



REPUBLIC OF KENYA



**Kamau v Nkumei & another (Environmental and Land Originating Summons
4 of 2021) [2024] KEELC 891 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 891 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 4 OF 2021
CG MBOGO, J
FEBRUARY 27, 2024**

BETWEEN

DANIEL KAMAU PLAINTIFF

AND

KARINO OLE NKUMEI 1ST DEFENDANT

NAPANOI ENE LENKUUMEI 2ND DEFENDANT

JUDGMENT

1. The applicant herein filed an Originating Summons dated 9th February, 2021, expressed to be brought under Order 37 Rules 1 (a) of the Civil Procedure Rules, Sections 1A, (1), (2), 3, 3A of the Civil Procedure Act, Sections 25 and 26 of the Land Registration Act No. 3 and Article 40 of the Constitution seeking the following orders: -
 1. That the honourable court be pleased to issue eviction orders evicting the respondents, their agents and/or servants from land parcel known as Cis-Mara/Rotian/356 and Cis-Mara/Rotian/357 registered in favour of the applicant.
 2. That the honourable court be pleased to make a declaration that land parcels known as Cis-Mara/Rotian/356 and Cis-Mara/Rotian 357 belong to and are owned by the applicant.
 3. That the officer commanding Narok North Sub County police station be ordered to oversee execution of the eviction order.
 4. That the costs of this application be borne by the 1st and 2nd respondents.
2. The application is premised on the grounds on the face of the application.
3. The application is supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that he entered into a sale agreement with Kugunka Ole Nkuumei and the



- 1st respondent for the purchase of two portions of land to be excised from Cis-Mara/Rotiani/186. That the two portions of the land being Cis-Mara/Rotian/356 and 357 were purchased from the estate of the late Ngongoiya Ole Nkuumei with the consent of their sister, Nadupoi Ene NKuumei.
4. He deposed that Kugunka Ole Nkuumei and the 1st respondent sold their shares of their late father's estate as they were the administrators of that estate. Further, that Kugunka Ole Nkuumei and the 1st respondent oversaw the process of completion of the succession proceedings and issuance of the individual title deeds.
 5. The applicant deposed that he received his certificates of title, but the defendants/respondents have restrained him from accessing his two parcels of land and instead, they started utilizing the same through farming activities. Also, that the 1st defendant refused to receive his share of the balance of the purchase price, but he deposited the same with the Chief, Rotian for collection.
 6. The Originating Summons was opposed vide the replying affidavit of the 2nd defendant/respondent sworn on 18th March, 2022. The 2nd defendant/respondent deposed that as the widow of Ngongoiyia Nkuumei Alias Ngongoiya Ole Nkumei (deceased), she was never a party to the succession proceedings in Succession Cause No. 41 of 2016. Also, that she was not involved in any way in the sale agreements.
 7. The 2nd defendant/respondent deposed that since the manner in which the plaintiff/applicant had obtained the title was a subject matter in Narok CMCC P&A No. 41 of 2016, the plaintiff/applicant cannot rely on the title deed which was irregularly obtained. She deposed that no process of survey has ever been carried on the ground for purposes of beaconing of each of the portions arising from the irregular subdivisions including the two parcels of land.
 8. This matter proceeded by way of viva voce on 25th May, 2023. The plaintiff/applicant adopted his witness statement dated 24th August, 2022 as his evidence in chief. He also produced the documents marked as Plaintiff's exhibit Nos 1-8 (a), (b) and 9 respectively.
 9. The plaintiff/applicant testified that he entered into a sale agreement with Kugunki Ole Nkumei and another agreement with one Karino Ole Nkumei. That the two informed him that they were administrators of each of the 2 parcels that they sold to him. He testified that Betty Naleme who is the wife of Karino was present and she signed the agreement. Also, that Kugunka Ole Nkumei also signed it. It was his testimony that the sellers told him that the land had been demarcated and he visited it to confirm the same.
 10. The plaintiff/applicant further testified that they also showed him the mutations to indicate that many people had purchased land from them. It was his evidence that he purchased the suit land in February, 2018 and the sellers first showed him the mutations, and the original title deed in the name of their deceased father. The plaintiff/applicant informed the court that there was a consent to transfer land from Karino Nkumei to him dated 21st February, 2019, which indicated the portion being transferred to him was part of his (Karino's) share.
 11. The plaintiff/applicant testified that he did not know why the transfer form did not have the photos. He further testified that there was another consent to transfer and the transfer application form by the 2nd defendant/respondent bearing her photo and thumbprint. According to him, the 2nd defendant/respondent appeared before the Land Control Board and she was part of the sale transaction. Further, that he had the bankers cheque for the 1st defendant/respondent being the balance of the purchase price.
 12. On cross examination, the plaintiff/applicant testified that he purchased about 9.5 acres at Kshs. 500,000/- per acre, from the 1st defendant/respondent. He testified that the 1st property was about



