



Parsaurei (Suing as the Personal Representative of the Estate of Masare Ole Alaseso Mapi alias Masarei Ole Alasejo Mapi) v County Land Registrar Kajiado & 16 others (Environment & Land Case 201 of 2018) [2025] KEELC 839 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEELC 839 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 201 OF 2018
LC KOMINGOI, J
FEBRUARY 27, 2025**

BETWEEN

LELOPA OLE PARSAUREI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MASARE OLE ALASESO MAPI ALIAS MASAREI OLE ALASEJO MAPI) PLAINTIFF

AND

COUNTY LAND REGISTRAR KAJIADO 1ST DEFENDANT
GEORGE NGACHA NJIRIRI 2ND DEFENDANT
SAMUEL NGACHA NJIRIRI 3RD DEFENDANT
GEORGE NGACHA NJIRIRI 4TH DEFENDANT
ATHI RIVER MINING COMPANY LTD 5TH DEFENDANT
KELLIAN WANJIKU NJIRIRI 6TH DEFENDANT
SUSAN NJOKI NJIRIRI 7TH DEFENDANT
KARAGITA EAST AFRICA LTD 8TH DEFENDANT
MAGANA HOLDINGS LTD 9TH DEFENDANT
TWO TWENTY INVESTMENT LTD 10TH DEFENDANT
INNER CONNECTIONS LTD 11TH DEFENDANT
ROMA MANAGEMENT LTD 12TH DEFENDANT
LOCAL AUTHORITIES PENSION TRUST REGISTERED TRUSTEES 13TH DEFENDANT
ROTINO FARMERS LTD 14TH DEFENDANT



ARM CEMENT LTD 15TH DEFENDANT
SIMBA CEMENT COMPANY LTD 16TH DEFENDANT
DAVINDER SINGH SIKAND 17TH DEFENDANT

JUDGMENT

1. By the Plaint dated 21st December 2018 and Amended on 29th March 2022, the Plaintiff claims that his late father was the registered proprietor of property Kajiado/Ololoitikoshi/Kitengela/3 and duly issued with a title deed on 14th December 1978. Upon his demise on 12th April 2017 unknown people invaded the property and started putting up permanent structures despite the family's protests. Upon inquiry, he found out that the property was illegally and fraudulently subdivided and sold off to the 2nd up to the 17th Defendants on or about March 1982.
2. It is the Plaintiff's case that property Kajiado/ Ololoitikoshi/Kitengela/3 was fraudulently subdivided to Kajiado/ Ololoitikoshi/Kitengela/162, 163 and 164; and further subdivided to Kajiado/ Kitengela/5663, 5664, 11344, 11345, 11346, 11347, 99005, 99006, 99007, 10055, 10056 and 108089. That the 1st defendant illegally, irregularly and fraudulently facilitated these subdivisions and transfers without proper documentation and during the pendency of this suit. The 2nd to the 17th Defendants fraudulently forged the Late Masaurei's thumb print and/or signature on mutation form, transfer forms, Land Control Board consent application; forged attendance of the Land Control Board meeting; fraudulently, illegally and up procedurally subdivided and transferred the property to themselves; and fraudulently dealt with the deceased's land without consent and contrary to the legal provisions. Adding that the transactions were carried out without sale agreements between the deceased and the Defendants. He therefore sought the following reliefs;
 - a. An order under Section 26 of the *Land Registration Act* ordering the cancellation of title deeds to Land Reference Numbers Kajiado/Ololoitikoshi/Kitengela/162, 163 and 164 and cancellation of all further and subsequent subdivisions/title deeds namely: Kajiado/Kitengela/5663, Kajiado/Kitengela/5664, Kajiado/Kitengela/11344, Kajiado/Kitengela/11345, Kajiado/Kitengela/11346, Kajiado/Kitengela/11347, Kajiado/Kitengela/99005, Kajiado/Kitengela/99006, Kajiado/Kitengela/99007, Kajiado/Kitengela/10055, Kajiado/Kitengela/10056 and Kajiado/Kitengela/108089; and all transactions accruing there from be declared null and void.
 - b. A mandatory order directed to the Chief Land registrar that all entries entered in the register and/or Green Cards from 17th March 1982 be and are hereby cancelled and declared null and void.
 - c. A permanent injunction restraining the Defendants, their kin, agents, servants or any one claiming under them from trespassing, ingressing, cultivating, selling, transferring, further subdividing, building, disposing off or in any other manner interfering with LR No. Kajiado/Ololoitikoshi/Kitengela/3 or any subsequent subdivision thereof.
 - d. A declaration that LR No. Kajiado/ Ololoitikoshi/Kitengela/3 was fraudulently subdivided and therefore all subsequent subdivisions and title deeds accruing there from are illegal and therefore null and void.



