REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC APPEAL CASE NO. E026 OF 2025

PETER LETOYA KURONOI……

….APPELLANT

VERSUS

JITAHIDI MILELE INVESTMENT LTD……1ST RESPONDENT

LAND REGISTRAR NAIVASHA……..2ND RESPONDENT

CHIEF LAND REGISTRAR NAIROBI……..3RD RESPONDENT

DIRECTOR LAND ADJUDICATION & SETTLMENT……..4TH RESPONDENT

DISTRICT LAND ADJUDICAITON & SETTLEMENT OFFICER NAIVASHA……5TH RESPONDENT

HON. ATTORNEY GENERAL……..6TH RESPONDENT

(Being an Appeal from the Ruling of the Chief Magistrate's Misc E.L.C Application E016 of 2023 at Naivasha delivered by Hon. Y.I Khatambi (P.M) online on 11th July 2024).

JUDGEMENT.

1. The Appeal arises from the learned trial Magistrate's hearing of an application dated 21st December 2023, in which the Applicant sought leave to file a suit against the Respondent after the limitation period had lapsed. By a Ruling delivered on 11th July 2024, the learned Magistrate found that, although the Applicant alleged that the suit was fraudulently transferred to the 1st Respondent, the evidence on record did not clearly

demonstrate when the Applicant became aware of the alleged fraud. Subsequently, she held that the court lacked jurisdiction to extend time for filing a suit for recovery of land and dismissed the Application with costs.

2. The Applicant/Appellant, being dissatisfied with the said findings and Ruling, has now filed the present Appeal based on the following grounds in his Memorandum of Appeal:
    i. That the learned trial Magistrate erred in law and fact in dismissing the Appellant's Application against the weight of the evidence that had been adduced and presented in Court.
    ii. That the learned trial Magistrate erred in law and fact in dismissing the Appellant's Application on the ground that the Court lacks Jurisdiction to extend time for filing suit out of time to recover land.
    iii. That the learned trial Magistrate erred in law and fact in finding that the Appellant did not demonstrate when he had become aware of the alleged land fraud, when there was sufficient evidence on the said facts.
    iv. That the learned trial Magistrate erred in law and fact in failing to consider the fact that there was no contract of whatever nature of the Sale of Land between the Appellant and the 1st Respondent, and in the circumstances, the Appellant was prejudiced.
    v. That the learned trial Magistrate erred in law and fact in failing to consider that this was a case where fraud was alleged to have been involved in having the land registered in the name of the 1st Respondent.
    vi. That the learned trial Magistrate erred in law and fact in failing to consider the fact that where fraud is alleged to have been involved, it would be in the interest of justice to

allow the parties to proceed to full trial to have the fact of the alleged fraud fully canvassed.

vii. That the learned trial Magistrate erred in law and fact in failing to consider the fact that there was evidence and facts which was adduced to show when the fraud regarding the land had been perpetrated.

viii. That the learned Magistrate erred in law and fact in failing to consider the merits and substance of the Application.

ix. That the learned trial Magistrate erred in law and in fact in laying more weight to the provisions of the law used against the merits and substance of the Application.

x. That the learned trial Magistrate erred in law and fact in failing to consider the fact that the Applicant had established the time that he had become aware of the fraud that had been perpetrated against his land.

xi. That the learned trial Magistrate erred in law and fact in not finding that the Appellant was entitled to the prayers sought in the Application.

3. The Appellant thus prayed for the following orders:

i. That the Honourable Court do find that the Appellant was entitled to seek leave to file suit out of time and the Court do grant the Orders as had been sought in the Application.

ii. That the Honourable Court grant the costs of the Appeal.

iii. Any further or other relief that the Honourable Court may deem fit to grant.

4. In response to the Appellant's Appeal, the 1st Respondent stated that the trial Magistrate in the Chief Magistrate's Misc. ELC Application No. E016 of 2023 rendered the court's judgement (sic), finding that there had been no proved fraud in the ownership of the subject parcel of land. The Appellant had not demonstrated any fraud on the part of the 1st Respondent to warrant the relief sought. Furthermore, the Appellant had not shown any

hindrance that had been occasioned to him during the entire period that had delayed the filing of the suit as required by the law, nor had he demonstrated when he had detected fraud, as claimed.

