



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NAROK

ELC NO 2 OF 2019

KIONGA OLE KIPURY.....1ST
PLAINTIFF

LEITA OLE KIPURY.....2ND
PLAINTIFF

OLTEITA OLE KIPURY.....3RD
PLAINTIFF

VERSUS

KIPURY FAMILY GROUP RANCH.....1ST
DEFENDANT

KOINA OLE KIPURY..... 2ND
DEFENDANT

G.N. WERUGIA..... 3RD
DEFENDANT

CLIFF MUNDIA MUCHIRI.....4TH
DEFENDANT

GREENPOT ENTERPRISES LTD.....5TH
DEFENDANT

DISTRICT LAND REGISTRAR, NAROK.....6TH
DEFENDANT

**DISTRICT LAND ADJUDICATION AND
SETTLEMENT OFFICER, NAROK.....7TH**
DEFENDANT

JUDGMENT

1. By an amended Plaint dated **7th February 2024**, the Plaintiffs herein sought for Judgment against the Defendants jointly and severally for;

a) A declaration that all the subdivisions and transfer on land parcel previously known as Cis Mara/ Entontol/188 pursuant to the minutes of the 1st Defendant dated 7th July 2015, are irregular, illegal, null and void;

b) A declaration that all subdivision and transfer on the suit land pursuant to the transfer forms thumb printed by the 1st Plaintiff as a result of misrepresentation on the part of the 1st Defendant were irregularly obtained and are illegal, null and void;

c) A permanent injunction to restrain the 1st and 2nd Defendants or persons acting under their authority from carrying out any subdivision of the suit land and or disposing it to third party;

d) A permanent injunction to restrain the 1st and 2nd Defendants, their agents, servants and anybody else acting under their authority or direction from subdivision, selling, transferring or in any other manner dealing with the parcel of previous land registration number CIS Mara/ Entontol/188;

- e) An Order directing the Land Registrar, Narok to cancel ALL the titles issued out of illegal subdivision and transfer on land previously known as Cis Mara/ Entontol/188, and vest the land to Kipury Family Group Ranch for fresh subdivision;**
- f) Any other and further relief as the Honourable Court may deem fit to grant.**

2. It is the Plaintiffs' claim that at all material times, they were registered members of the 1st Defendant, who was the registered owner of the suit land **Cis Mara/Entontol/188**, measuring approx. **1335 Hectares**. Further, that the 2nd Defendant was one of the registered officials of the 1st Defendant holding the position of Chairman, and was involved in the day to day running of the 1st Defendant.
3. The Plaintiff claims that the 1st Defendant was formed about **1972**, and has had several committee members elected to run the affairs of the Group, among the duties being registration of members, which membership had grown to about **170 members**. The 1st Plaintiff, who is allegedly illiterate has been the secretary of the said Group Ranch since **1985**.
4. The Plaintiffs also claims that there is a suit pending in **Nakuru: ELC NO 302 OF 2015: NTITIMA OLE RATIA & 200 OTHERS VS KIPURY FAMILY RANCH & 8 OTHERS**, which touches on the subject matter, but has a totally different cause of action. That because of the said case at Nakuru, in **July 2015**, the 2nd Defendant as the Chairman of the 1st

Defendant, fraudulently informed the 1st Plaintiff that his signature was required for the purposes of having said **ELC NO 302 OF 2015**, at Nakuru withdrawn, and amicably settled out of court.

5. The Plaintiffs further claimed that instead of court documents, the 1st Plaintiff had in fact thumb printed on a land transfer form, and related documents which the 2nd Defendant used to obtain subdivision of the suit land and transferred the resultant subdivisions to various persons, among them **Kingwala Ole Kipury**, land parcel No **Cis Mara/ Entontoi/ 372** measuring **8.32 Ha** and **Green Port Enterprises Ltd**, land parcel No **Cis Mara/ Entotoi/292**, measuring **92.5ha**.
6. The Plaintiffs particularised fraud in **para 21** of the Plaint, among it being forgery of the signatures on the minutes of the meeting held on **7th July 2015**, and inclusion of minors into the allocation list and falsely using them to transfer land parcel to third parties.
7. The Plaintiffs further particularised fraud on the part of the 1st and 2nd Defendants among them being that; they falsely misrepresented that **Kishanto Ole Kipury and Kadipo Ole Kipury** were **secretary** and **treasurer** of the Group, a fact they knew to be false and not true.
8. Further, the Plaintiffs alleged that the **3rd, 5th, 6th and 7th Defendants**, condoned and /or colluded with the **1st and 3rd Defendants** by *encouraging and facilitating* the *illegal and fraudulent subdivision* of the suit land. Further, that the 6th

Defendant despite numerous complaints and full knowledge of complaints relating to the land parcel has continued to facilitate the subdivision and transfer of the suit land.

9. The particulars of the **3rd, 5th, 6th and 7th Defendants'** fraud was enumerated in para 24 of the Plaint, among them, failure to scrutinize the bonafide officials of **Kipury Family Group Ranch**, and also scrutinize list of bonafide members who had passed on.
10. The Plaintiffs claim against the Defendants is for an order directing the Land Registrar, Narok to cancel the titles illegally issued out of illegal subdivisions and transfer of the suit land, and vest the land back to **Kipury Family Group Ranch**. They urged the court to allow their claim.
11. The suit is vehemently opposed by the Defendants herein. The 1st and 2nd Defendants filed their Statement of Defence dated **15th May 2023**, through **Ochengo Onduso & Co Advocates**, who denied all the allegations made in the Plaint. They did put the Plaintiffs to strict proof thereof.
12. The **1st and 2nd Defendants** denied all the allegations of fraud attributed to them, and averred that all the relevant consents were obtained justly and the transfer of ownership is legal.
13. Further, they claimed that the sale agreements were done as required by the law, and in the presence of an advocate, and the purchasers are indeed purchasers for value. Further, it was their allegation that the meeting that was held on **7th July**

2025, was conducted as per the Constitution of the 1st Defendant, and the minutes are proper.