- 4.5 acres at the price of Kshs. 500,000/-. According to him, the title was in the name of the 1st defendant/respondents father and that the 1st defendant/respondent sold the land to him before he could acquire the title deeds. That in total, he paid the 1st defendant/respondent Kshs. 2,250,000/- and that there is no balance remaining.
13. The plaintiff/applicant informed the court that he paid some of the purchase price via mpesa, and the rest via banker's cheque and that there is no balance. He admitted that he did not have any bank statement to show that the cheque was cleared or anything to evidence that the 1st defendant/respondent was notified to collect his cheque but declined to do so. He further testified that he had paid the purchase price in full by the time he was issued with the title deed. Further, that the 1st defendant/respondent had told him that there was an amount that he had not paid.
 14. The plaintiff/applicant further testified that the 1st defendant/respondent, his mother and Kugunka appeared before the Land Control Board for consent to transfer the land to him. Further, that the two consents to transfer were issued on the same day. He was not able to tell the type of the Land Control Board that he attended but according to him, it could have been special. As far as he could remember, the board had about 8 members. He further testified that he was not there when the Surveyors mounted the beacons as he was shown the beacons before he purchased the land. That at that time, one of the titles was in the name of Karino while the other was in the name of the 2nd defendant/respondent.
 15. The plaintiff/applicant testified that the 2nd defendant/respondent was to transfer land parcel number Cis Mara/ Rotian/ 357, while Kerino Nkuumei was to transfer Cis Mara/ Rotian/ 356. He admitted that he had been shown the land on the ground before they appeared before the Board. He testified that the 2nd defendant/respondent did not sign the sale agreements and admitted that the agreements do not show that the parcels he was to purchase were in the names of their mother. Also, he testified that she did not receive any purchase price. He agreed that their mother signed the transfer form, as it bears the ID card number of the 2nd defendant/respondent which is number xxxx.
 16. The plaintiff/applicant admitted that the transfer form does not bear the ID card number and Pin Number of the 2nd defendant/respondent whose name is Nadopoi Ene Nkuumei. Further that in the transfer form, the name is Naipanoi Ene but he does not have the national Identity card of Naipanoi. According to him, Naipanoi signed the transfer in the presence of Githui John and he also signed before the same person. He admitted that the transfer form does not have his photo and his pin number. It was his evidence that he appeared before Githui John, Advocate but could recall the date when he appeared before him. Further, that the transfer form shows that they appeared before the Lands officers on a date which is not indicated, but that the date of execution is 11th March, 2019.
 17. The plaintiff further testified that the transfer form of Karino does not bear his photo, his Identity card number, and his pin number. Further, that the date of execution was made by the Lands officers which was on 11th March, 2019. Also, that the Land Registrar has not signed the date of transfer, and neither has he signed the transfer for Naipanoi either. Also, that he does not remember if he paid stamp duty and he does not know the percentage that he was required to pay. Also, that he does not have any dispute with Kugunka. He admitted that he tried to evict the 2nd defendant/respondent from the boma where she resides which was built recently by her son. That as far as he is concerned, she resides in a different boma.
 18. The cross examination of the plaintiff/applicant proceeded further on 25th July, 2023. The plaintiff/applicant testified that he had not finished paying for the purchase price by the time he was issued with the title deed. According to him, he bought 2 parcels of land through a sale agreement dated 19th December, 2018 and that Karino sold to him 4.5 acres. He admitted that he carried out a search