5. The Appellant filed a claim nearly 10 years after a court case, Naivasha Chief Magistrate's Court Criminal Case No. 660 of 2016. This delay did not prevent him from pursuing a land recovery suit. The long delay in taking action or the claim he now intended to lay resulted in the 1st Respondent acquiring the land in good faith for value, without any notice of defect.
6. That, in any event, the Applicant had not brought on board one John Kilesi Ole Lekutit in any of his applications, despite knowing that the land in question had first been registered in his name before the sale. That, subsequently, they were strangers to the fraud claims the Appellant had raised against them as purchasers for value. That, indeed, no single piece of evidence had been filed to demonstrate fraud against them to warrant the grant of the orders sought.
7. The honorable court correctly ruled that it lacked jurisdiction beyond the scope set by the law on time limitations. Therefore, granting the orders sought by the Appellant would imply that the court is extending its jurisdiction to hear a suit for land recovery, despite the Appellant being aware of the registration and transfer from the outset.
8. That the Appeal herein had not raised any serious grounds of law or facts to warrant the orders sought and should be dismissed with costs.
9. The 2nd to 6th Respondents did not participate in the appeal.
10. The Appeal was admitted on 10th February 2026, and directions were taken for its disposal through written submissions. Only the Appellant complied and submitted his arguments dated 6th March 2026, where he summarized the factual background of the matter and then drew the Court's attention to the charge sheet judgement in Naivasha Criminal Cause No. 660 of 2026, where the Appellant was the 1st Accused person.
11. The facts of the Charge had been that the Appellant had, without any colour of right and with intent to cause a breach of peace, taken

possession of the 1st Respondent's farm, Title Number Naivasha/Moi Ndabi/886 (suit property), without its consent.

12. That it had been after the hearing and determination of the criminal case on 23rd June 2020, that the Appellant, who had been an accused in the said criminal case, confirmed that indeed his land had been obtained fraudulently. Hence, he sought to file a civil suit to recover the land.

13. He submitted that where fraud, mistake or concealment was involved, the period should start running upon discovery of the fraud. That in the instant Appeal, the fraud in respect of the suit property had been confirmed by the lower court's decision dated 23rd June, 2020.

14. That by the time he had filed the Application for leave to file suit out of time, the period envisaged for filing a claim to recover land where fraud was discovered had not yet expired. That, in any event, he had lived on the suit property since 1994 without contemplating the sale or alienation of the property, and therefore could not, with reasonable diligence, have discovered the fraud.

15. That the period of limitation ought to start running from the date the fraud was discovered, not from the date the suit land was fraudulently transferred to the 1st Respondent. He placed reliance on the decided case of **Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015] KECA 816 (KLR),** where the Court of Appeal held that while limitation periods were meant to provide finality, they should not be used as a "cloak for fraud".

16. That under the provisions of Article 159 (2) (d) of the Constitution, the court must prioritise substantive justice over technical procedural barriers such as a lapsed timeline, especially where fraud was prima facie evident.

17. That he had lived and worked on the suit property from the year 1994 to date, hence he could not have been expected to have known that there was a person who had been working behind the scenes to take his land. That, indeed, it had been held by several authorities that no court would allow a person to retain an advantage he had obtained by fraud, since

fraud unravels everything, vitiates judgement, contracts, and all transactions whatsoever. Reliance was placed in the decided case of **Lazarus Estates Ltd v Beasley [1956] EWCA CIV JO124-1.**

18. That in any event, neither the 1st Respondent nor the state had appealed the decision in Naivasha Criminal Cause No. 660 of 2016. It was his submission that he had placed before the court sufficient evidence to confirm the exact date or time when the discovery of fraud in obtaining his land by the 1st Respondent had been established, which was on the 23rd June 2020 and which period within which to claim land had not expired by the time he filed his application in the lower court.

19. That there had been no contract of sale between the Appellant and the 1st Respondent, thus the 1st Respondent's argument that the Appellant excluded Kilesi Ole Kutit did not affect his Appeal, nor did it affect the Appellant's Application before the trial court. He explained that Kilesi Ole Kutit was his witness in Naivasha Criminal Cause No. 660 of 2016.

20. That, if the 1st Respondent's claim that it had acquired the suit property for value without notice were true, it would have challenged the judgement in Naivasha Criminal Cause No. 660 of 2016. Accordingly, if the 1st Respondent insists that it had acquired the suit property lawfully, it should not oppose the Appellant's application for leave to file a suit to challenge how it had acquired the suit property, since it would have an opportunity to present evidence of lawful acquisition.