14. They also claimed that the resultant subdivisions were as a result of unanimous decisions by the members of the Group Ranch, and all the necessary procedures were followed together with the required consents, which were obtained. Therefore, the 5th Defendant is an innocent purchaser for value, and the interest that he has on the suit property was legally acquired.
15. The **3rd, 4th and 5th Defendants** filed their Statement of Defence dated **6th November 2023**, and denied all the allegations made against them in the Plaint, and did put the Plaintiffs to strict proof thereof.
16. The **3rd, 4th and 5th Defendants** denied all the particulars of fraud attributed to them, and averred that all legal procedures were duly adhered to prior to the sale, subdivision and transfer of the respective portions of land. Therefore, they alleged that the Plaintiffs' claim is **frivolous** and **vexatious** which ought to be disregarded in totality.
17. They denied ever having received any demand, and notice to sue. Consequently, they urged the court to dismiss the suit with costs.
18. The **6th, 7th & 8th Defendants** filed their Statement of Defence dated **7th May 2019**, through the Office of the ATTORNEY GENERAL, and also denied all the allegations of fraud attributed to them. It was their contention that they are

privity to the issues of fact as pleaded, and the same remain disputed matters between the Plaintiffs and the **1st to 4th Defendants**, and did put the Plaintiffs to strict proof thereof.

19. They also denied that the 1st Defendant is the registered owner of land parcel **No Cis Mara/Entontoi/188**, and did put the Plaintiffs to strict proof. They further contended that the Plaintiffs are not entitled to the prayers sought in their Plaint, and did put them to strict proof thereof.
20. Further, they denied having received any Demand and Notice to sue from the Plaintiffs. Further, without prejudice, they pleaded that should the court find them culpable for the subdivision and registration of transfers in relation to **Cis Mara/ Entontoi/188**, in relation to the information and misrepresentation of the 1st, 2nd, 3rd, 4th and 5th Defendants, and that the Plaintiffs will have suffered loss, they will seek indemnity under **Order 1 Rule 24** of the **Civil Procedure Rules** as against the said Defendants.
21. After several applications and pre-trials conferences, the matter proceeded for inter-parties hearing through viva voce evidence as from **18th September 2024**, wherein the Plaintiffs called three witnesses to support its case. The 1st and 2nd Defendants did not call any witness, the **3rd, 4th and 5th Defendants** called one witness. The **6th, 7th and 8th Defendants** participated in the proceeding through the Attorney General, but did not call any witness to support their Defence.

PLAINTIFFS' CASE.

22. **PWI Kiunga Ole Kipury**, one of the Plaintiffs, adopted his witness statements dated **3rd December 2018** and **21st February 2024**, as his evidence in chief. He further testified that the suit land is in **Olkinyei area** near **Melili**, at **Entontol Location**, and the size of the suit land is about **7800 acres**. He further testified that the land in question is a Group Ranch land, which Group Ranch was founded by one **Kipury** who was their grandfather. That all the residents hail from the same lineage of their grandfather, but **Koina** brought other non-family members.
23. Testified that, **Koina** the 2nd Defendant, who was the Chairman of the Group Ranch sold the suit land, without knowledge of the committee members or the consent of the members. He alleged that the subdivision and sale of the land was done fraudulently, and the purchasers are in wrongful occupation.
24. He urged the court to order that the land do revert back to the Group Ranch, so that their children can get land. It was his evidence that the matter has been reported to the Government officers.
25. In cross examination by **Mr Langat** for the 3rd, 4th and 5th Defendants, he confirmed that he was the secretary of the Group Ranch since it was formed. However, he testified that there was one **Oloolasho Kantet Kishanto Ole Kipury**, who used to refer himself as the secretary, and one **Kadipo**

Ole Kipury, used to refer himself as the treasurer, but he was the only original member.

26. He claimed that the persons who purchased the suit land did so fraudulently, and though he occupies **20 acres** of the suit land, he does not have a title deed, since he has not paid for it, as the subdivision was not done properly. He further claimed that he was entitled to **600 acres**, just like all the other members. It was his contention that his children have not been allocated land by the Group ranch, and there are many people in the area list who were not supposed to have been allocated land.
27. He also claimed that he was not present when the sale agreement between the 1st Defendant and 5th Defendant was drawn, and he was not aware of the meeting held on **18th May 2014**, at the **District Land Adjudication and Settlement Officer's Office (DLASO), Narok North**. He also did not know where the funds to facilitate the subdivision of the Group Ranch Land came from. He also testified that he could not remember the meeting of **5th July 2015**.
28. It was his evidence that he did not know about the **Land Control Board Consent** to the **Group Ranch** to subdivide the land, and he was surprised about it, and the land was transferred without his knowledge, and he complained about it to the police.

29. He also confirmed that he did not know all the children of the **Kipury Family**, and that the Group Ranch was subdivided in an opaque manner, but if it was to be proved that the subdivision was done in a proper manner, he would withdraw the claim. He did not know how much the 5th Defendant paid for the land, but he was certain the Group Ranch did not attend the Land Control Board meetings.
30. Upon being cross examined by **Ms Kirina**, for the 6th, 7th and 8th Defendants, he testified that he did not know that the documents produced by him bore his thumb print. Further, that though he testified that the Land Registrar fraudulently registered the subdivisions, he did not produce any report of the fraudulent instances. He confirmed that he reported the matter to the police, but he did not produce the police report on investigations of fraud.
31. He also confirmed that the transfer documents bore his passport photo, and his thumb print. However, he denied that the thumb print in the consent documents was his, and he did not know the owner. He could not tell where the area list came from, and he signed it, he signed without knowing what it was for.
32. On re-examination, he confirmed that he is still the secretary of the Group Ranch, and the Defendants sued are the fraudsters, and that he resides on the suit land. He reiterated that the members of the Group Ranch were entitled to be allocated **600 acres each**, and that the Group Ranch had a proper area list when there was no dispute, and that the area

list referred to by the Defendants is not the one that they had agreed upon.