- dated 26th November, 2018 and that the registered proprietor is Kugunka Ole Nkumei and Karino Ole Nkumei. Further, that the purchase price was kshs. 2,250,000 per parcel, and that the first installment was Kshs. 800,000/- which he paid in cash, and the rest was paid in 2 cheques. He admitted that he has not brought evidence of payment of stamp duty. Also, that he did not have the minutes of the Land Control Board.
19. The plaintiff/applicant testified that he was not present when the suit land was beacons, but that he saw Naipanoi when he visited the suit land, which was after he purchased it. Also, that she was not shown Naipanoi's boma. According to him, he handed over the cheques to his advocates and he has never received the cheques back. He testified that his Advocate told him that she had called the defendants/respondent several times to go for the cheques to no avail.
 20. The plaintiff/applicant testified that the second agreement is with Kugunka Ole Nkumei on 8th February, 2018 which is for parcel number Cis Mara/186, in the name of Kugunka Ole Nkumei and Kerino Ole NKumei. According to him, he bought 4.7 acres at kshs. 2,350,000/- and he paid via Mpesa and cash in 2 portions and there is no balance of payment remaining. It was his testimony that the sellers disclosed to him that they were administrators of the estate of their father. With regard to the transfer forms, the plaintiff/applicant testified that it is in the name of Naipanoi ene Nkumei as the person transferring the properties to him. Further, that he went to the Advocates office to sign the transfer form, but Naipanoi was not present when he signed the transfer form and that he did not deal with her.
 21. He testified that the administrators told him that they had agreed that the 2nd defendant/respondent was to sign the transfer forms even though she did not sell any land to him, or receive payment of money from him. Further, that those who applied for consent from the Land Control Board was the 2nd defendant/respondent, in respect of Cis Mara/Rotian/357. Further, that the 2nd defendant/respondent obtained consent to transfer Cis Mara/Rotian/356, but the applicant is Karino Ole Nkuumei. He admitted that the 2nd defendant/respondent had no land to transfer to him.
 22. The plaintiff/applicant admitted that he was not one of the beneficiaries of Nkuumei's estate and he did not know if every member of the family got their shares. On being shown the consent to the confirmation of grant, the plaintiff/applicant testified that Karino was entitled to 1.964 hectares, Kugunka was entitled to 1.964 hectares and Naipanoi was 1.964 hectares. According to him, the administrators sold to him the 2nd defendant/respondent's share. Further, that at the Lands Board, she consented to transfer the land to him. He testified that he had not seen her before appearing before the Land Control Board, but at the Land Control Board, she confirmed that the land was hers and had no objection to transfer to him. According to him, he was invited to the Land Control Board which had 7 or 8 people but he does not know if it was a regular or a special board. He admitted that he paid for the Board but could not remember the amount. Further, that the transfer for the 2 parcels were obtained on 3rd December, 2018. He admitted that he has made use of the suit land ever since he purchased it and that when he first saw the suit land, it had not been surveyed. Further, that the second time he saw it, it had been surveyed and that beacons had been erected on the land by the time he obtained the consent.
 23. On re-examination, the plaintiff/applicant testified that the land was sold to him by Karino and Kugunka who were the proprietors of the suit land and who were qualified to sell the land. Further, that they told him that they were acting as administrators, as he knew the two. According to him, his manager brought them to him and they were people he already knew. He testified that he did not know the rest of their family members and Karino also offered to sell his share. Further, that one piece was being sold by the whole family to meet the expenses of the succession cause, but he did not meet the rest of the family members to confirm that they had agreed to sell their land.