21. That the law provides for the extension of time, particularly where fraud had been detected. That the provisions in the Limitation of Actions Act did not bar the trial Magistrate from extending time or granting the leave required. There was no objection raised on the issue of jurisdiction, and neither was there an objection that the land value had been higher than the requisite jurisdiction of the honourable court. Reliance was placed in the decided case of **Law Society of Kenya (Nairobi) v Malindi Law Society & 6 Others [2017] eKLR,** where it had been held

that under the provisions of Article 169 (1) of the Constitution, parliament has been given the power to confer jurisdiction on the subordinate courts.

22. It was his submission that where a court had the power to hear the main case, it naturally had the power to hear an application for extension of time related to that case, which was the gist of the case herein. He urged the Court to find that his Appeal and orders sought therein were merited and grant the same.

Analyses of the evidence.

23. The Court of Appeal in **Paramount Bank Limited vs. First National Bank Limited & 2 Others (Civil Appeal 468 of 2018) [2023] KECA 1424 (KLR)** where the court held as follows;

> *"A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the Civil Procedure Act, a first Appellate Court can appreciate the entire evidence and come to a different conclusion."*

24. The summary of the core dispute is that vide a Notice of Motion dated 21st December 2022 (the supporting affidavit was sworn on 21st December 2023) brought under the provisions of Article 159 (2) (a), (b), (d) and (e) of the Constitution, Section 27 and 28 of the Limitation of Actions Act, Order 37 of the Civil Procedure Rules, Section 1A, 1B, 3 and 3A of the Civil Procedure Act and other enabling provisions of law, the Appellant herein, Peter Letoya Kuronoi, sought leave to file suit against against Jitahidi

Milele Investment Ltd, Land Registrar, Naivasha, Chief Land Registrar, Nairobi, Director Lands Adjudication & Settlement, District Lands Adjudication & Settlement Officer, Naivasha and the Hon. Attorney General as the 1st to 6th Defendants respectively, after lapse of the Limitation period.

25. The Applicant's Application was premised on the grounds therein and the Supporting Affidavit of equal date, sworn by Appellant/Applicant therein, who in summary deponed that he was the original and rightful owner of Land Parcel Naivasha/Moi-Ndabi/866 (originally plots 2166 and 2167), which he had occupied and farmed since being allocated in 1994.

26. That his land was illegally and fraudulently diverted through the following chain of events: The Ministry of Lands purportedly allocated the plot to one John Kilesi Ole Lekutit, whom the applicant claims never applied for the land. The land was then transferred to Lekutit and subsequently sold to Jitahidi Milele Investment Co. Ltd, who fraudulently obtained a Title Deed for the property on 10th May 2013.

27. That he therefore intended to file a lawsuit seeking the cancellation of the Title Deed currently held by Jitahidi Milele Investment Co. Ltd, that there be rectification of the land register to reflect his name, and re-issuance of a Title Deed in his name.

28. His justifications for the delay in filing suit were that he was previously facing a criminal trial as an accused person in Naivasha CM Case No. 660 of 2016, where he had been charged with forcible detainer of the same land. He was acquitted on 13th June 2018.

29. The time taken to process court proceedings and judgments in criminal cases was disrupted by the COVID-19 pandemic. He concluded by deponing that the current title held by the investment company was a threat to his rights, and he feared that they would sell or charge the land to a third party if the court did not intervene.

30. A summary of the response via a Replying Affidavit sworn by Leonard Kang'ethe Wanjiku on behalf of the 1st Respondent (Jitahidi Milele

Investment Co. Ltd) was that the 1st Respondent was an innocent purchaser for value. That they had conducted proper due diligence before purchasing the land, and maintain that their Title Deed was legally and duly issued by the Ministry of Lands.

31. They sought to have the Applicant's Application struck out while arguing that he had failed to explain why he did not file a suit since August 2011 when the land was first allotted to John Kilesi Ole Lekutit. They dismissed the COVID-19 excuse, noting that it covered only the period between 2020 and 2021.

32. They argued that the suit was defective because the Applicant failed to include the original allottee, John Kilesi Ole Lekutit, as a party to the case, noting that his testimony was vital to prevent biased information.

33. The Respondent questioned why the Applicant did not file a civil suit simultaneously while the criminal proceedings were ongoing, rather than waiting until they concluded.

