved fraud on the part of the Defendants, and that he was a genuine member of Nkairamram Group Ranch, and was allocated the suit land. That Leposo Sadera was not a member of the Group Ranch, and the root of his title was suspect.
 131. Reliance was sought in the case of Dina Management Ltd Vs County Government of Mombasa & 5 Others (Petition No E010 of 2021(2023) KESC 30 (KLR), and since the 1st Defendant was not a member of Nkairamram Group Ranch, he could not have been allocated the suit land by the said Group Ranch, and therefore the entries in the Green Card dated 12th March 2018, and 25th March 2019, were fraudulently done.
 132. Further reliance was sought in the followings cases; General & Another vs Hussein & 3 Others (Civil Appeal No 100 of 2018(2025) KECA 1022(KLR(5th June 2025) (Judgement); Presbyterian Foundation Vs Kibera Siranga Self Help Group Nursery School(2025) eklr; and Munyu Maina vs Hiram Gathiha Maina (Civil Appeal No 239 of 2009(2013) KECA 94(10th December 2013) (Judgment).
 133. On the third issue, he relied on the cases of Wakaimba vs Registrar & 3 Others (ELC NO 617 OF 2011(2025) KEELC 1058(KLR); Kayoyo Investment Ltd vs Nesclay Ltd & 3 Others (ELC No E006 of 2022(2025) 3027(KLR) (2ND April 2025)(Judgment) and Daudi Kiptugen vs Commissioner of



- Lands & 4 Others (2015) eklr; and submitted that the 1st Defendant title was procured fraudulently, the said title was not absolute or indefeasible, as its root is tainted with fraud.
134. Further, that since the sale to the Interested Party was done in disobedience of the court order, then the said sale is null and void, and the Interested Party's titles are impeachable. He urged the court to allow his claim in ELC NO E011/2023 with costs.
135. On their part, the 1st, 6th and 9th Defendants set out six issues for determination in their submissions;
- i. Whether the plaintiff has identifiable interest in the suit property capable of protection by the court;
 - ii. Whether the plaintiff's case has been proven on a balance of probability;
 - iii. Whether the defence and cross claim by the interested party are proven and or compelling;
 - iv. Whether there was illegality, fraud, collusion and misrepresentation by the defendants? If any, whether proven to the threshold;
 - v. Whether the prayers sought in the plaint and the defence to counter-claim are merited;
 - vi. Who should bear costs of the suit and counter-claim.
136. On the first issue, it was submitted that the 6th to 9th Defendants and Interested party were all bona fide purchasers for value without Notice, and the sale to them as well were all legitimate and bona fide as conducted by the advocate. Though the plaintiff alleged fraud, on the part of the 1st to 3rd Defendants, he did not proof the same.
137. Reliance was sought in the cases of Elizabeth Kamene Ndolo vs George Matata Ndolo(1996) eklr, Vijay Morjaria vs Nansingh Madhusingh Darbar & Another(2000) eklr; Kinyanjui Kamau Vs George Kamau Njoroge (2015) eklr, Dr, Joseph K. Arap Ngok vs Justice Moiyo Ole Keiwua & Others Nairobi Civil Appl No. 60 of 1997; Vikartiya Investment Ltd vs Kenya Airports Authority & 2 others (2014) eklr; ineah Luyani Njirah vs Agha Khan Health Services (2013) eklr and Jesse Kamau & 25 others vs AG (2010) eklr;
138. In conclusion, they submitted that the Plaintiff in the Counter-claim has failed to prove that the methods and process leading to its acquisition of the titles was irregular, as every step required was ignored, breached and/ or wrongly executed. Though the burden of proof laid squarely on the Defendant/ Plaintiff in the Counter-claim, he shifted the said burden to the plaintiff.
139. Further, that the title held by the 2nd Defendant only in respect of block 199, was not a mistake or an overlap, no reduction in size or loss of land or non-existent as claimed, and therefore that was a void and false claim, as the root of the title cannot be traced and/ or supported by the party asserting it.
140. In its submissions, the Interested Party argued that it purchased several parcels of land from the 1st, 6th to 9th Defendants, and subsequently amalgamated the various titles into land parcel No Cis Mara/ Oleleshwa/26162.
141. Further, it submitted that at the time of purchase, no encumbrances were registered against any of its titles by the 3rd Defendant, and therefore, it was a bona fide purchaser for value without any notice of irregularities of defect of the title, and it holds a valid certificate of title.



142. The interested party identified four issues for determination being;
- i. Whether the interested party was a bona fide purchaser of the five titles without notice;
 - ii. Whether the 1st defendant and or the 6th to 9th Defendants had good titles to pass to the interested party? And if so should the amalgamated title No.Cis-Mara/Oleleshwa/26162, be confirmed and validated?
 - iii. If the above (a) and (b) is in the negative should the 1st and 6th to 9th Defendants refund the purchase price paid to them together with interest?
 - iv. Who should pay the costs of this suit?
143. On the first issue, it was submitted that the Interested Party is a bona fide purchaser for value of all the five parcels of land, without Notice of any irregularity or defect of title. Reliance was placed in the case of Lawrence P.Mukiri Vs Attorney General & 4 others(2013) KEHC 3676; on what the bona fide purchaser for value needs to prove to be successful in its claim; It was its submissions that from the available evidence, no allegations of fraud or knowledge of the same was adduced against the Interested Party, and that it has a valid title No Cis Mara/ Oleleshwa/ 26162.
144. On the 2nd issue, it was submitted that at the time of sale, each vendor had a certificate of title issued by the 3rd Defendant, and the Interested Party carried a search, and confirmed the titles were valid. Reliance was placed on Section26(1) of the [Land Registration Act](#), and since no fraud or misrepresentation has been made against the Interested Party or in any way that falls into exception
145. On the third issue, the Interested Party submitted that in the event that the 1st, 6th to 9th Defendants are found not to have held good titles which they could pass to Interested Party, then the special condition in each sale agreement dated 31st October 2023, should take effect. That the vendors should be made to refund the purchase price with interest as agreed in the sale agreements.
146. On who should pay costs of the suit, the Interested Party relied on section 27 of the [Civil Procedure Act](#), and urged the court to make a finding that costs follow the event, and award costs to the Interested party.
147. The above are the Pleadings of the two consolidated suits; ELC NOE001/2023 and ELC E011/2023, the evidence adduced in support of the two claims, and the Cross claim by the Interested Party, the rival written submissions, cited authorities and the relevant provisions of law, which this court has read and carefully considered, and finds as follows;
148. From the available evidence, there is no doubt the suit land in dispute is Cis Mara/ Oleleshwa/201, which was originally among the parcels of land available for allocation by Nkairamram Group Ranch, which Group Ranch owned the larger Cis Mara/ Oleleshwa/1.
149. It is also not in doubt that in late 1990s Nkairamram Group Ranch allocated parcels of land to its members as indicated in the Area List, produced as exhibit. It is evident that the Plaintiffs in E001/2023 and E011/2023. were both members of this Group Ranch. The Register or Area List shows that Saruni Ole Noose was member No 199, and was allocated land parcel No 199, whereas Kaiyioni Ole Sangare was member No 201, and from the Area List, and his evidence in court, he was allocated land parcel No 201.