33. It was his evidence that though the transfer documents bore his thumb print and photo passport, it was not explained to him why he was thumb printing the documents, and the 2nd Defendant is the one who directed him on the thumb print and told him that they were to subdivide the Group Ranch land. He also reiterated that they have reported the matter to the police severally, and that they were to call the police as their witness. He also reiterated that **Koina**, the 2nd Defendant took the wrong area list to the Land Registrar that was used for subdivision, and he was not invited by the Land Registrar during the subdivision.
34. **PW2 George Kipury**, who resides in **Olkinyei**, in **Ole Kipury Family Group Ranch**, testify that he is a businessman and a farmer. He adopted his witness statement dated **26th February 2024**, as his evidence in chief. He further testified that he is a member of **Kipury Family Group Ranch**, and his father was **John Lemeria Ole Kipury**, who had a parcel of land in the Group Ranch.
35. That in **2000**, he moved into the area, and he was shown his family land and he put up a house thereon. Further, that non-members were included in the Group Ranch by the Chairman of the committee, and he did not involve other committee members. The 1st Plaintiff was the secretary of the Group Ranch, and **Kituli** was the Vice chairman, but were not

involved. He claimed that some members were removed from where they had settled.

36. It was his further testimony that some non-members were allocated land, even though they were not members of the Group Ranch. He claimed that his land has been fenced after a non-member bought land nearby.
37. Upon being cross examined by **Mr Langat**, for the 3rd, 4th and 5th Defendants, he confirmed that he resides on the Group Ranch Land, but he did not know the parcel land number, though he inherited it from his father. He claimed that his brother also resides on the said suit land, and that he was aware that the 5th Defendant owns about **250 acres**, out of the suit land, and that members had resolved to sell the land so that they would get money to cover for the subdivision of the suit land.
38. However, even after the sale, members were still required to pay money for subdivision, because the money received from the 5th Defendant was not used for the intended purpose. Though he named the officials of the Group Ranch as **Koina** the Chairman, **Kionga** the Secretary and **Kantet Ole Kipury** the treasurer, he did not know how they were elected. He denied that one **Kishanto** was the secretary, and that **Kodipo** was the treasure. However, he confirmed that the two were appointed by the Group Ranch to assist the Chairman during the sale of the land to 5th Defendant.
39. It was his further evidence that the non-members who were allocated land were invited by the Chairman of the Group

Ranch. He faulted the minutes of **7th July 2015**, because members were not involved, though the meeting was held within the Group Ranch. He also testified that though **53 members** attended the meeting, he did not attend, and most of the people who attended the meeting are children, and he denied having signed against his name.

40. However, he testified that he did not have a report from the **DCIO** to show that he reported that he did not attend the meeting, and there was a signature against his name. further, that the members had resolved to amend the area list, but they did not attend the meeting to amend as resolved, but the chairman amended alone. He further testified that the original Group Ranch had 15 members, but the numbers had grown due to the addition of the children of the original members, and he did not know how many they were.
41. Further, that he did not know that the **Land Control Board** approved the subdivision, and he had not seen the consent to subdivide from the Land Control Board. That **Koinga** told him he did not sign the **transfer forms**, and that non-members were allocated parcels of land that were far much better than those allocated to members.
42. Upon being cross examined by **Ms Kirwa** for the 6th, 7th and 8th Defendants, he stated that he sued the Land Registrar because of transferring land in the absence of members. Further, he testified that he knows that the Land Registrar

transfer land based on the documents presented and received by him.

43. Further, that though they complained of fraud, the report was with the officer who investigated the said issue of fraud. That they have tried to remove the Chairman through the **AGM** to no avail, and that is why they have turned to court. That they even complained to the **DC, DCIO** and **Land Registrar**, and they were not assisted.
44. On re-examination, he confirmed that Green Port the 5th Defendant owns land in the area, which is about **250 acres**, and the purpose of selling the land was to facilitate surveying, but they were later asked to meet the survey expenses, as can be confirmed from the survey fees produced as exhibits. He totally denied having attended the meeting of **7th July 2015**, and that he was not aware of it. That members had not been allocated land when non-members were added, and they complained to the **DCIO** over fraud and the office of the DC.
45. Though the Plaintiffs had indicated they would call one more witness, an officer from the **DCIO**, they failed to do so, and closed their case having called only **Pw1 and Pw2**.

DEFENCE CASE

1ST -5TH DEFENDANTS' CASE.

46. **DW1 James Ochengo Onduso**, an advocate of the High Court practising in the Law Firm of **Ochengo Onduso & Co Advocates**, testified that on **18th March 2015**, he executed an agreement between **Kipury Family Group Ranch** and

Green Port Enterprises Ltd, as Kipury Family Group was selling land parcel **No Cis Mara/Entontol/188**, measuring **150 acres** for **ksh 9000,000/=**.

47. It was his evidence that the total purchase price was paid in full and the Chairman, Secretary and Treasurer were paid the full purchase amount. That there were witnesses for both vendor and purchaser, and he signed the sale agreement too, as he was representing both the seller and buyer. The officials of **Kipury Family Group** were **Koina Ole Kipury** and **Kishanto Ole Kipury**, and all payments were made and there was no balance.
48. The witness was not cross examined.
49. **DW2 Kuki Kathomi Njeri**, a Director of **Green Port Enterprises Ltd**, told the court that the company plants and grows Bamboos and then process them, and that the other Directors are Mundia **Muchiri** and **Carol Wambugu**. She adopted her witness statement dated **19th March 2025**, as her evidence in chief. She also produced her list of documents **DEXHIBITS 1-2**.
50. She identified two sale agreements for purchase of two land parcels, which came to total of **280 acres**, which were subdivisions of land parcel No 188. She also testified that the officials of the Group Ranch were present, and they dealt with the chairman **Koina Ole Kipury** and their other members were present too.