34. They also noted that the acreage and description of the land the Applicant was claiming were totally different from the property they owned. The Application was frivolous, vexatious, and scandalous, wherein the Applicant had suppressed material facts to mislead the court. They then sought the dismissal and/or striking out of the Application with costs, asserting that the litigation was an unnecessary waste of the court's time.

35. In rejoinder, the Applicant/Appellant deponed that his application was merited and his case was valid that he had no way of knowing about the 2011 illegal allocation to John Kilesi Ole Lekutit and only discovered the alleged land grabbing in 2016 when he was criminally charged with forcible detainer of his own land. That he had been advised by his previous lawyer to wait until the conclusion of the criminal case before filing a civil suit, which lasted six years and ended with his acquittal in June 2020. He reiterated that the peak of the COVID-19 pandemic in 2020 further hindered his ability to seek immediate legal redress.

36. He deponed that he did not sue the original allottee, John Kilesi Ole Lekutit, who testified in the criminal case, where his testimony actually helped with his acquittal and that he intended to call him as a star witness in the upcoming civil suit to prove that the transfer to the investment company was fraudulent.
37. He dismissed the Respondent’s claim that the properties are different, pointing out that the land in question was the exact same plot that the Respondent used as the basis for the criminal charges against him in 2016. He argued that technical disputes over acreage were matters to be argued during the main trial, not during this preliminary application for "leave to file."
38. He emphasized that he has remained in physical possession of the land throughout these disputes stating that if the investment company truly believed they were innocent purchasers, they should have filed their own case to declare their rights after the criminal case ended in 2020, rather than waiting for him to act.
39. In conclusion, the Applicant maintained that his application was made in good faith and was not a waste of the court's time. He requested the court to dismiss the Respondent's objections, noting he was never served with their formal Grounds of Opposition. He sough leave to proceed with his lawsuit.
40. A summary of the Replying Affidavit sworn by Stephen Kariuki, the Sub-county Land Adjudication and Settlement Officer for Naivasha, representing the Ministry of Lands and the Settlement Fund Trustees (the 2nd to 5th Respondents was that the land being Plot No. 866 was originally allocated to the applicant, Peter Letoya. However, during the ground verification in the year 2008/2009, a survey was conducted which allegedly found the parcel to be unoccupied. The Ministry then followed the legal process for repossession, including issuing a notice to remedy breach of conditions and a subsequent cancellation of the applicant's allotment, wherein in August 2011, the land was re-allocated to Kilesi Ole

Lekutit via a formal letter of offer. In September 2011, Lekutit accepted the offer, confirmed the boundaries, and paid the 10% land deposit of Kshs. 3,500/=. In October 2011, Lekutit made a further payment of Kshs. 29,200/= for the outright purchase wherein in May 2013, the land was formally discharged and transferred to Lekutit.

41. They argued that the Applicant was prohibited by law from filing this case pursuant to the provisions of Section 7 of the Limitation of Actions Act, because he had waited too long to seek the recovery of the land. They maintained that all transactions were carried out in strict observance of the law and concluded that the Applicant/Appellant had lost his rights to the land through a legal repossession process due to his alleged failure to occupy. That the subsequent transfer to Kilesi Ole Lekutit, and eventually the Investment Company, was legitimate and procedural.

Determination.

42. I have considered the record of appeal, the holding of the trial Magistrate, the written submissions of learned Counsel, the authorities cited and the applicable law. I have also considered that this appeal was unopposed, as the Respondents did not file their submissions despite the court's directions.

43. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm, as written submissions serve the purpose of expedience and amount to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that parties who fail to file their submissions on an application and or appeal as ordered by the court are deemed as parties who have failed to prosecute and/or defend their cause. The filing of submissions having been ordered, on the 22nd January 2026 and leave extended on the 10th February 2026, wherein only the Appellant complied,

the failure by the Respondent herein to exercise the leave granted to file written submissions clearly demonstrated inertia and inordinate delay, lack of interest and/or seriousness on their part in the prosecution of the matter.

44. The Court of Appeal in **Rowlands Ndegwa and 4 Others vs. County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties) [2020] eKLR,** citing with approval the decision of the High Court in, **Winnie Wanjiku Mwai vs. Attorney General & 3 Others [2016] eKLR,** observed as follows:

> "*With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the Respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....*"

45. The mode of hearing of the Appeal having been accepted by the parties, and there having been no compliance to prosecute the same, I am persuaded to find that the Appeal herein is undefended, and I shall proceed to deliver a judgement on its merit.