150. Further, it is evident that Totiyio Ole Sangare was also a member of Nkairamram Group ranch and was allocated land parcel No. Cis-Mara/Oleleshwa/171. The Plaintiff in E011/2023, Kaiyoni Ole Sangare, told the court that after he was allocated this land parcel No 201, he did not obtain the title in his name.
151. From the available evidence, there is no doubt that on 12th September 2018, there is an entry on Green Card of the suit land in favour of Kayioni Ole Sangare, who testified that he never applied for title deed in his name. Further, there is another entry dated 25th March 2019, in the name of Leposo Sadera, the 1st Defendant in E011/2023. It was the evidence of Kaiyoni Ole Sangare, that he never transferred this suit land to Leposo Ole Sadera, and thus this entry of 12th September 2018, was fraudulent.
152. Further, DW3 Meritei Ole Lanke a witness for Kaiyoni Ole Sangare, testified that Leposo Ole Sadera was not a member of Nkairamram Group Ranch, and was never allocated the suit land. He claimed this suit land was allocated to Kaiyoni Ole Sangare, as per the Area List, who later left it under the care of his brother Totiyio Ole Sangare.
153. It is also not in doubt that after this suit land No Cis Mara/ Oleleshwa/201, was transferred and registered in the name of Leposo Sadera, the same was subdivided into five portions of land. The suit land No 201, was thus closed for subdivision. Further, it is evident that Leposo Sadera sold the resultant subdivisions to 6th to 9th Defendants, who in turn sold their respective parcels of land to SDA Church, the Interested Party herein. Later SDA Church as the Interested party amalgamated these five parcels of land, and the new title in its name is Cis Mara/ Oleleshwa/ 26162.
154. It is also not in doubt, that when Plaintiff in E011/2023, filed his suit dated 26th October 2023, he also filed an Notice of Motion Application, even dated, wherein he sought for injunctive and prohibitive orders, which were granted on 26th October 2023. The sale agreements between the Interested Party and the five other Vendors were entered while the Court Order was in place. In fact, Leposo Sadera was charged with contempt of Court, and fined ksh 200,000/= in default to serve 3 months imprisonment.
155. The above are the undisputed facts. The court finds the issues for determination are;
 - i. Whether the plaintiff's suit in ELCL No E001/2023 is merited;
 - ii. Whether the 1st and 2nd Defendants' counter-claim in ELCLC No. E001/2023 is merited;
 - iii. Whether the Plaintiff's suit in ELCLC No. E011/2023 is merited;
 - iv. Whether the Interested Party/ Cross claimant claim is merited;
 - v. What are the final orders of this court?
 - vi. Who should bear costs of the suits and Cross claim?

I) Whether the Plaintiff's suit in ELCLC No. E001/2023 is merited?

156. The Plaintiff in ELCLC No E001/2023, is the one who initiated litigation over the suit property Cis Mara/ Oleleshwa/ 201, by alleging that this suit property was non-existent, since during the ascertainment of the boundaries that was requested by the Land Registrar on 5th December 2014, parcel No 201, was labelled NO CARD, and it was within his parcel of land No Cis Mara /Oleleshwa/199.
157. The said Plaintiff alleged fraud, misrepresentation, illegality and irregularity on the part of the Defendants, by purporting that land parcel No 201, was in existence, which was not. He also alleged



that the title issued in respect of land parcel No 201, was irregular, as it was created on a parcel of land labelled NO CARD.

158. From the above allegations and evidence adduced in court, he urged the court to enter judgment against the Defendants in the said suit, and among the prayers sought is a declaration that land parcel No 201, is non-existent and is therefore null and void.
159. The suit is opposed by the 1st and 2nd Defendants, who also filed a Counter-claim, and urged the court to enter judgment in favour of Kaiyioni Ole Sangare and among the prayers sought are; a declaration that the plaintiff in ELCLC E011/2023; Kayioni Ole Sangare is the initial allottee of Cis Mara/ Oleleshwa/ 201, having been a bonafide member of Nkairamram Group Ranch. The 3rd and 4th Defendants filed their Defence, and denied the allegations of fraud, though they did not participate in the proceedings.
160. The suit having been opposed by the Defendants, it was upon the plaintiff Saruni Ole Noose, to call sufficient evidence to prove his case on the required standard of balance of probabilities as provided by sections 107, 109 and 112 of the Evidence Act, which provide;

107. Burden of proof.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

109. Proof of particular fact.

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

112. Proof of special knowledge in civil proceedings.

In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.

161. Courts have severally decided on the issue of burden of proof, which is always upon the person who has alleged. See the case of Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another [2005] 1 EA 334 where the court held;

“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.”

162. The question that the court should determine is whether from the available evidence, the Plaintiff Saruni Ole Noose, was able to prove his case on the required standard. It should be noted that he alleged fraud on the part of the Defendants. Fraud is a serious allegation, which should not only be pleaded, but also proved in evidence. See the case of R.G. Patel vs Lalf Mjakani cited in the case of Gladys Wanjiru Ngacha vs Theresa Chepsaat and 4 others[2013]eKLR.