51. That the Group Ranch was selling the Land, so that they can get enough money to subdivide their bigger parcel of land and issue titles to individual members. That the purchaser paid the full consideration, and she denied that the titles in issue were acquired **fraudulently**, since the Company as the purchaser, paid the full purchase price, and they were allocated their respective land after following all the due process. she produced the list of documents as **DExhibits 1 to 6**, and **Supplementary List** as **Dexhibits 8-12**.
52. On cross examination by **Mr Kanyonge** for the Plaintiffs, she testified that even if she had alleged that she was a Director of the 5th Defendant, she did not produce any documents to confirm her Directorship. She did not produce any authority to appear for **Green Port Enterprises Ltd**, but since she is a founder of the Company, she has permission to appear, as she is not a stranger to Green Port. She confirmed that she had a copy of the sale agreement, and that the company purchased **27 acres** from **Koina Ole Kipury**. The sale agreement was dated **17th November 2015**.
53. It was her evidence that the purchaser paid the full purchase price for **227 acres**, and the land was owned by **Kipury Family Group Ranch**, and Koina Ole Kipury was not the absolute owner of land parcel **No Cis Mara/ Entontol/188**. That the acknowledgement for receipt of the money was done by **Koina Ole Kipury**.
54. It was her evidence that all the acknowledgements for receipt of the purchase price were done by **Koina Ole Kipury**, who

was the chairman of the Group, and there was no evidence of payment to the **Kipury Family Group Ranch**. She did not have any confirmation that **Kipury Family Group Ranch** was paid the purchase price. She also confirmed that she heard and learnt about the contention on the subdivision of the suit land, and she is aware of the criminal investigations over the sale of the suit land.

55. It was her evidence that **Ole Ntaiya** was not an official of the Group Ranch, but he introduced them to the officials of the Group Ranch, as a land Broker. She did not know why **Koina Ole Kipury** did not testify in the matter. She also did not know if any official of the **Kipury Group Ranch** did testify in court.
56. The Attorney General did not cross examine him, and in re-exam, she confirmed that the registered owner of the original title was **Kipury Family Group Ranch**, where individuals owned the land. Further that **Koina Ole Kipury** was selling the **Family Group Ranch Land**, and the initial payment was made to the Group Ranch. That the Group Ranch gave permission for sale of the suit land, and payments were made through **Advocate Onduso**, who acknowledged receipt of the money.
57. After the viva voce evidence, parties' filed and exchanged written submissions. The Plaintiffs filed their submissions dated **16th January 2026**, through **Kiskan Law Africa LLP**, and urged the court to allow their case. the Plaintiffs set out five issues for determination;

- i) Whether there is a breach of fiduciary duty by the 2nd Defendant;**
- ii) Whether the 6th & 7th Defendants acted in breach of duty;**
- iii) Whether fraud has been established;**
- iv) Does the 5th Defendant have a valid title;**
- v) The courts responsibility.**

58. On **issue No 1**, the Plaintiffs relied on **Black's law Dictionary (11th Edition)** on the definition of *fiduciary duty*; they also relied on the case of **Mukuha vs Waweru Jackson t/a Waweru Munyi & Co Advocates (2022) KEHC 16682(KLR)**, and submitted that the 2nd Defendant was required to exercise utmost good faith, and he was expected to act with the highest degree of honesty and loyalty, and in the best interest of **Kipury Family Group Ranch** ,but he acted in clear conflict of interest, and solely for his own benefit. Therefore, the Chairman failed the said Kipury Family Group Ranch.

59. On **issue No 2**, the Plaintiffs relied on the case of **Arthi Highway Developers Ltd vs West End Butchery Ltd & 6 Others (2015) KECA 816 (KLR)**, and submitted that the court should find and hold that the **6th and 7th Defendants** acted negligently in breach of duty by failing to investigate the complaints by the Plaintiffs and interrogate the documents submitted by the 2nd Defendant. Further, that the Land Registrar had the responsibility of ensuring the accuracy of documents presented during registration of subdivisions and subsequent transfers. That the proper procedure of

having all the subdivisions registered in the name of the Group Ranch, and later transferred to the individual members was not followed.

60. On **issue No 3**, the Plaintiffs quoted the **Black Law Dictionary** on the definition of **fraud**, and further submitted that fraud is a serious accusation, which must be pleaded and proved on the required standard. Reliance was sought in the Case of ***in Lawrence Vs Lord Norreys (1880) 15 App. Cas 2010 at 221***, where the court held; *the statement of claim must contain precise and full allegations of fact and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of*".
61. On the **issue No 4**, the Plaintiffs relied on the case of ***Dina Management Ltd vs County of Mombasa & 5 Others (Petition 8 E010) of 2021(2023) KESC 30 (KLR)***, which settled the legal position that one cannot claim right to property under **Article 40**, while relying on a title deed that was not acquired regularly.
62. Reliance was also sought in the cases of ***Denis Noel Mukhulo & Another vs Elizabeth Murungari Njoroge & Another CA, No. 298 of 2013*** and ***Samuel Kamere vs land Registrar Kajiado (Civil Appeal No 28 of 2005***, where the Court of Appeal referred to the case of ***Munyu Maina vs Hiram Gathiha Maina, Civil Appeal No 239 of 2009***, and submitted that the 5th Defendant's title is challenged, and should have brought sufficient evidence to prove the root of it title.