46. Conscious of my duty as the first Appellate Court in this matter, I have reconsidered the decision appealed against and the dismissed application in the trial court, and I have assessed them and find the issue arising therein for determination as follows:

    i. Whether the Appellant/Applicant's discovery of fraud during the criminal case constitutes sufficient grounds to override the Limitation of Actions Act.

47. Before I make my determination, I must point out that Sections 27 and 28 of the Limitation of Actions Act, which provisions of the law the Appellant had relied on to bring his application, are specifically designed for actions claiming damages for negligence, nuisance, or breach of duty where the damages claimed consist of or include damages for personal injuries. The Appellant's claim is a dispute over land recovery and fraudulent title registration, and so the power to extend time under Section 27 is strictly gate-kept and cannot be imported into land disputes governed by Section 7.

48. Section 28 of the same Act outlines the procedure for seeking the court's leave. Even if the court were to consider these sections applicable to land, an application for leave under Section 28 must be made within the 12-month rule, which is a judicial standard used to test whether an applicant has acted with reasonable diligence once they discovered the facts they claim were hidden.

49. I have reconsidered the decision of the trial court. While the lower court focused strictly on the 12-year expiry from the 2011 re-allocation, it failed to weigh the mandatory provisions of Section 26 of the Limitation of Actions Act, which section is not a mere suggestion; it is a statutory shield against the legalization of fraud through the passage of time.

50. Having said this, Section 26 of the Limitation of Actions Act provides as follows;

> *''Where, in the case of an action for which a period of limitation is prescribed, either—*
>
> *(a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or*
>
> *(b) the right of action is concealed by the fraud of any such person as aforesaid; or*

(c) the action is for relief from the consequences of a mistake,

The period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:''

51. The Limitation of Actions Act generally provides a 12-year window to sue for the recovery of land. However, Section 26 specifically addresses the Postponement of the limitation period in cases of fraud, concealment, or mistake and states that the clock does not start ticking until a party discovers the fraud, or could have discovered it with reasonable diligence.
52. The Appellant argues that his case is anchored on the claim of original ownership and subsequent fraud. He deposes that he was the original allottee of the suit property in 1994 and has remained in actual, physical possession of the land to date. He alleges that in 2011, the Ministry of Lands (2nd to 5th Respondents fraudulently re-allocated his land to one John Kilesi Ole Lekutit, who then sold it to the 1st Respondent.
53. The Appellant maintains that, since his allotment of the suit property in 1994, he has been in physical possession and has been farming the land; there was no trigger event that would have made him suspect that his ownership was compromised. That he had no reason to suspect his title was under threat and only discovered the fraud on the 23rd June 2020, after the hearing and determination of Naivasha CM Case No. 660 of 2016, the criminal proceedings in which he had been charged with forcible detainer of the same land. That therein, after he filed the summons on 21st December 2022
54. He attributes the delay in filing this civil suit to the six-year duration of those criminal proceedings, which ended in his acquittal in June 2020, and the subsequent disruptions caused by the COVID-19 pandemic.
55. The 1st Respondent, through its Director, Leonard Kang'ethe Wanjiku, opposes the application, describing it as frivolous and vexatious, asserting

that it was a bona fide purchaser for value without notice, having conducted due diligence before purchasing the land from the registered owner.

56. The 2nd to 5th Respondents, through a Replying Affidavit sworn by Stephen Kariuki, the Sub-County Land Adjudication Officer, argued that the Applicant's original allotment was lawfully cancelled in 2008/2009 following a ground verification exercise that found the land unoccupied. Consequently, the land was re-allocated and transferred to Mr Lekutit in 2011. The State further argues that the Applicant's claim was statute-barred under Section 7 of the Limitation of Actions Act, as more than 12 years had passed since the cause of action arose. The Respondent's view was that land records are public. By 2011/2013, a simple search at the land registry would have revealed the new owners. They contended that failure to check the registry for over a decade constituted a lack of reasonable diligence.

57. Registration of land is a public act. Title deeds and registry entries are public records. The land, having been re-allocated and transferred to Mr Lekutit in 2011, and with a criminal case filed against the Appellant in 2016, the Applicant, despite claiming possession, should have conducted a search in 2016 as soon as he was charged to know the status of the land that he had been charged for. Instead, he waited until the matter had been finalised before filing his application.