163. There is no doubt that Saruni Ole Noose is and was Member of Nkairamram Group Ranch, which allocated parcels of land to its members between 1996 and 1997. The Plaintiff did confirm that he was allocated land parcel No Cis Mara/ Oleleshwa /199, and he was member No 199. He testified that his parcel of land was approx. 15.67HA, and a title deed was issued to that effect.
164. It was his further evidence that he sold some portion of his land to Tuinuane Self Help Group, and the title was closed for subdivisions into land parcels from Nos 4413 to 4445, which are 32 parcels of land.
165. Saruni Ole Noose, alleged that the persons who purchased the resultant subdivisions were not issued with title deeds, and that when he demanded for the said title deeds, he was issued with his own title deed Number Cis Mara/ Oleleshwa/23028, in his name measuring 1.327HA instead of 15.67 HA. He alleged that was a result of illegal and irregular creation of land parcel No 201, which was No Card, parcel of land.
166. However, the 1st and 2nd Defendants disputed the plaintiff(Saruni Ole Noose) allegations, and testified that though Saruni's Land parcel No 199, measured Approx. 15.67 Ha at the time of allocation, he has been selling portions of and to willing buyers, and thus he has remained with a smaller portion, which is 1.327Ha as per the title deed in his name.
167. The court has seen this title deed in the name of Saruni Ole Noose, issued on 22nd March 2022, and indeed, it is s subdivision of Land parcel No 19943, and not any of the initial subdivisions being Nos 4413 -4445. The 1st and 2nd Defendants testified that Saruni Ole Noose continued to subdivide and sell his parcel of land to other buyers. If that was the case, it is possible that the remaining land for Saruni Ole Noose is indeed 1.327HA, as reflected in the title issued to him in 2022.
168. Saruni Ole Noose also alleged that when he sold the suit land to Tuinane Self Help Group, and the land parcel No 199, was subdivided, the said purchasers have never been issued with their title deeds. However, none of these purchasers were called as witnesses to support this allegation. Without back up evidence from the alleged purchasers who have not been issued with their title deeds, that evidence remains mere allegation, which is not sufficient to prove case on the required standard. See the case of Scholastica Nyaguthii Muturi vs Housing Finance Company of Kenya Ltd and another [2017]eKLR
169. Further, Saruni Ole Noose, did not give evidence on why these purchasers of his subdivisions were not called as witnesses to support his allegations. Failure to call such witness is presumed that the evidence of the said witnesses would have been adverse to the plaintiff. See the case of Tum & 2 Others vs Towett & 5 Others (Environment and Land Case NO. 501 of 2017)[2022]KEELC 13790(KLR),
170. Saruni Ole Noose, was the sole witness for his case. Though a civil case can still be proved through the evidence of single witness, however in an allegation of this nature, where the plaintiff alleges that land parcel No 201, does not exist, and that he has been using the land being claimed by Kaiyioni Ole Sangare, then he ought to have called some of his neighbours as his witness to support his claim.
171. The Plaintiff in ELCLC NO.E011/2023, who alleges to own land parcel No 201, called Meritei Ole Lanke, the Chairman of Nkairamram Group Ranch, as his witness, who testified that Saruni Ole Noose, and Kayioni Ole Sangare, were both members of the Nkairamram Group Ranch, and were allocated their respective land parcels.
172. Meritei Ole Lanke also testified that Totiyio Stephen Sangare, who has been sued by the Plaintiff was also a member of the Group Ranch. It was his evidence that all members were allocated their portions of land. Saruni was allocated land parcel No 199, Kaiyioni No 201, the suit land and Totiyio Sangare No 171. He asserted that land parcel No 201, is in existence, it is not a NO CARD Land, and was rightfully owned by Kayioni Ole Sangare.



173. 1st and 2nd Defendants in their evidence in chief and cross examination confirmed that land parcel No Cis Mara/ Oleleshwa/201, or the suit land was allocated to Kaiyioni Ole Sangare, who did not cause the same to be transferred to his name, and the same remained in the name of the Group Ranch. Further, they testified that Kaiyioni Ole Sangare did not take possession of this suit land, but left this land under the care and use of his brother Totiyio Ole Sangare, the 1st Defendant, which he has been utilizing as a quarry land.
174. That 1st Defendant remained in such possession and use until 2023, when he was served with the pleadings for this suit. The 1st and 2nd defendants rebutted the Plaintiff's evidence, and plaintiff had a duty to call further evidence to support his claim, because failure to do so, the court would probably decide in favour of the rebuttal by the other parties. See the case of Raila Odinga and 5 Others v. IEBC and 3 Others; Petition No. 5 of 2013, [2013] eKLR.
175. As pointed out, the Plaintiff claim was that land parcel No 201, was within land Parcel No 199, as the said land No 201 was indicated as NO CARD. The District Surveyor and Land Registrar, are Defendants in this suit, who filed a Defence, but did not participate in the proceedings. This court did not have the benefit of hearing from them on whether land parcel No 201 was within land parcel No 199.
176. Even if the said 3rd and 4th Defendants did not attend court to support their Defence, they are very necessary witnesses, and they are public officers. The Plaintiff who had a duty to prove his case could have sought for Summons to have them attend court and give evidence on the history of land parcel No 199, and on whether land parcel No 201, was curved within land parcel No 199.
177. Without evidence from the Land Registrar, Surveyor, whether government or private, this court cannot hold and find that land parcel No 201, was non-existence, and was illegally curved out of land parcel No 199.
178. Further, there is no evidence to prove that the Plaintiff's {Saruni Ole Noose) parcel of land No 199, was illegally or irregularly allocated to Kaiyioni Ole Sangare, and due to that illegality, his parcel of land reduced to 1.327 Ha instead of 15.67Ha.
179. What is not in doubt is that title No Cis Mara/Oleleshwa/199, was closed for subdivision in 2011, to give rise to 32 land parcels from Nos 4413 to 4445, and therefore land parcel No 199, is not in existence. Further, both Saruni Ole Noose and Kaiyioni Ole Sangare, were allocated land parcels by Nkairamram Group Ranch, as members. The Area List was produced as an exhibit by the 1st and 2nd Defendants, and from the said Area List, Saruni was member No.199, and was allocated Land parcel No 199, and title was issued in his name. Kayioni Ole Sangare was member No 201, and it was the evidence of the 1st and 2nd Defendants, that he was allocated land parcel No 201, though he did not transfer the said land to his name. therefore, the suit land 201, was not NO CARD.
180. The Plaintiff Saruni Ole Noose, alleged fraud, misrepresentation, illegality and irregularity on the part of the Defendants. He did not avail any iota of evidence of this allegation of fraud, illegality and irregularity as particularized by him in his plaint. The 1st and 2nd Defendants availed evidence that land parcel No. 201, was in existence and was allocated to Kayioni Ole Sangare, and was NO CARD parcel of land.
181. The court has considered the evidence of Saruni Ole Noose, and in his evidence in chief, he testified if the court was to find that the suit land was not owned by him, then the owner of the said land should be given the said land, an if he court was to find that the land belongs to him, he should be given the same.



182. This court has found and held that the land parcel No 201, is not curved out of land parcel No 199, but was allocated to Kayioni Ole Sangare, and as requested by the Plaintiff herein Saruni Ole Noose, then the court finds that Saruni Ole Noose is not entitled to claim any portion of land from Land parcel No Cis Mara/ Oleleshwa/201,since it does not overlap with his initial land parcel No 199, which is not in existence as it was closed upon subdivision on 23rd August 2011.
183. Further, Saruni Ole Noose, did not rebut the allegation that he has sold his initial land parcel, which was approx. 15.65 Ha, to several buyers, and what might be remaining for him is as reflected in Land title No Cis Mara/ Oleleshwa/ 23038, in his name, issued on 22nd March 2022, as a subdivision of land parcel No 19943. Plaintiff might have brought this suit, when he realised that his parcel of land had reduced in size, and the discovery that after fixing of boundaries, parcel No 201, was indicated as NO CARD, which was an error, because the Green Card for this parcel of land was opened in 1996.
184. This court will concur with the 1st and 2nd Defendants assertion and submissions that if the suit land 201, was NO CARD, thus unallocated, then it belonged to the Group Ranch, but not the Plaintiff, who only came to court in 2023, whereas, the allocations were done in 1996/1997.
185. The Plaintiff (Saruni Ole Noose) did not prove that the land Registrar erroneously or fraudulently issued title No 23038 in favour of the Plaintiff to warrant a cancellation of the same; No evidence that land parcel No 201, was non-existence to warrant the court to declare the title of said land parcel null and void ab initio;
186. Further land parcel No 199, was closed for subdivision on 23rd August 2011, and the court cannot direct the Land Registrar-Narok, to issue title to the said land in favour of Saruni Ole Noose. The plaintiff did not prove of any lose by the to warrant award of damages, as sought in the claim herein.
187. For the above reasons, the court finds that the Plaintiff in ELCLC No.E001/2023, has not proved his case on the required standard, is not deserving of the orders sought, and the claim therein is not merited.