63. On **issue No 5**, the court was urged to be guided by the law and facts, interrogate legal compliance and non-compliance and administrative irregularities, and find a remedy in the face of the glaring issues raised by the Plaintiffs, and finds that the Plaintiffs have proved their case on the required standard of balance of probabilities, and allow their claim as sought in the amended plaint.
64. The 1st to 5th Defendants filed their submissions dated **15th December 2025**, through **D. Langat & Co Advocates**, and after laying the background of the case, they set out five issues for determination being;
- i) Whether the Plaintiffs proved fraud forgery, misrepresentation or irregularity in the 7th July 2015 meeting, minutes, subdivisions (Cis Mara/ Entontol/ 269-427, and transfers including to the 5th Defendant and others;**
 - ii) Whether the 92.5 ha land was sold to 4th and 5th Defendants fraudulently or without proper authority;**
 - iii) Whether the 5th Defendant is a bona fide purchaser, holding indefeasible title under Land Registration Act;**
 - iv) Whether the suit is defective for non-joinder of non-members allottees and other interest holders;**
 - v) Whether the testimony of Dw2(Kuki Kathomi) is credible and reliable notwithstanding the absence of CR12, Certificate confirming her directorship in the 5th Defendant.**

65. On **issue No1**, they submitted that allegations of fraud must be particularized as was held in the case of **Mutsonga vs Nyati (1984) KLR**; and further submitted that the 4th and 5th Defendants offered explanation on how the subject land parcels were transferred to them. It was their further submissions that all the due process was followed, and the process of transfer was legal.
66. Further, they submitted that the Plaintiffs who bore the burden of proof were not able to effectively discharge that burden. They relied on the case of **Gudka Vs Keshavji Jivraj Dodhia (1982) eKLR**; and submitted that despite the plaintiffs alleging that they reported the matter to the **DCI**, on forgery, falsified minutes, forged signatures, false attendance, non-notification and non-members inclusion, there was no forensic report produced to support that allegation.
67. On **issue No. 4**, it was submitted that the suit was defective for non-joinder of allottees and other interest holders, and court cannot nullify titles without hearing proprietors as provided by **Article 50(1)** of the Constitution on the right to be heard.
68. On **issue No. 5** on whether the testimony of **DW2**, is credible and reliable notwithstanding the absence of **CR12 Certificate**, it was submitted that her testimony is credible as documentary evidence was not the only evidence to prove the case, as oral evidence was corroborated and was consistent. Reliance was sought in the case of **Okiya**

Omtatah vs Communication Authority of Kenya, and further submitted that the evidence of DW2, was corroborated by the other documents produced as exhibits.

69. In conclusion, the **1st to 5th Defendants** submitted that the Plaintiffs have failed to discharge their onerous task, and they argued that the sale of **92. 5 acres** to the 4th and 5th Defendants was lawfully executed by duly authorised Group Ranch officials, as per the resolution of the members. Therefore, the 5th Defendant was a bona fide purchaser for value without notice, and is entitled to indefeasible title under the ***Land Registration Act, 2012***.
70. They urged the court to dismiss the Plaintiffs suit with costs to the 1st and 5th Defendants.
71. The **6th, 7th and 8th Defendants** who were represented by the Attorney General did not file their written submissions, and did not call any witness to support their Defence.
72. The court has considered the pleadings herein, the evidence adduced in court, together with the exhibits produced by the parties, the rival written submission alongside the cited authorities and the relevant provisions of law, and renders itself as follows;
73. What is not in dispute is that the ***Ole Kipury Family Group Ranch*** was the registered owner of land parcel ***No Cis Mara/Entontol/188***, which is now closed upon subdivision. This Group Ranch was established by the ***Kipury Family***, and the

original or initial members are now deceased. The **Kipury family** trees or lineage has grown in number and size.

74. There is also no doubt that the dispute herein is over the subdivision, transfer and registration of the subdivisions of **Cis Mara/ Entontol/188**, which was initially owned by **Kipury Family Group Ranch**. Further, it is evident that the 4th and 5th Defendants purchased about **280 acres** from his Group Ranch on or around **2018**.
75. Further, from the evidence of the Plaintiffs witnesses, the Chairman of the Group Ranch is **Koina Ole Kipury**, the 2nd Defendant herein. The 1st Plaintiff is the Secretary, and there are other officials, who did not play an active role in this suit.
76. Further, from the exhibits produced in court, it is evident that for the sale of the suit land to 5th Defendant, **transfer forms** were signed, and application to the **Land Control Board**, was also signed and thumb printed by the Officials of the Group Ranch, the passport photos of the officials are also appended to the **transfer Forms**.
77. The Plaintiffs alleged that they did not sign the **transfer forms** nor the **Application Form** to the **Land Control Board**, and that the thumb print of the 1st Plaintiff was obtained through misrepresentation. Further, that the minutes of **7th July 2015**, were a forgery.
78. The 1st to 5th Defendants denied those allegations, and averred that the members of the Group Ranch **unanimously**

resolved to sell a portion of the suit land to 5th Defendant so as to obtain money for subdivision of the rest of the land, and payment for title deeds to individual members. The 2nd Defendant denied forging the minutes of **7th July 2015**.

79. Therefore, it is evident that the Plaintiffs have alleged, and the Defendants have denied those allegations. It is trite that he who alleges must prove. The Plaintiffs being the ones who have alleged, it is trite that the burden of proof was upon them as provided by sections **107, 109** and **112** of the **Evidence Act**.

80. In the case of **Anne Wambui Ndiritu -vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, the Court of Appeal held that:

“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 cast 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.”

81. From the available evidence, have the Plaintiffs herein discharged their duty of proving case on the required standard of balance of probabilities?
82. The Plaintiffs allegations are anchored on *fraud, misrepresentation* and *forgery*. Allegations of fraud are serious allegations, and they not only need to be pleaded, but also needed to be particularised and proved on the required standard.
83. In the case of **Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] KECA 223 (KLR)**, the Court held as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts. See Davy v Garrett (1878) 7 Ch. D 473 at 489.”***
84. Further in the case of **in R. G. Patel v. Lalji Makanji [1957] EA 314**, the former Court of

Appeal for Eastern Africa explained the standard thus:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

85. The court will scrutinise the pleadings herein, the evidence of the parties, especially the Plaintiffs and their witness to determine whether the Plaintiffs have discharged their onerous task of proving the case on the required standard of balance of probabilities.

86. The court finds there only two issues for determination;

i) Whether the Plaintiffs suit is merited?

ii) Who should bear costs of the suit.

i) Whether the Plaintiffs’ suit is merited?