24. The plaintiff/applicant testified that he attended the Land Control Board, whose chairman was the Deputy County Commissioner. Also, that the 2nd defendant/respondent attended the board, and was interviewed by the board. Further, that she informed the board that she was the owner of the land. Further, that Kerino was also interviewed by the Board and he saw the consents. According to him, he was not involved in the process of succession, but that the process was complete by the time he made the purchase. Further, that he entered into the contracts with the owners of the parcels of land that he bought and he had no duty to tell the sellers what to do with their money once he took the cheques to his Advocate as the money was debited from his account. Further, that the process of registering his property was done by the Surveyor and he got receipts for payment of the process.
25. Rael Muthoni Njoka (PW2) adopted her witness statement dated 28th September, 2022 as her evidence in chief. She testified that as the spouse of the plaintiff/applicant, she was present when the 1st instalment of KShs. 800,000/- was made to Karino and that she also made several payments through mpesa.
26. On cross examination, PW1 testified that as per the sale agreement dated 8th February, 2018, the same shows that the seller had received the full purchase price in form of cash. She admitted that the agreement does not mention any banker's cheque, and that she was not a witness in the agreements. Also, that Kugunka's spouse was not present during the agreement and she did not sign the spousal consent. With regard to Karino's agreement, PW1 testified that the agreement shows spouses of the two parties were present and that the balance was to be paid in 2 instalments of KShs. 450,000/- and KShs. 600,000/-. However, she testified that it was paid in banker's cheques and that they are for KShs. 780,000 and KShs. 81,210 bringing the total payment to KShs. 1,661,000/-. She testified that the payment was to Betty Nkuumei who is a spouse of Karino Nkuumei, and that the said cheques are with the Advocate who drafted the sale agreement. Also, that she did not have any evidence to show that the Advocate asked Mr Karino to collect the cheques.
27. PW1 testified that she knows the 2nd defendant/respondent, who appears in the second page of the second agreement and amongst the signatories. That in this agreement, it does not show that the property being sold belonged to the 2nd defendant/respondent. Also, that the sellers are Kario Ole Nkurumei and Kugunka Ole Nkurumei are said to be the sellers in page 2 of the agreement. That although the 2nd defendant/respondent has not signed the agreement, she received the money but she did not know how much money she received. She testified that the 2nd defendant/respondent sold the land title no. 357. Also, that she was not there when the Surveyor visited the ground and neither did she appear before the Land Control Board.
28. On re-examination, PW1 testified that she knows the people who sold land to her husband, even though the agreement shows the seller as Karino, as it is clear that his identity card shows that his name was Kerino. Also, that his wife was present when he signed the sale agreement, and she consented to sale of the land. Also, that she knew the sellers since they met in their home and the 2nd defendant/respondent agreed to sell her land.
29. The plaintiff's case proceeded for further hearing on 26th July, 2023.
30. Kugunka Ole Nkuumei, (PW2) adopted his witness statement dated 28th September, 2022 as his evidence in chief. He testified that with respect to his late father's parcel of land in Rotian, himself, Karino, and their mother filed for letters of administration. That after the process, they sat in Karino's home and decided to sub divide the land. Further, that they later approached the plaintiff/applicant and Karino sold his portion to the plaintiff/applicant. It was his testimony that their mother agreed that they could sell her portion to enable her sub divide the estate to the beneficiaries. Further, that



- together with their mother and Karino, they were paid for the sale of land by the plaintiff/applicant. He testified that they appeared before the Land Control Board for the transfer of the land to the plaintiff/applicant. However, the defendants/respondent have refused to let the plaintiff/applicant work on the land that he bought.
31. On cross examination, PW2 testified that their mother sold 4.7 acres or thereabout to the plaintiff/applicant and that the plaintiff/applicant and the 2nd defendant/respondent prepared the agreement in the office of an advocate by the name of Mogere. According to him, the 2nd defendant/respondent did not sign the agreement, but she was present when the agreement was prepared and that Naidopoi is his sister. According to him, the 2nd defendant/respondent's name was not included in the agreement because she was not to go to the advocate's firm. Further, that he was recorded as an agent in the sale agreement, and they informed the advocate that they were selling land belonging to someone else.
 32. Whereas he did not have documentary evidence to show that he gave the money to the 2nd defendant/respondent, PW2 testified that they used the money to facilitate the succession cause and the 2nd defendant/respondent was involved in the said succession cause. Further, that in the succession cause, their mother was present when they informed the court about it. Also, that by the time the 2nd defendant/respondent appeared before the Land Control Board, the suit property was in her name. He further testified that he was paid in cash and through mpesa. Further, that he received about kshs. 1,000,000 in cash, and the rest was paid to him through the mpesa of the plaintiff/applicant's manager. He testified that the payment was in instalments and the entire purchase price was paid in one day.
 33. PW2 further testified that Karino's sale agreement was also done on the same day, but he did not enter into the advocate's office when it was prepared. That as such, he did not know how much money he was paid. According to him, Karino was paid the full purchase price, and that the plaintiff/applicant does not owe anything to Karino, the 1st defendant/respondent. He testified that the Surveyor went to the ground after the sale agreement and payment of purchase price. That in this case, the plaintiff/applicant is claiming the portion that the 2nd defendant/respondent sold to him, which she was entitled to as a beneficiary. He testified that the portion that was sold is cultivated upon and there is a house. Further, that the 2nd defendant/respondent does not reside on it, as she resides in Narok. He testified that he has never seen Karino's sale agreement.
 34. On re-examination, PW2 testified that the 2nd defendant/respondent sold the land to the plaintiff/applicant and that she appeared before the Land Control Board. On his part, he signed the agreement as an administrator of the estate and the 2nd defendant/respondent identified herself in the succession cause.
 35. Nadupoi Ene Nkuumei (PW3) adopted her witness statement dated 6th April, 2023 as her evidence in chief. She testified that while at home, the 6 of them had a meeting and their mother was also involved in the meeting. That in the meeting, they agreed to sell land so that they could use the money to sub divide the rest of the family land amongst themselves and their mother was the one who sold the land. She testified that their mother appeared before the Land Control Board and that she was with her when she appeared before the Board.
 36. On cross-examination, PW3 testified that she is the eldest child of their mother, who sold the land to the plaintiff/applicant. She testified that there was a sale agreement between their mother and the plaintiff/applicant and the two appeared before the Lands Office. However, she did not know whether the two carried out monetary transaction. PW3 testified that she is aware that their mother was paid by the plaintiff/applicant as their mother informed her and she did not witness any other sale agreement.