II) Whether the 1st and 2nd Defendants’ counter-claim in ELCLC No. E001/2023 is merited;

188. The 1st and 2nd Defendants in this ELCLC NO. E001/2023, alleged that the suit land No Cis Mara/ Oleleshwa/201, was allocated to Kaiyioni Ole Sangare, who did not cause the same to be transferred to his name, but he left it under the care of his brother Totiyio Ole Sangare, the 1st Defendant. That when the Plaintiff herein served the 1st Defendant with the pleadings to this suit, and 1st Defendant informed his brother about the suit, and then they went to the lands office to carry a search, they were surprised to find that the Green Card of this suit land showed that the suit land was transferred to Kayioni Ole Sangare on 12th September 2018, and later to Leposo Ole Sadera, who was not a member of Nkairamram Group Ranch on 25th March 2019.
189. It was the 1st and 2nd Defendants claim that this transfer of the suit land to Kaiyioni Ole Sangare and later to Leposo Sadera was fraudulent, as Kaiyioni Ole Sangare did not authorize such entries, and never sought to have he suit land registered in his name.
190. It is evident that out of the said discovery, Kaiyioni Ole Sangare, filed ELCLC NO E011/2023, dated 26th October 2023, wherein he sought for similar orders as the one contained in the Counter-claim.
191. Therefore, this court finds and holds that the outcome of ELCLC NO E011/ 2023, will bind this issue of whether the 1st and 2nd Defendants’ Counter-claim dated 11th June 2024, is merited or not.



III). Whether the Plaintiff's suit in ELCLC No.E011/2023 is merited?

192. The Plaintiff in this suit is Kayioni Ole Sangare, who alleged that he was a bonafide member of Nkairamram Group Ranch, and he was allocated land parcel No Cis Mara/ Oleleshwa/ 201, and a Green card in respect of this parcel of land was opened on 31st July 1996. A Green card was attached to the pleadings to confirm the above position, and was also produced by the 1st Defendant and counter-claimant as their exhibit to support their position.
193. Kaiyioni Ole Sangare also alleged that he did not cause the suit land to be transferred to his name, but it remained in the name of Nkairamram Group Ranch. However, he did not take possession or occupied the suit land, since he moved to Morijo area in Loita, where he had been allocated another parcel of land by another Group Ranch.
194. He also alleged and testified that he mandated his brother Totiyio Ole Sangare to take care of the land and use it. It was his evidence that Totiyio used to carry quarry works on the suit land, until 2023, when he informed him the Saruni Ole Noose, had sued him. However, on carrying a search, they found that contrary to his expectation, the suit land was registered in the name of LEPOSOSADERA, the 1st Defendant. Whom he did not sell the land to, and that the said transfer was fraudulent.
195. From the above allegations and claim, Kayioni Ole Sangare, urged the court to enter Judgment in his favour against the Defendants and issue a declaration that he was the bonafide initial allottee of this suit land; that the transfer of the suit land to 1st Defendant, Leposo Ole Sadera was wrong, unprocedural, null and void and should be cancelled; that subsequent subdivision of this suit land into five parcels of land was un-procedural, null and void.
196. The Plaintiff's suit is opposed by the 1st and 2nd defendants, and later by the Interested Party/ Cross claimant. The 1st Defendant. Leposo Sadera alleged that he was a member of Nkairamram Group Ranch and was allocated the suit land, and was registered as the proprietor on 25th March 2019. He denied that the Plaintiff, Kaiyioni Ole Sangare was a member of this Nkairamram Group Ranch, and that he was ever allocated the suit land. He also claimed that he lawfully subdivided the suit land, and lawfully sold it to third parties, and therefore the plaintiff suit should be dismissed with costs.
197. Saruni ole Noose, the 2nd Defendant denied the Plaintiff's suit through his reply to the Counter-claim and averred that the suit land was lawfully allocated to him by the Group Ranch, and he lawfully obtained a title in his favour. However, it is clear that Saruni Ole Noose, was never registered as owner of land parcel No 201, the suit land, but land parcel No.199.
198. He also denied that Kaiyioni Ole Sangare, ever held any valid proprietary interest in the suit property, and he urged the court to dismiss the Plaintiff's suit with costs.
199. As stated earlier, he who alleges must prove! The Plaintiff herein Kaiyioni Ole Sangare has alleged, and he is the one with the onerous task of calling sufficient evidence to prove his case on the required standard of balance of probabilities. See the case of Miller vs. Minister of Pensions (1947) 2 ALL ER 372, where the court held;

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability is equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other