87. The bone of contention herein is whether the suit property herein ***Cis Mara/Entontol/188***, was *irregularly* and *fraudulently* subdivided into several land parcels known as ***Cis Mara/ Entontol/269-427***.

88. The Plaintiffs averred that the 2nd Defendant subdivided the suit land without the knowledge of the committee members, including the 1st Plaintiff who was the secretary, and later sold the subdivisions to non-members without involving the members, and did not remit the money to the ***Group Ranch***, or use the purchase price for the intended purpose.

89. The 1st Plaintiffs as **PW1**, admitted that he thumb printed the transfer forms after being misled by the 2nd Defendant that he was signing the forms for withdrawal of the case that was pending in Nakuru ELC.
90. The Plaintiffs further alleged that the 2nd Defendant forged the signatures of the meeting of **7th July 2015**, falsely stated that **Letia Ole Kipury**, attended the said meeting, and that **Kishanto Ole Kipury** and **Kadipo Ole Kipury**, were secretary and treasurer of the Group Ranch, a fact he knew was false.
91. These are very serious allegations of fraud, which apart from being pleaded, must be proved through calling of evidence. The Plaintiffs needed to call sufficient evidence to prove these serious allegations of fraud and forgery. It was not just enough to just allege, evidence needed to be adduced to support each and every allegation made. See the case of **Kinyanjui Kamau v George Kamau [2015] eKLR** the Court held as follows:

***“It is trite law that any allegations of fraud must be pleaded and strictly proved. see Ndolo vs Ndolo [2008]1KLR (G & F) 742 wherein the court stated that “.. we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the allegation lay squarely on him.*”**

Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...” In case where fraud is alleged it is not enough to simply infer fraud from the facts.”

92. The 1st and 2nd Defendants in their Defence averred that the subdivision in issue was a result of *unanimous decisions* by members, and that all necessary procedures were followed, and relevant consents were obtained. With the denials made by the Defendants, the burden of proof remained with the Plaintiffs. See the case of ***Jennifer Nyambura Kamau -vs- Humphrey Mbaka Nandi [2013] eKLR.***
93. Firstly, the 1st Plaintiff as ***PW1***, alleged that sometime in ***July 2015***, the 2nd Defendant fraudulently told him to sign some documents so that the said documents could be used for withdrawal of ***ELC No. 302 of 2015***, which had been filed in Nakuru. The 1st and 2nd Defendants denied that allegation, and averred that the members of ***Group Ranch unanimously resolved*** to have a portion of the suit land sold, so that they could meet charges for survey and subdivision of the suit land.

94. That being the case, the Plaintiffs needed to prove that indeed the 2nd Defendant misrepresented to the 1st Plaintiff the intention of the thumb print in the transfer form. The court has seen that the said **transfer Form** was signed before **Karanja Mbugua Advocate** who appended his signature to confirm that **the transfer form** was signed in his presence.
95. The Plaintiffs did not call the said **Karanja Mbugua Advocate** as their witness to confirm whether the 1st Plaintiff appeared before him with the other signatories, and he appended the said thumb print, knowing the reasons for the said thumb print or not. Failure to call the said **Karanja Mbugua Advocate**, will leave no option but for this court to hold that his evidence would have been adverse to the Plaintiffs case. See the case of **Kimotho -v- KCB [2003] 1 E.A 108**.
96. There is no doubt that at the time of the alleged subdivision and transfer, the 2nd Defendant acted as the Chairman of the Group Ranch, and the 1st Plaintiff was the Secretary. The transfer Forms are signed by the three officials of the Group Ranch, and unless cogent evidence is availed, this court would find no reasons to hold and find that the thumb print of the 1st plaintiff was affixed on the said **Transfer Form**, through misrepresentation, as a **Certificate of title** is considered prima facie evidence of absolute ownership under the **Land Registration Act of 2012**. See the case of **King'oo v Mwangi [2019] KECA 734 (KLR)**.

97. Further, in the Plaint, and evidence of **PW1**, the Plaintiffs alleged that the 3rd Defendant *facilitated irregular subdivision, colluded and collaborated with* the other Defendants to illegally transfer the subdivisions of the suit property to non-members of the Group ranch.
98. These are indeed very serious allegation, because if they are found to be true, the registered owners of the said subdivisions, will be deemed to have acquired good titles, and thus the said titles will be candidates for cancellation. See **sections 26(1(a)(b) and 80(1)** of the **Land Registration Act**.
99. From the Defence of 3rd, 4th and 5th Defendants, it is evident that they have denied the claims by the Plaintiffs and contended that in the ensued subdivisions and transfers, all legal procedures were duly adhered to prior to the subdivision and sale and transfer of the respective portions of land.
100. What exactly did the 3rd Defendant do, and how did he do it to warrant the Court find and hold that he facilitated irregular subdivision. The 3rd Defendant is a surveyor, who was contracted to carry the survey work by the officials of the Group Ranch. He could only be held personally liable if he acted negligently or irregularly, but the Plaintiffs did not adduce evidence to that effect. This court would find it difficult to hold and find that the 3rd Defendant indeed facilitated irregular subdivision of the suit land. See the case of **Nzomo v Mwandoto (Environment and Land Case**

***E002 of 2021) [2025] KEELC 5848 (KLR) (17 July 2025)
(Ruling).***

101. Further, the 1st Plaintiff had averred that he is an old man of 60 years, illiterate, and only knew how to effect thumb prints to documents, and he was misled. However, he did not call a witness to corroborate his evidence that he put his thumb print on the transfer documents without knowing the implications. See the case of ***Kibathi t/a Osoro Chege Kibathi & Co Advocates v Musti Investments Ltd [2024] KECA 270 (KLR)***.
102. The 1st Plaintiff alleged that he did not affix his thumb print on the Application Form for Consent to subdivide which was presented to the ***Land Control Board***. The Defendants denied that allegations, and argued that indeed the 1st plaintiff willingly affixed his thumb Print to the Application for Consent to transfer.
103. The Court has considered the said Application, and it bears the rubber stamp of the ***Deputy Commissioner Narok North Sub County***. If the plaintiffs indeed wanted the court to find and hold that he did not affix his ***thumb print*** to the Application Forms, he ought to have called a witness from the ***Land Control Board*** or the ***Deputy County Commissioner***, to confirm or dispute, whether the 1st plaintiff appeared before them. This was not done, and the court presumes that their evidence would have been adverse to the plaintiffs' case.