37. PW3 testified that Kugunka is her brother, and she does not know if he sold her land and that Kugunka has never told her if he gave their mother the money for the sale of land. Further, that the 6 who agreed to sell land were Nadupoi, Karino, Naipanoi, Rukunga, the plaintiff and PW1. According to her, Karino's wife was not at the meeting and she was present when Karino sold the land to the plaintiff/applicant. Further, that both parcels of land were sold on the same day. It was her testimony that she did not witness any sale agreement, however she went to the Lands office, and they were 8 people. Further, that the eight included herself, their mother, Karino, Kugunka, the plaintiff and Kamau's wife (PW1) was also present. It was her evidence that she remained outside the office when their mother, the 2nd defendant/respondent, Karino, Kugunka and the plaintiff/applicant entered into the Lands office.
38. On re-examination, PW3 testified that she signed a document concerning a land sale but she did not know what she signed.
39. Justus Parantai Ole Nkooyo (PW4) adopted his witness statement dated 20th July, 2023 as his evidence in chief. As the farm manager of the plaintiff/applicant, it was his evidence that he was the go between the family of the plaintiff/applicant and the defendants/respondents.
40. On cross examination, PW4 testified that he did not witness the sale agreements, but he witnessed payment of the survey fees. With regard to the purchase price of the suit properties, PW4 testified that, that was between the plaintiff/applicant and the defendants/respondents and that he only saw the payments in their agreements. It was his testimony that the plaintiff/applicant would send the survey fees to him through his Mpesa account which he would thereafter pay to the surveyor, but he could not remember how much it was. He testified that the receipts were issued in the names of the sellers of the land, who were Karino and Naipanoi. It was his testimony that the land initially belonged to Ngongoiya Ole Nkuumei who was the father of Karino and husband to Naipanoi. He testified that the two sons sold the land and with the consent of their mother and Nadupoi and their mother sold her portion of land as well. According to him, the plaintiff/applicant is entitled to 2 parcels of land but he has been barred from taking possession of the land that he purchased.
41. The defendants/respondents case proceeded for hearing on 26th October, 2023.
42. Naipanoi Ene Nkuumei, the 2nd defendant/respondent testified that she does not recall signing any document before any advocate. The 2nd defendant/respondent was stood down for a few minutes to enable them supply to the plaintiff their documents dated 13th February, 2023. Later on, the court resumed and the 2nd defendant/respondent proceeded to give her evidence. The 2nd defendant testified that she executed a replying affidavit sworn on 22nd February, 2022 and adopted it as her evidence in chief.
43. The 2nd defendant/respondent testified that she did not carry out any transaction with the plaintiff/applicant and that she did not authorize her son, one Kugunka, to sell land on her behalf. Further, that she did not receive money from the plaintiff/applicant and she did not appear before the Land Control Board for purposes of transferring the suit properties to the plaintiff/applicant. She testified that she retained the title deed for Cis mara/Rotian/186 and has never given out the title deed to anyone. The 2nd defendant/respondent produced D. exhibit nos. 1 to 10 respectively as evidence.
44. The 2nd defendant/respondent testified that she did not know an advocate by the name of Scholastica Mogere who is said to have prepared a sale agreement in respect of the suit properties and has never been a witness to any sale agreement before any advocate.
45. She further testified that she did not affix her thumb print on any application for consent to transfer before the Land Control Board and that she did not appear before any advocate by the name John