which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

200. In an effort to discharge the burden of proof, Kayioni Ole Sangare gave evidence for himself and called two more witnesses. He also produced the list of documents as his exhibits in support of his case. From the available evidence, has the Plaintiff herein proved his case on the required standard?
201. From the onset, it is evident that the court has found and held that Saruni Ole Noose, the 2nd Defendant was allocated land parcel No 199, which he later subdivided and sold some of the subdivisions to 3rd Parties. It is also evident that Saruni Ole Noose was never registered as owner of the suit land. Though he had alleged that the suit land was curved out of parcel No 199, the court found and held that this allegation was unproven, and therefore the 2nd Defendant’s Defence herein is not sustainable.
202. However, there is no doubt that the suit land was registered in the name of LEPOSO SADERA on 25th March 2019. Before this registration to Leposo Sadera, the suit was allegedly registered in the name of Kayioni Ole Sangare, the plaintiff herein on 12th September 2018, who alleged that he never caused the land to be registered in his name nor authorized such transfer.
203. The Plaintiff and his witnesses alleged that LEPOSO SADERA was not a member of Nkairamram Group Ranch, and was not allocated the suit land or any other land by the Group Ranch, and the Plaintiff(Kayioni Ole Sangare) never sold or transferred the land to him(Sadera)
204. Leposo Sadera alleged and testified that he was lawfully allocated the suit land by Nkairamram Group Ranch, which allegation has been refuted by the Plaintiff and his witnesses. Therefore, in the instant suit, there are allegations made by the plaintiff, and denial by the 1st, 6th and 9th Defendants herein
205. Further, the Interested Party has claimed that it is an innocent purchaser for value without any notice of fraud, and the Plaintiff’s suit should be dismissed with costs.
206. The root of this suit land is the allocation of parcels of land by Nkairamram Group Ranch, which Group Ranch owned the initial mother title being Cis Mara/ Oleleshwa/1, and which land the said Group Ranch later subdivided and allocated the resultant subdivisions to its members. Meritei Ole Lanke, who testifies as DW3, gave evidence in favour of the Plaintiff, and confirmed that parcels of land in Cis Mara/ Oleleshwa were allocated to the Group members using the Area List.
207. It was his evidence that Kaiyioni Ole Sangare, was member No 201, as per the Area List and allocated land parcel No Cis Mara/ Oleleshwa/201(suit land)by the Group Ranch in 1996. He also testified that the Plaintiff herein, Kaiyioni Ole Sangare never transferred the suit land to his name, but it remained in the original name of the Group Ranch.
208. He also corroborated the Plaintiff’s evidence that the plaintiff did not take possession of the suit land, but left it under the care of his brother Stephen Totiyio Ole Sangare, who was also a member of the Group Ranch and was allocated Land parcel No 171. The evidence of the Plaintiff and DW3, was also corroborated by Jackson Karino Ole Sangare (DW2), another brother of the Plaintiff, who confirmed that the suit land was allocated to the Plaintiff, who relocated to Loita area and left the suit land under the care of Stephen Totiyio Ole Sangare, their other brother.
209. Meritei Ole Lanke, who testified as the Chairman of Nkairamram Group Ranch, claimed that Leposo Sadera, was not and has never been a member of the Group Ranch. He relied on the Area List which was used for allocation of parcels of land to members, and which showed the names of the members, their membership Number, which numbers tallied with the parcels of land allocated to each member. He gave example of Saruni Ole Noose, who was member No 199, and his parcel of land was No 199. Kaiyioni Ole Sangare was Member No 201, and his parcel of land was No 201(suit land).



210. The Area List was produced as an exhibit by the Plaintiff and the court has considered it (page 22 of the trial bundle), and indeed LEPOSO SADERA, the 1st Defendant is not listed as a member, though in his defence he alleged that he was allocated this suit land on 25th March 2019, as a member of Nkairamram Group Ranch. The 1st Defendant alleged that he was member of this Group Ranch, which allegations has been denied by the Plaintiff, and the Chairman of the Group Ranch. Therefore, Leposo Sadera had a duty to call evidence to rebut this denial by the plaintiff.
211. Though the burden of proof is always on the plaintiff, the evidential burden of proof could shift, once evidence is required to rebut any allegation. See the case of *Mbuthia Macharia vs Anna Mutua Ndwiga & Anor* (2017) eKLR, where the court held;
- “The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence”
212. Leposo Sadera alleged that he was allocated the suit land in 2019 by the Group Ranch, and it is clear that allocation of the parcels of land was being done to members of this Group Ranch. Leposo Sadera has not availed evidence that he was a member of this Group Ranch. Kaiyioni Ole Sangare, the Plaintiff herein has proved through his testimony, testimony of witnesses and exhibits that he was indeed Member No 201, and allocated the suit land by the Group Ranch.
213. Further, it is evident from the titles produced by the Plaintiffs in both ELCLC NO E001/2023 and E011/2023, that the allocation to Group Ranch Members was done between 1996/1997. Leposo Sadera alleged that he was allocated the suit land in 2019, which was long after the Group Ranch had allocated the parcels of land to its respective members.
214. The Plaintiff (Kaiyioni) alleged that after he was allocated the suit land, he did not immediately transfer it to himself, but left it in the name of the Group Ranch. Leposo Sadera, had alleged that Kaiyioni Ole Sangare, was never a member of Nkairamram Group Ranch, and was never allocated the suit land. However, the Green Card produced by the Interested party, which it acquired when it carried out official search and which was also produced by the Plaintiff shows that the suit land was transferred and registered in the name of Kaiyioni Ole Sangare from the Group Ranch on 12th September 2018.
215. If at all Kaiyioni Ole Sangare was not a member of Nkairamram Group Ranch, how come the Green Card that bears Leposo Sadera’s name also has Kaiyioni as the person who transferred the suit land to him? Further, though Leposo Sadera alleged that he was a member of the Group Ranch, he did not produce the Area List to show his membership, nor call a witness from the Group Ranch to confirm that indeed, he was a member of Nkairamram Group Ranch, and also show his Membership Number.
216. Without evidence to confirm that Leposo Sadera, was a member of Nkairamram Group Ranch, this court finds and holds that he was not a member, and he could not have been allocated the suit land by the said Group Ranch. Further, the entry in the Green Card does not reflect an allocation from the Group Ranch, but a transfer from Kaiyioni Ole Sangare to Leposo Ole Sadera, which transfer has been denied by the plaintiff herein, and which was done long after the Group Ranch had allocated parcels of land to its members.
217. If the 1st Defendant was not a member of Nkairamram Group Ranch and was not allocated the suit land, and the plaintiff did not sell nor transfer the land to him, how did he obtain registration of the



- same? The plaintiff testified that the entries Nos 2 and 3, were irregular and or fraudulently done, and due to the said actions of the Defendants, he has been deprived of his parcel of land. Indeed, if the plaintiff did not sell the suit land to LEPOSO SADERA, then the registration of Leposo Sadera as the owner of the suit land is illegal, irregular and fraudulent, and he did not have or hold a good title.
218. Having found that LEPOSO SADERA was registered as the owner of the suit land fraudulently, then the subsequent subdivisions and transfers were null and void, as the suit land was allocated to Kaiyioni Ole Sangare, who never registered it in his name, and did not sell it to Leposo Sadera.
219. It is evident the Kaiyioni Ole Sangare was a member of Nkairamram Group Ranch and was allocated the suit land in 1996. Leposo Sadera was not a member of Nkairamram Group Ranch, and was never allocated this suit land, and the Plaintiff never sold nor transferred the suit land to him. The 1st Defendant's allegations as contained in his Statement of Defence dated 24th October 2024 are found to be mere allegations, which are not supported by any evidence at all.
220. However, the court finds and holds that the Plaintiff in ELCLC NOE011/2023, has proved that as an allottee of the suit land, he never registered it in his name nor transferred it to Leposo Sadera, the 1st defendant on 25th March 2019, as reflected in the Green Card. Therefore, that transfer was fraudulent, and Leposo Sadera, never held a good title, as his acquisition of the said land was not procedural, and the subsequent subdivisions carried out were null and void.
221. In answer to issue No 3, this court finds and holds that the Plaintiff's suit in ELC EPCC NO. E011/2023, as contained in the Plaint dated 26th October 2023, is merited, and thus allowed.

IV) Whether the Interested Party/ Cross claimant's claim is merited?