104. The 1st Plaintiff disputed the **thumb print** on the Application form for consent to transfer, and alleged that it was not his thumb print. How could such allegation be proved? By availing Forensic Report, from the registrar of persons to confirm whether the thumb print affixed on the Application Form was for 1st plaintiff or not. That was not availed, and this court would find no reason to doubt that the thumb print on the Application Form for consent of Land Control Board, is not for 1st Plaintiff.

105. The court has also considered the particulars of fraud as enumerated in the Plaint. It is trite that fraud must not only be pleaded and particularised, but evidence must be availed to support the stated particulars. See the case of **Kiarie & 2 others v Magera [2018] KECA 467 (KLR)**, where the Court of Appeal held;

“ The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA (as he then was) states as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is

not allowable to leave fraud to be inferred from the facts.”

106. The Plaintiffs alleged forgery of minutes of **7th July 2015**, falsely stating that **Letia Ole Kipury**, and collusion of the Defendants in failing to ascertain forgeries. The particulars are allegations that needed to be proved by availing evidence of such forgeries, and collusion. See the case of **Richard Akwesera Onditi v. Kenya Commercial Finance Co Ltd [2010] eKLR**, where the Court of Appeal held;

“...fraud and collusion are serious accusations and require a very high standard of proof, certainly above mere balance of probability and the bare allegations put forward by the Appellant do not therefore avail him.’

107. The court has seen the alleged minutes of **7th July 2015**, and quite a number of people are indicated to have attended. It was alleged that the signatures on the minutes were forged. Which were the forged signatures? None of the persons named as having attended the meeting were called as witnesses to dispute their attendance. How will they could believe that the minutes were forged? See the case of **Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR** where the Court of Appeal held; *that the mere allegation of fraud is not proof of fraud.*

108. The Plaintiffs alleged that **Letia Ole Kipury**, did not attend the meeting of **7th July 2015**. Letia Ole Kipury is the 2nd Defendant, and he recorded a witness statement, but did not

attend court to testify. without his evidence in court, the contents of witness statement are mere allegations, and the court finds and holds the particulars that **Letia Ole Kipury** was falsely stated to have attended the meeting of **7th July 2015**, were not proved on the required standard, as the court cannot simply infer fraud; it must be clearly established and proved by evidence. See the case of **Kingori v County Government of Nairobi & 2 others (2025)**.

109. It was alleged that the 1st Defendant *fraudulently* and *illegally* executed a sale agreement in favour of the 4th Defendant for sale of **150 Acres** for **ksh 9 Million**, by using unauthorised persons. However, the 1st to 5th Defendants through DW1, adduced evidence and averred that the sale of subdivisions of the original suit land, was above board, as members of the Group Ranch had resolved to sale **150 acres** to cater for, survey, subdivision and titling of the resultant subdivisions.
110. To support the above allegation, DW2, produced in their bundle of documents dated **8th July 2015**, wherein the members of the Group Ranch resolved to each give out 4 acres out of their portions of land to make **150 acres** and sale it to 5th Defendant, to cater for subdivision expenses.
111. The 1st to 5th Defendant therefore rebutted Plaintiffs allegations of *fraudulent* and *illegal sale* of the suit land. With the said rebuttal, the burden of proof shifted back to the Plaintiffs, and needed to call evidence to disapprove that the meeting of **8th July 2015**, did not take place, and the persons named therein did not attend. The plaintiffs did not do so, and

the court believe that indeed, Members of the Group ranch resolved to sale a portion of their original land, so that they can offset survey and subdivision costs.

112. The court has also seen the minutes of the meeting that was convened by the **District Lands Adjudication and Settlement Officer**, Mr. Julius Njeru on **18th August 2015**, and after a lengthy deliberation, members voted on whether or not to sale a portion of the suit land, and majority voted for a **YES**, and the vote of the majority carried the day, and the court finds and holds that indeed, there was a vote by majority of the Group members for sale of a portion of the suit land to 5th Defendant.

113. Further, **PW2, George Ole Kipury**, testified that the members of the Group Ranch had resolved to sell some land to offset the subdivision exercise, and the sale was led by **Koina ole Kipury**, the chairman of the Group Ranch. In cross exam, he confirmed that the Members also appointed **Kishanto and Kadipo Ole Kipury**, to assist the Chairman.

114. If **Kishanto Ole Kipury** and **Kadipo Ole Kipury** had been appointed by the members of the Group Ranch to assist **Koina Ole Kipury** in the sale of the portion of the suit land, how could the plaintiffs allege that the sale agreement was executed by unauthorized persons?

115. In his evidence in court, and witness statement, **PW1, Kionga Ole Kipury** alleged that they have made several complaints to the **District Commissioner, DCIO, other**

Government offices and **Land Registrar**. However, the Plaintiffs did not produce any evidence of such complaints, nor the investigation Report of such complaints of **Fraud** or the alleged **forgery**. Without the **OB number**, investigation report, or evidence of witnesses from any of the named offices, then this court cannot hold and find that indeed, there were several reports made to government offices of such complaints or any complaint from the Plaintiffs.