58. From 1994 to 2020 gave a total of 26 years. A simple search of the Land Registry at any time between 1994 and 2016 would have revealed that the land was no longer in the Appellant's name.

59. Equity aids the vigilant. The Applicant claims to have been in possession of the land from 1994 to date. I find that his failure to formalize the transfer for 26 years, from 1994 to 2020, lacked reasonable diligence and constituted laches.

60. However, according to Section 26 of the Limitation of Actions Act, when an action is based on fraud or the right of action is concealed by

fraud, the period of limitation does not begin to run until the Plaintiff, in this case the Appellant has discovered the fraud or could have discovered it with reasonable diligence.

61. In **Ahmed Siad Mohammed v Municipal Council of Garissa & another [2014] KECA 611 (KLR),** the Court of Appeal sitting in Nyeri at paragraph 6 of its judgement had cited ***S. Muketi, J,*** *holding on limitation of action* in a Ruling dated 2nd July, 2011, wherein, in dismissing the motion, the Honourable Judge had expressed herself as follows:

> *"Section 26 of the Limitation of Actions Act makes it very clear that in claims where fraud or mistake is alleged, time starts to run from the moment such fraud or mistake is discovered. Fraud is alleged in this case and therefore under the provisions of Section 26 time started to run when the fraud was discovered. In this case, it is alleged that the fraud was discovered in the year 2010. ... The prudent thing for a court to do where fraud is alleged in a claim is to allow the parties to proceed to full trial so that the parties can present facts for and against the alleged fraud for the court to decide on the matter. It would be against the dictates of fair play and justice to decide such a case at the preliminary stage".*
>
> *In agreeing with the said holding, the Court of Appeal had at paragraph 16 held that:*
>
> *"In relation to limitation of actions, it is our considered view that Section 26 of the Limitation of Actions Act establishes an exception to the 12-year limitation period when fraud is involved. In the instant case, the Honourable Judge held that fraud is a matter that cannot be determined at a preliminary stage in the suit and it requires full hearing. We concur with the reasoning and finding by the Honourable Judge. The learned judge did not err in invoking the provisions of*

Section 26 of the Limitation of Actions Act and ordering that this suit should proceed to full hearing. Fraud must be proved and it can only be proved through a hearing and cannot be summarily rejected."

62. Following the precedent in the **Ahmed Siad Mohammed** case (supra), fraud is a live issue where, once you discover the fraud, you generally have 12 years from that date of discovery to file a suit for the recovery of land. In the present case, the time limits are contested because there are three different ''start dates''.

63. The first is that the land was re-allocated to Kilesi Ole Lekutit on 29th August 2011. Based on this, the right to sue would have normally expired on 29th August 2023. Since the Appellant filed his application in December 2023, the Government argues he is roughly 4 months late and therefore "statute-barred."

64. Under Section 26, the 12-year clock only started when the fraud was discovered. The Appellant claims he only discovered the transfer when he was criminally charged on 28th April 2016, or after the hearing and determination of Naivasha CM Case No. 660 of 2016 on 23rd June 2020, and therefore, he had until 28th April 2028, or 23rd June 2032, to file his suit. Under this timeline, the Appellant was well within time; therefore, no special leave would technically have been required.

65. The second scenario where the 1st Respondent argues that the Appellant should have known sooner after the 1st Respondent obtained a Title Deed on 10th May 2013. They contend that because a Title Deed is a public record, the Applicant had constructive notice of the change in ownership as of 2013. Again, under Section 26 and the 12-year clock, if the clock started in May 2013, the limit expired in May 2025. The impugned application, having been filed in 2023, was before the expiry of the limitation period.

66. In the end, I find that the Appellant's Appeal succeeds, the trial court's ruling is herein set aside and substituted with the following orders:

i. The Appellant is hereby granted leave to file the intended Suit for recovery of land and cancellation of title out of time.
ii. The said intended suit shall be filed and served within fourteen (14) days from the date of this Judgement.
iii. The Respondents shall have liberty to file their respective defences within fourteen (14) days of service.
iv. Cost shall abide the outcome of the Suit.

Dated and delivered via Microsoft Teams at Naivasha this 14th day of May 2026.

M.C. OUNDO
ENVIRONMENT & LAND COURT – JUDGE