222. The Interested Party /Cross claimant herein is the Seventh Day Adventist Church, which actually purchased the subdivisions of land parcel No 201, vide several sale agreements dated 31st October 2023, while the two suits were on going in court, and while there was in existence valid Court Order dated 27TH October 2023, which restrained and prohibited the Land Registrar-Narok, from further transfer and registration of any subdivisions or dealing /transactions over the suit property until the Application dated 26th October 2023, was heard and determined.
223. In fact, after the transfers to the Interested party, the parcels of land were amalgamated while the cases were on going, and the resultant title is now Cis Mara/ Oleleshwa/ 26162, in the name of the Interested party. Further, it is evident that contempt of Court proceedings were undertaken against the 1st and 3rd Defendants, on 22nd May 2024 and 1st Defendant(Leposo Sadera) was fined ksh 200, 000/= or to serve 3 months imprisonment.
224. In its Statement of Facts and Cross claim, the Interested party narrated how it purchased the five parcels of land which were subdivisions of land parcel No 201 for ksh 60,120,000/= . from various vendors, being 1st, 6th, 7th, 8th and 9th Defendants.
225. The parcels of land were Cis Mara/Oleleshwa/ 25235-25239. Sale agreements were attached to the pleadings and produced as exhibits. Evidence of payment of the purchase price was also produced. Leposo Sadera, the 1st Defendant also admitted to have sold the suit land to third parties, the Interested Party Included, and he urged the court to allow the Interested claim.
226. It was the Interested Party's claim that it is an innocent purchaser for value without Notice of any fraud or defect, and it should be declared the lawful owner of the land parcel No Cis Mara/ Oleleshwa/ 26162, which is an amalgamation of land parcels Nos. 25235-25239.



227. In its Cross claim, the Cross Claimant has sought for various prayers among them a declaration that it is an innocent purchaser for value; and that it should be declared to have acquired the five parcels of land lawfully; and that the amalgamated title No 26162, is indefeasible, and all restrictions and cautions on it should be lifted;
228. In the ALTERNATIVE, the Interested Party/ Cross claimant urged the court to find that the vendors, being 1st, 6th, 7th, 8th and 9th Defendants are in breach of special conditions and terms of the sale agreements dated 31st October 2023, and the said sales/ transactions should be automatically terminated; Order for refund of the purchase price; General damages for breach of contract; Costs and interest thereon.
229. It is not in doubt that the Interested Party/ Cross claimant, purchased the subdivisions of land parcel No 201, from different vendors, and titles were transferred to it. What is disturbing is that the said sale and purchase was done while these two suits were live in court, and temporary orders of Injunction and prohibition were in place to restrain and prohibit any further transfers of the suit land, by the 1st and 3rd Defendants to any party.
230. The Court has on issue No 3 found and held that LEPOSO SADERA, the 1st Defendant acquired the suit land fraudulently, or illegally and did not have a good title and therefore he could not pass a good title to anyone, any purchaser/s including the Interested Party.
231. Though the Interested Party has urged the court to declare it as an innocent purchaser for value without Notice, the jurisprudence emerging from our superior courts is that the root of a title is very crucial before any holder of a title can be protected through the doctrine of innocent purchaser. See the case of; Torino Enterprises Ltd vs Attorney General(Petition5 (E006 0F 2022(2023) KES 79 KLR, where the court held;
- “ we have already declared that allotment letter even if perfected cannot by and is itself confer transfer title to the allottee, unless the latter completes the process by registration. Therefore, the grim reality is that all transactions between Renton Company Ltd and the appellant were a nullity in law. This is further affirmed by the failure to observe due process and the procedure in acquiring the allotment letter”
232. Leposo Sadera, did not have a good title, and he could not pass what he did not have. The doctrine of Nemo dat rule applies herein. See the case of Kiprugut Maiywa vs Rebecca Chepkurgat Maina (2019) eKLR, where the court held one cannot sell or pass a good title on what he did not belong to him.
233. Before purchasing the suit land, the Interested Party /Cross claimant ought to have carried out sufficient due diligence to ascertain the root of the vendors’ titles, given that they were all subdivisions of the same title No 201, and the registered owners were all selling and transferring these subdivisions a few months after they were registered as the owners.
234. The court will concur with the submissions of the Plaintiff in E011/2023, that the court should be guided by the findings of the Court of Appeal in the case of Munyu Maina vs Hiram Gathiha Maina(supra) that when “a proprietors title is challenged, it is not sufficient to dangle that title as proof of ownership, but must go further to prove the legality of how the said title was acquired, meaning the root of the title.”
235. The root of the Interested party’s title is challenged, and it is evident that the persons who sold the subdivisions of Land Parcel No 201, did not have good title, as Leposo Sadera, acquired the suit land either fraudulently, illegally, irregularly, unprocedurally or through corrupt scheme, and subsequent



- subdivisions and sale of the said subdivisions was null and void. The purchase of the suit land by the Interested party was therefore null and void, since the alleged vendors could not pass a good title to it. The Interested Party did not acquire a good title!
236. This court is bound by the decision of the Supreme Court of Kenya in the Case of Dina Management Ltd vs County Government of Mombasa & 5 Others (2023) KESC 9 KLR, where the court held
- “... in order to be considered as a bonafide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out necessary due diligence to determine the lawful owner from whom they acquired a legitimate title, and thirdly that they paid valuable consideration for the purchase of the suit property...”
237. Further, in the case of Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No. 28 of 2005(2015) eklr; the court held the following on the need for due diligence while purchasing any property;
- “...in order to be considered as a bonafide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out necessary due diligence to determine the lawful owner from whom they acquired a legitimate title, and thirdly that they paid valuable consideration for the purchase of the suit property...”
238. In the instant suit, apart from carrying a search at the Lands Registry, the Interested Party through its Advocate should have carried a search or inquired from the court registry on whether there was a suit pending in court over this suit property. The interested party did not carry sufficient due diligence, and thus purchased parcels of land that had the root of its title questionable, and which subdivisions were being challenged through ELC EPC No E011/2023, and temporary Orders of Injunction and prohibition were in place against the said titles.
239. Therefore, with the existence of the court order, whatever was done in defiance of the said court orders was null and void, and the said transactions could not pass good title to the Interested party/Cross Claimant, this Court cannot grant the Cross claimant its prayers Nos 1, 2, 3, 4 and 5 of its Cross Claim. See the case of M.A Koinange vs Joyce Ganchuku & 2 others [2015]eklr.
240. However, it is very clear that the Interested party purchased the suit land from several vendors, whom it joined as Defendants No 5th to 9th. The interested Party produced various sale agreements between itself and the said vendors to support its claim. It is also evident that Leposo Sadera, who was initially registered as the owner of the suit land on 25th March 2019, acquired the said registration fraudulently and/ or through corrupt scheme, most probably with collusion from officials from the Lands office.
241. This is evident from entries Nos 2 and 3, which look like they were done by the same hand, and probably the same day. Indeed the Interested party through its evidence in court and the exhibits produced has proven that there was fraud on the part of the 1st, 3rd, 4th, 6th, 7th, 8th and 9th Defendants.
242. The transfer from Nkairamram Group Ranch to Kaiyioni Ole Sangare, to Leposo Sadera and later subdivision and sale of the subdivisions to Interested party, could not have happened without the knowledge of officials or land officers from Narok Lands office. The Lands office indeed facilitated fraudulent, un-procedural and/ or illegal transfers of the suit land from its original owner Kaiyioni Ole Sangare to Leposo Sadera, to 6th- 9th defendants, and eventually to unsuspecting third party, Seventh Day Adventist Church, the Interested party herein. It is unfortunate that the Interested Party become a victim of fraud, which most probably emanated from the lands office.
243. The interested party purchased parcels of land that were acquired fraudulently and or illegally, and the titles issued to the Interested Party, cannot stand. The subsequent amalgamated title was acquired