116. The 3rd plaintiff had alleged in the Plaint that as a member of the 1st Defendant, he did not authorize the 1st defendant to share his position with anybody. What was the position of the 3rd Plaintiff? He did not appear in court to adduce evidence to support his averments and allegations. How could he prove his assertion if he failed to attend court? Mere allegations, remain mere allegations and cannot prove a case on he required standard. See the case of **Motex Knitwear Limited V Gopitex Knitwear Mills Limited [2009] Kehc 4017 (KLR)**

117. In his witness statement, the 1st Plaintiff had alleged that the 2nd Defendant and area chief presided over illegal succession **Parsokonte Kipury**, and illegally allocated his share to **Stanley Patita Ole Kipury**, who was a grandson to the said **Parsokonte Kipury**.

118. In the alleged letter of **29th April 2017**, the Assistant Chief has named four dependants, Stanley being one of them. The other three who are alleged to have been disinherited were not called as witnesses, and this court cannot hold and find

the said allegation to have been proved on the required standard of balance of probabilities.

119. Further, PW2, in his witness statement had alleged that the Group Ranch had a loan, from Agricultural Finance Corporation (AFC), which was to be repaid through the sale of a portion the suit land. However, the Government paid the loan, but the chairman still insisted on selling the suit land. There was no evidence of payment of the said loan by the Government, or even the existence of the said loan with AFC.
120. The Plaintiffs had also alleged that the 2nd Defendant added non-members without the consent of the Members of the Group Ranch. However, the court has seen the minutes of **7th July 2015**, and in ***Minutes NO 01/2015; Registration of New Members***, the issue of additional of 62 members was discussed and passed unanimously. The plaintiffs cannot then be heard to say that additional members were added without consent of the Group Ranch members. If that was the case, then they ought to have called evidence of several Members of the Group ranch to confirm that indeed private members were added without their consent.
121. **PW2**, also stated in his statement that members of the Group ranch realised at some point that their parcels of land, were smaller than what was indicated in the title deed. Who are these members? It was alleged that the said members employed the services of a surveyor to measure their parcels of land afresh, and that is when they realised that the portions were small than what was indicated in the title. The

said Report of fresh measurements, and discovery of smaller portion of land, was not produced in court as evidence. That statement remains mere allegations!

122. Having analysed the pleadings and available evidence by the parties, the court finds and holds that the allegations of fraud were not proved on the required standard of balance of probabilities.

123. What is not in doubt is that the 1st Defendant vide a sale agreement dated **18th March 2015**, entered into a sale agreement to sale to 5th Defendant 150 acres, at **ksh 60,000/=** per acre, at a total **ksh 9,000,000/=**, which was paid through the chairman as is evident from various acknowledgment receipts.

124. Further, it is evident that the 4th defendant, who was one of the Directors of 5th Defendant purchased several other parcels of land from the owners of the subdivisions of the mother title. **Koina Ole Kipury**, the 2nd Defendant was one of the vendors, and in total, the 5th Defendant is now holding 228 acres, which it purchased out of the original land parcel **No Cis Mara/ Entontol/188**.

125. It is also not in doubt that the land parcel No **Cis Mara/Entontol/188**, is not in existence, since it was subdivided after the Officials of the Group Ranch applied to the **Land Control Board** for consent, and consent was granted. There is a **Mutation Form, and List** of allocated plots and their numbers.

126. The 6th, 7th and 8th Defendants averred in their defence, that they used the available documents to register and transfer parcels of land to different individuals as per the area List and the allocation one, Minutes of the Group Ranch were also availed to the Land registrar, to confirm that the Group Members had resolved on the subdivision of the suit land. The court finds no reasons to fault the 6th, 7th and 8th Defendants.
127. The 4th and 5th Defendants purchased the subdivisions of Land parcel No **Cis Mara/ Entontol/188**, after following due process, and no cogent evidence of fraud or forgery was availed by the Plaintiffs.
128. Having found that the 4th and 5th Defendants are bona fide purchasers for value, without any notice of defect or fraud, this court holds and finds that the plaintiffs have not proved on the required standard of balance of probabilities, that they deserve any of the prayers contained in the plaint, as there was no evidence that the subdivision of **Cis Mara/ Entontol/188**, was irregular, illegal, null and void.
129. Without evidence of irregularities, the court has no reasons to issue or grant orders of permanent injunctions against the 1st and 2nd Defendants, and no reason to direct the Land registrar to cancel the titles of the subdivisions of **Cis Mara/ Entontol/188**, since the Plaintiffs were not able to prove evidence of fraud, misrepresentation, illegality, Irregularity and lack of following due process in the process of subdivision

of the suit land, and transfer to the 5th defendant, and other individuals.

130. If the 2nd Defendant misappropriated the purchase price money, then that is an aspect that falls under the criminal law, or is criminal offence, and the purchasers, who genuinely purchased the subdivisions cannot be punished due to the alleged misconduct of 2nd Defendant.
131. The members of the Group Ranch can pursue him for recovery or through other lawful means as provided by the law, criminal charges being one of them.
132. With the above conclusion, the court finds and holds that the Plaintiffs' suit is not merited, and the same is dismissed entirely for lack of evidence.

ii) Who should bear costs of the suit?

133. Ordinarily, costs are granted at the discretion of the court as provided by **section 27** of the **Civil Procedure Act**, but in most cases, costs follow the event, and are awarded to the successful litigants. See the case of **Jasbir Singh Rai and 3 Others vs Tarlochan Singh Rai and 4 Others SCK Petition No.4 of 2012[2014] eKLR**.
134. The Plaintiffs 'suit has been dismissed in its entirety, and thus the Defendants are the successful litigants. However, taking into account the circumstance of the case, and the fact that costs are awarded at the discretion of the court, the court

uses its discretion, and directs each of the parties herein to bear their own costs.

135. *Ultimately, the Plaintiffs suit is dismissed entirely with an order that each of the Parties herein to bear their own costs.*

It is so ordered.

Dated, Signed and delivered virtually this 4th day of May 2026

***L. Gacheru
JUDGE***

Delivered online in the presence of

Elijah Meyoki - Court Assistant.

Mr Kanyonge for Plaintiffs.

Mr Langat for 1st to 5th Defendants

N/A for the 6th to 8th Defendants.

***L. Gacheru
JUDGE***