- Githui. It was her testimony that the plaintiff/applicant has no right over her land, and she does not know if there are beacons on the suit properties as she has not seen any beacons on the said land.
46. On cross-examination, the 2nd defendant/respondent testified that she is not known as Wanjiru but that she has a child known as Nyambura. It was her evidence that she does not know how to read and write and that what was reduced into handwriting on her behalf was read over to her. She acknowledged the photo, containing the thumb print as hers, but informed the court that the Land Registrar lied by stamping on the document that has her photo and her thumb print. The 2nd defendant/respondent testified that the Land Registrar lied when he stated that in the said document, she had applied to transfer land to the plaintiff/applicant.
47. The 2nd defendant/respondent testified that it is not true that she transferred land parcel number Cis Mara/Rotian/357 to the plaintiff/applicant. With regard to the letter of consent for parcel number 357 by the Chairman of Land Control Board, she testified that the Chairman of the Land Control Board also lied and that the consent document is not truthful.
48. It was her testimony that her land has not been sub divided although she admitted that her husband is deceased, and that she filed for letters for administration in respect of his estate. She testified that she does not know that Kugunka and Karino were the ones who filed the succession cause, and that she did not sue anyone in the other case pending in court.
49. On re-examination, the 2nd defendant/respondent maintained that she did not sell any land to the plaintiff/applicant, she did not sign the mutation forms and that she did not appear before the Land Control Board in order to make an application to transfer land to the plaintiff/applicant. She admitted not to have brought any certificates of search to court and that she came to know that Kugonka and Karino had applied for letters of administration when they started selling land.
50. On the 16th November, 2023 the plaintiff/applicant filed his written submissions dated 15th November, 2023 where he raised the following issues for determination: -
- a. Whether this honourable court be pleased to issue eviction orders evicting the respondents, their agents and/or servants from land parcel known as Cis Mara/ Rotian/356 and Cis Mara/ Rotian/ 357 registered in favour of the applicant.
 - b. Whether the honourable court be pleased to make declaration that land parcels known as Cis Mara/Rotian/ 356 and Cis Mara/Rotian/ 357 belong to and are owned by the applicant.
 - c. Whether the officer commanding Narok North sub county police station be ordered to oversee execution of the eviction order.
 - d. Whether the costs of this application be borne by the 1st and 2nd respondents.
51. On the first issue, the plaintiff/applicant submitted that the defendants/respondents despite selling the subject parcels to him, appearing before the Land Control Board meeting and signing the transfer forms, reneged on the contract and refused him access to his land. He submitted that the defendants/respondents are engaging in acts of impunity, fraud and forceful detainer contrary to the law. Further, that the defendants/respondents were paid and they were able to use the money for their intended purpose of subdivision.
52. On the second issue, the plaintiff/applicant submitted that pursuant to Sections 24, 25 and 26 of the *Land Registration Act*, he used the right procedure to acquire the subject properties and followed all steps in acquiring the titles to the parcels as evidenced in the documents produced. He further



submitted that the titles to the two properties are clean. The plaintiff relied on the case of Mursal Hajj Ali versus Stanley Maina Macharia [2021] eKLR.

53. On the third and fourth issues, the plaintiff/applicant submitted that the supervision by the Officer Commanding Station Narok North sub-county will ensure that the orders of this court are enforced to pave way for the plaintiff/applicant to access his properties. Further, that he is entitled to the costs.

54. By the time of writing this judgment, the defendants/respondents had not file their written submissions. Be that as it may, I have considered the Originating Summons, the replying affidavit, the evidence tendered through trial and the written submissions filed by the plaintiff/applicant as well as the authorities cited.

55. The issues for determination are as follows: -

- i. Whether eviction orders should issue as against the defendants/respondents.
- ii. Whether there is need for police supervision.
- iii. Who is entitled to costs.

56. Order 37 Rule 1 of the Civil Procedure Rules provides as follows:

“The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions—

- a. any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
- b. the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
- c. the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
- d. The executors or administrators of a, (d) the payment into court of any money in the hands of the executors, administrators or trustees;
- e. directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
- f. the approval of a sale, purchase, compromise or other transaction;
- g. the determination of any question arising directly out of the administration of the estate or trust.”

57. Order 37 Rule 1 of the Civil Procedure Rules is clear on the categories of litigants who can take out an Originating Summons and seek a determination. A purchaser for value, as contended by the plaintiff/applicant, does not fall under the above category more so as pertains to the circumstances of this case.