while there was a pending court order, and active court cases over the suit land. The said title is not protected, is null and void, and as provided by Sections 26(1)(a)(b) and 80(1) of the *Land registration Act*, this amalgamated title No Cis Mara/ Oleleshwa/ 26162, is challengeable, and thus impeachable.

244. Having held as above, the court proceeds to cancel and revoke the title held by Interested Party herein being Cis Mara/ Oleleshwa/26162, as provided by section 80(1) of the *Land Registration Act*; which states;

“(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

245. Having revoked the said title held by the Interested party, and having found and held that the Interested Party/ Cross claimant indeed paid the purchase price to the vendors, this court finds and holds that the Interested Party/Cross claimant is entitled to Refund of the purchase price as prayed in prayer No 7 of its Cross claim.

246. Further, the Cross claimant urged the court to make a declaration that the 1, 6th, 7th 8th and 9th Defendants are in breach of the special conditions and terms of the sale agreements dated 31st October 2023; and the said sale should be automatically terminated and status quo ante be returned, as provided in the said sale agreements.

247. Parties are indeed bound by the terms of their agreements. See the case of, Pius Kimaiyo Langat vs. Co-operative Bank of Kenya Ltd (2017) eKLR where the court of Appeal held;

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

248. This court has considered the sale agreements in between the Interested Party and the 1st, 6th, 7th, 8th and 9th Defendants and the Special Condition referred to, and specifically 3.2 which states as follows; The Vendors having the legal capacity as owners of the property to sell the property to the purchaser, and there being no dispute whatsoever on the property, if at any time whether before or after the completion Date a dispute over the property whatsoever arise, the sale transaction shall stand automatically terminated and the parties shall be returned to the status quo ante as if this agreement had never been entered.

249. Indeed, the said vendors were in breach of the above special condition because at the time of these transactions, there was already live and active proceedings in court over the suit land. Therefore, the said Vendors did not have legal capacity to sell the suit land, as they could not sell what was not legally owned by them. See the case of Macfoy vs United Africa Co. Ltd 9 1961) 3ALL E.R 1169, where the court held;

“...if an act is void, then it is in law a nullity. It is not only bad, but incurably bad, void without more ado, though it is sometimes convenient to have the court declare there is no need for an of the court to set aside. It is automatically null and bad. You cannot put something on nothing and expect it to stay there. It will it to be so. And every proceeding which is founded on it is also bad and incurably collapse.”

250. For the above reason, the court finds prayer No 6 of the Cross claim is merited and is allowed, since the vendors are indeed in breach of the sale agreements. The said sale agreements were founded on an illegally acquired properties, are illegal and thus declared null and void.



251. The Cross claimant has also urged the court to order that the 1st, 6th, 7th, 8th and 9th Defendants to pay it an amount equivalent of 30% of the total purchase price as liquidated damages payable by a party in wilful default in accordance with the terms of the Agreements of sale.
252. As the court stated earlier, parties are bound by the terms of their contract, and the court cannot re write contracts for parties. The Cross claimant has alleged and submitted that the above prayer is in the Default Clause of the sale agreements in issue.
253. The Court has considered the sale agreements produced in court as exhibits, which are contained on pages 22 to 56 of the Interested Party/ Cross claimant trial bundle and list of documents and produced as exhibits. Apart from the sale Agreement between L Maya Lookout Solution Ltd and Interested Party for purchase of land parcel No Cis Mara/ Oleleshwa/ 25237, for ksh 12, 600,00/= that contains a Default Clause in Clause No 10 as follows; 1.1 Any party in default to perform the terms and conditions of the agreement , the party in wilful default shall pay the other 30% of the total purchase price as liquidated damages”, the other sale agreements do not contain any Default Clause.
254. It is not clear to this court whether the above omission of the Default Clause, in the sale agreements was by design or negligence of the advocate who drew the said sale agreements, given that they were prepared by one advocate. However, it is only the 8th Defendant herein L Maya Lookout Solutions Ltd who is bound by the Default clause. The Interested Party failed to take keen scrutiny of the Sale Agreements. Had it done so, it would have noted that the Default clause was missing in almost all the sale agreements between itself and the vendors.
255. It is trite that a party cannot generally claim liquidated damages if there is no express default (or liquidated damages) clause in the contract. Liquidated damages are defined as a pre-determined sum agreed upon by parties at the time of contracting to be paid in the event of a specific breach. See the case of Susan Wakuthii Kibata & Another vs Elizabeth Njoki Murage[2017]eklr.
256. Consequently, on prayer No 8, the court finds and holds that it applies only in regard to 8th Defendant, L Maya Lookout Solutions Ltd, who is bound by the terms of the sale agreement dated 31st October 2023, and which it has breached
257. However, since there was no Default Clause in the other sale agreements, the court declines to order that 1st, 6th, 7th, and 9th defendants pay the equivalent of 30% of the total purchase price as liquidated damages. However, the 8th Defendant, L Maya Lookout Solutions Ltd is directed to pay the liquidated damages as per the terms of the contract.
258. On General damages, it is evident that the 1st, 6th, 7th, 8th and 9th Defendants are in breach of contract. They sold the suit land to the Interested party, while there was an temporary order of the court barring any transactions, and the vendors also did not hold good titles to pass to the Interested party. The Interested Party has suffered loss and damages due to the fact that it cannot be declared as the lawful owner of the suit property, and cannot take possession and occupation of it, as per its intentions.
259. The court finds and holds that the Interested Party is entitled to General damages from each of the Defendants herein at fault. Consequently, the court finds and holds that the Interested party is entitled to General Damages of ksh 3,000,000/= from each of the following Defendants. 1st, 3rd, 4th, 6th, 7th, 8th and 9th Defendants.
260. Even though the 3rd and 4th Defendants are represented by the Attorney General (5th Defendant), given that it is evident that the Lands Office in Narok was involved in the illegal and fraudulent transfer of the suit property from the original allottee, to a non-member of the Group Ranch, an later the transfer to the Interested Party, while knowing very well there were active cases in court, and temporary orders of



injunction and prohibition were in place, then the Land Registrar, Narok and Land Surveyor, Narok who participated in the said collusion and fraudulent transactions and entered entries No 2 and 3, carried our Mutation and subdivision of original land parcel No 201, are held personally responsible and liable ,and should pay the said General Damages to the Interested party, personally!

261. The Chief Land Registrar, to be served with the instant Judgment, and ensures that the responsible officers have personally paid the General damages as directed. The court is persuaded by the holding of the Court in the case of Dr. Olango Onudi the acting County Secretary v. Samuel Okuro & Others, CA NO. 79 OF 2018,the Court of Appeal stated as follows:

“The law is that public officers do not enjoy immunity from litigation in respect to acts, which though done in the name of the office, are overtly outside the remit of their offices . If there is need for support of this now well settled proposition, is the decision of this Court in Ethics and Anti-Corruption Commission –vs- Judith Marilyn Okungu & another (2017) eKLR where the Court held as follows; “... There is ample authority to the effect that a person against whom fraud or illegality is alleged cannot escape personal liability (should the fraud or illegality be proved) on the basis that he was acting as an agent or servant of another. Indeed, government functionaries of whatever seniority are not immune from personal liability for unlawful acts such as deceit, fraud or contempt of court”

262. In the case of Salim vs Co-operative Bank Of Kenya Ltd & 2 Others ELC No 193 of 2021(2024) KEELC 852(KLR) 15TH February 2024(Judgment), the ELC Court in Mombasa held as follows;

“That this Honourable Court also awards the Plaintiff exemplary and aggravated damages (acts of Misfeasance in Public office) to the tune of Kenya Shillings Seven Million (Kshs. 7, 000,000/-) to be paid by the 1st and 3rd Defendants (specifically the two Land Registrars – Mr. M. S. Chinyaka of Staff Personal numbers 097 and Mr. S. K. Gatuiru of personal numbers – 356 (1210812021 both of whom handled the matter while serving at the Land Registry, Kilifi during this period) jointly and severally for the unlawful, illegal, wrongful actions is charging the Plaintiff’s property in favour of the 1st Defendant.”

263. This court will borrow from the above holding of court of concurrent jurisdiction to find and hold that the responsible officers of the 3rd and 4th Defendants are personally liable to pay the awarded general damages to the Interested party.
264. The Interested Party is also entitled to costs of the Cross claim and interests thereon from the date of this Judgment until payment in full from the 1st, 3rd to 9th Defendants herein.

V) What are the final orders of this court?

265. The determination herein is in respect of Consolidated suits No ELC EPCC No E001/2023 AND ELCLC No E011/2023, together with the Cross claim by the Interested party herein Seventh Day Adventist Church (East Africa Ltd).
266. The court has analysed the available evidence and has found and held that the plaintiff’s suit in ELC EPCC NO E001/2023, is not merited, since the Plaintiff(Saruni Ole Noose) did not prove his case on the required standard of balance of probabilities. For these reasons, the final orders in the Plaintiff’s suit ELC EPCC NO E001/2023, are that the said suit is dismissed entirely with costs to the 1st and 2nd Defendants.



267. In respect to ELC LC NO E011/2023, the court finds and holds that the Plaintiff herein Kaiyioni Ole Sangare is the bonafide allottee of land parcel No Cis Mar/Oleleshwa/ 201, which was unlawfully, illegally, unprocedurally and fraudulently transferred to Leposo Sadera, the 1st Defendant herein, and later subdivided & transferred to 6th to 9th Defendants, and eventually quickly disposed of by being illegally sold and transferred to the Interested party herein, who did not acquire a good title, since the root of the acquired title is suspect and is not legally tenable.
268. Consequently, the final orders of the court in ELC LC NO E011/2023, are, the court finds and holds that the plaintiff Kaiyioni Ole Sangare, has proved his case on the required standard of a balance of probabilities and therefore, allows his claim as prayed, and enters judgement against the Defendants thereon jointly and severally in terms of prayers Nos 1, 2, 3 and 4 of the Plaint dated 26th October 2023, or the prayers sought in his Counter-claim dated 11th June 2024.
269. In regard to the Cross claim, filed by the Interested party, the court finds that the Interested Party has not proved on the required standard that it was an innocent purchaser for value without Notice of any defect or fraud on the title. It failed to carry sufficient due diligence.
270. For the above reasons, prayers Nos 1, 2, 3, 4 and 5 of he Cross claim are disallowed and dismissed entirely. However, the Cross claimant is entitled to prayers Nos 6 and 7, as prayed in the Cross claim. In respect to prayer No 8, the same is allowed only against the 8th Defendant, L Maya Lookout Solutions Ltd, as it is bound by the sale agreement, which contains a Default Clause. However, the said prayer is not allowed in respect to the other Defendants, whose sale Agreements do not contain any Default Clause.
271. On General Damages, the Interested party is awarded Ksh 3000,000/= payable by each of the 1st, 3rd, 4th, 6th, 7th, 8th and 9th Defendants. Further, in respect to 3rd and 4th Defendants, the officers who were responsible in carrying out the acts complained of, and which acts were fraudulent and illegally, and resulted in the Cross claimant purchasing illegally obtained/ acquired parcel of land are held personally liable to pay for the said General damages.
272. The Interested Party is also entitled to costs of the suit and interests thereof from the date of this Judgement to payment in full from the 1st, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Defendants herein.

VI) Who should pay costs of the suits and Cross claim?

273. Ordinarily costs are awarded at the discretion of the court as provided by section 27 of the *Civil Procedure Act*. However, costs follow the events and are awarded to the successful litigants, unless there are circumstances, that would warrant the court to depart from the above position. This court finds no such circumstances, and therefore awards costs to the successful litigants.
274. In ELC EPCC NO.E001/2023, the 1st and 2nd Defendants are the successful parties and are therefore awarded costs of the suit. In ELCLC No.E011/2023, the plaintiff thereon Kaiyioni Ole Sangare is the successful litigant, and is awarded costs of the suit to be borne by the 1st, 3rd to 9th Defendants thereon.
275. As for Cross claimant, it has partially succeeded, and is also awarded costs and interest from the date of the Judgment to payment in full against the 1st, 3rd to 9th Defendants herein. The 2nd defendant was not involved in the sale of the suit land to the interested party, and no costs attaches to him.
276. Judgment is entered as per the above final orders, costs and interests.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 14TH DAY OF APRIL 2026.



L. GACHERU

JUDGE

14/04/2026

Delivered Online in the Presence of.

Elijah Meyoki...Court Assistant.

Mr Okumu for Plaintiff in ELC EPCC NO E001/2023.

Mr Masikonde for Plaintiff in ELC LC No. E011/2023.

Ms Buyengo H/B for Mr Osur for 1st, 6th and 9th Defendants in ELC LC NO. E011/ 2023.

N/A for 7th and 8th Defendants

Mr Rachuonyo for the Interested Party/ Cross claimant.

L. GACHERU

JUDGE