58. However, that does not stop this court from delving into the merits or demerits of the case for the reason that, this court presumes that the parties opted to treat the matter as having been instituted by way of a plaint. I say so for the reason that it took the form of a plaint as the plaintiff/applicant and his witnesses filed their respective witness statements. Further, that the parties herein conducted a pre-trial to confirm compliance with Order 11 of the Civil Procedure Rules.
59. On dealing with the first issue, it was the plaintiff/applicant's case that he purchased two parcels of land known as Cis-Mara/ Rotian/ 356 and 357 from the defendants/respondents. His position was that Kugunka Ole Nkuumei and Karino Ole Nkuumei approached him with the intention to sell portions of the suit properties and informed him that they were administrators of the estate of their deceased father. During trial, the plaintiff's witnesses' evidence was that the money paid was to be used for survey, subdivision and succession proceedings after which the plaintiff/applicant would obtain his title deeds. Indeed, the plaintiff/applicant supplied evidence of the two properties registered in his name.
60. It is not in dispute that indeed the plaintiff/applicant obtained title deeds to the suit properties. However, the contention is that he has been unable to access his parcels of the land and therefore, now seeks eviction.
61. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24(a) of the [Land Registration Act](#) provides as follows:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
62. Section 26 (1) of the [Land Registration Act](#) states as follows:
- “The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
63. The law is clear that, the certificate of title issued by the Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.
64. This court in considering this matter referred to the case of Elijah Makeri Nyangw'ra versus Stephen Mungai Njuguna & Another (2013) eKLR where the court held that :-
- “the title in the hands of an innocent party can be impugned if it is proved that the title was obtained illegally, un-procedurally or through a corrupt scheme. The court in the case while considering the application of Section 26(1) (a) and (b) of the [Land Registration Act](#) rendered himself as follows:-



“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

65. While relying on the above provisions of the law and the authority cited and looking at the circumstances of this case, the common denominator is that the legality of the title was not challenged. The plaintiff/applicant witnesses led evidence to show that the 1st defendant/respondent received money which was the purchase price but has refused to receive the balance thereof which has been held by the advocate who drafted the sale agreements. The plaintiff/applicant and his witnesses further led evidence that the defendants/respondents were intent on selling the said parcels of land owing to their presence and or appearance before the Land Control Board. The 2nd defendant/respondent defence was that every occurrence leading up to the issuance of the title deeds ‘was a lie’. According to her, the Land Registrar lied by stamping on the document, and the Chairman of the Land Control Board lied as well that she had filed a letter of consent for parcel no. 357.
66. In the absence of any evidence of revocation of grant of the certificate of confirmation of grant issued on 12th June, 2018, this court is of the view that the names of those listed as beneficiaries of the estate of Ngongoiya Nkuumei Alias Ole Nkuumei remain as the legitimate beneficiaries who were capable of dealing with the properties in the manner they so wished.
67. The 2nd defendant/respondent has not shown that the title deeds were obtained through fraud or misrepresentation or through corrupt means. The plaintiff/applicant being the registered proprietor of the suit properties, ought to have all rights and interests arising therefrom including actual possession of the suit properties.
68. I am satisfied that the orders of eviction are sufficient to issue to enable the plaintiff/applicant realized his rights and interests accruing as a holder of a legitimate title. However, it appears that the 1st defendant/respondent failed or refused to accept payment of the balance of the purchase price which was payable through cheque. In a bid to ensure that justice is done, the plaintiff/applicant is hereby ordered to issue a banker’s cheque of the sum owing to the defendants/respondents within 90 days from the date hereof.
69. Having found that the plaintiff/applicant is entitled to the orders of eviction, it also goes without saying that in the nature of such an order, there is need for police assistance to supervise the exercise.
70. This court finds merit in the originating summons dated and hereby issues the following orders:-
 - i. That the defendants/respondents to vacate the suit properties known as Cis-Mara/Rotian/356 and Cis-Mara/Rotian/357 within 90 days from the date hereof failure to which the plaintiff/applicant shall evict them.
 - ii. In the event that the defendants/respondents fail to comply with order i. above, the officer commanding Narok North Sub County police station be ordered to oversee execution of the eviction order.
 - iii. That the plaintiff/applicant to issue a cheque of the sum owing to the defendants/respondents within 90 days from the date hereof.
 - iv. That the costs of this application be borne by the 1st and 2nd defendants/respondents.

Orders accordingly.



DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 27TH DAY OF FEBRUARY, 2024.

HON. MBOGO C.G.

JUDGE

27/02/2024.