- e. A declaration that LR No. Kajiado/ Olooloitikoshi/Kitengela/3 and any subsequent subdivisions thereof belongs to the deceased's estate and the rightful beneficiaries to the exclusion of the Defendants or anyone claiming title under them whatsoever;
 - f. A permanent injunction restraining the Defendants, their kin, agents, servants or anyone claiming under them from doing or suffering to be done any act or omission that will in any way interfere with the extent, boundaries and/or acreage of LR No. Kajiado/ Olooloitikoshi/Kitengela/3 or any subsequent subdivisions thereof.
 - g. General damages for fraud and loss of use;
 - h. Mesne profits since 1982;
 - i. Costs of this suit;
 - j. Interest on (g), (h) and (i) above until payment in full.
 - k. Any other relief that this Hon. Court may deem fit and expedient to grant.
3. The 1st Defendant neither entered appearance nor filed a defence. The 2nd – 4th, 6th and 7th Defendants did not enter appearance or file any defences.
- The 5th Defendant was struck out from these proceedings on following a Preliminary Objection filed and the subsequent ruling dated and delivered on 30th September 2019.
4. The 8th Defendant in its statement of defence dated 9th March 2019 denied the Plaintiff's claim stating that it purchased property Kajiado/ Olooloitikoshi/Kitengela/3 from the late Masaurei Ole Alasejo Mapi in the year 1982 after undertaking due diligence and executing a sale agreement. The seller, the late Masaurei obtained the necessary documents and the transfer in its favour was effected. Thereafter the property was subdivided and sold to the 9th Defendant among others. The suit was thus time barred and should be struck out.
5. The 11th Defendant in its statement of defence and Counterclaim dated 8th April 2019, denied the Plaintiff's claim on the grounds that it is a bona fide purchaser for value having purchased property known as Kajiado/Kitengela/5663 free from encumbrances from the 10th Defendant (Two twenty Investments Ltd) and became the registered owner on 2nd June 1999. Since then it has been in open, peaceful and uninterrupted occupation. That as per the Lands Registry record available as they conducted due diligence, this property was registered to the 10th Defendant on 21st October 1994 after acquiring it from the 9th Defendant (Magana Holdings Ltd) who were registered as the proprietors on 14th September 1994, and the 9th Defendant had acquired it from the 8th Defendant (Karagita East Africa Ltd). Further, from the records at the Land Registry this property was a subdivision of property Kajiado/Kitengela/162 which was a subdivision of Kajiado/Olooloitikoshi/Kitengela/3 and there was no evidence of fraud or illegalities in its subdivision. It was its case that apart from having purchased the property for valuable consideration, it had equally acquired it by way of adverse possession for being in occupation for over 19 years.
6. In its counterclaim, it averred that sometime in 2004 they subdivided the property 5663 into three portions Kajiado/Kitengela/9906, 99005 and 99007 and later further subdivided 99005 into two portions Kajiado/Kitengela/100555 and 100556. It further stated that parcels Kajiado/Kitengela/9906, 99005 and their subsequent subdivisions were sold to third parties. And that the 11th Defendant was currently the only one in occupation of Kajiado/Kitengela/99007 having constructed a permanent house where the Director resides. They thus sought for:



- i. Dismissal of the suit;
 - ii. A declaration that the 11th Defendant acquired the property known as Kajiado/Kitengela/5663 and/or subdivisions arising therefrom including but not limited to LR Kajiado/Kitengela/99007 by adverse possession against the Plaintiff.
 - iii. An order that the 11th Defendant acquired the property LR No. Kajiado/Kitengela/5663 and or subdivisions arising therefrom including but not limited to LR Kajiado/Kitengela/99007 by adverse possession against the Plaintiff.
 - iv. A permanent injunction restraining the Plaintiff whether by herself or acting through her agents, servants and/or employees from trespassing, accessing, entering into, interfering with, evicting, harassing, intimidating and/or in any manner whatsoever dealing with all that parcels of land known Kajiado/Kitengela/563 and or subdivisions arising therefrom including but not limited to LR Kajiado/Kitengela/99007.
 - v. Costs of the suit and Counterclaim.
 - vi. Any other such or further relief that this court may deem fit.
7. The 13th Defendant in its Defence and Counterclaim dated, 23rd May 2019 stated that it purchased property Kajiado/Kitengela/5664 from the 12th Defendant on 18th May 2012 for consideration of Kshs. 181,200,000 and a Title deed issued on 14th August 2012 and has been in its possession since then. The Lands Registry records confirmed that the property had been purchased by the 12th Defendant from the 9th Defendant in 1994. As such, the suit should be dismissed because transaction was devoid of fraud or any form of illegality and it was the rightful owner of the property. It also sought for:
- i. Declaration that the 13th Defendant is the rightful owner of property Kajiado/Kitengela/5664 and any restriction placed by the Plaintiff be removed;
 - ii. A permanent injunction restraining the Plaintiff and/or beneficiaries of the Estate of the deceased acting either by themselves, their agents, servants, and or employees from trespassing, entering into, interfering with, evicting, harassing, intimidating and/or whatever manner dealing with all that parcel of land Kajiado/Kitengela/5664 belonging to the 13th Defendant;
 - iii. In the alternative, the 13th Defendant prays for compensation for the land based on the current market value of the land and developments thereon at the time of the judgement;
 - iv. Any other further relief that this Hon. Court may deem fit or just to grant.
8. The 16th Defendant in their Defence and Counterclaim dated 17th March 2023, also contested the claim against them indicating that they legally acquired property Kajiado/Kitengela/108089 from the 5th Defendant (Athi River Mining and Co. Ltd), which was an amalgamation of Kajiado/Kitengela/11344, 11345, 11346 and 11347. They therefore had the right to quiet and peaceful possession of their property which the Plaintiff was not according them. They thus sought for:
- a. A declaration that they were the bonafide, lawful and registered proprietors of LR No. Kajiado/Kitengela/108089 and was entitled its quiet enjoyment, access, use and occupation.
 - b. An order directing the Registrar of Lands, Kajiado (the 1st Defendant) to remove any restriction/inhibition and/or cautions, if any registered on title no. Kajiado/Kitengela/108089;



- c. A permanent injunction restraining the Plaintiff whether by themselves, their agents, kinsmen, employees, servants, officers and/or whosoever from entering into, encroaching, engaging in any way or interfering with the 16th Defendant's access, quiet enjoyment, lawful use and/or occupation of the suit property Kajiado/Kitengela/108089;
 - d. Costs of the suit and Counterclaim and any other relief the Court deems fit.
9. The 17th Defendant in his Defence and Counterclaim dated 30th November 2022 contested the allegation on grounds that he purchased properties Kajiado/Kitengela/99006 and 100555 from the 11th Defendant vide a sale agreement dated 11th May 2018 and 12th February 2019 for valuable consideration of Kshs. 46,375,000 and 16,500,000 respectively, and the transfers effected on 18th October 2018 and 28th May 2019 with titles being issued on 23rd October 2018 and 19th June 2019. He was thus the bona fide purchaser entitled to legal protection and as such sought for:
- a. Dismissal of the suit with costs;
 - b. A declaration that the 17th Defendant was the bona fide purchaser of properties Kajiado/Kitengela/99006 and Kajiado/Kitengela/10055 and any restrictions be removed.
 - c. An order directed to the 1st defendant, the County Land Registrar Kajiado, to remove any restrictions /inhibitions or caveats registered as LR No. Kajiado/Kitengela/99006 and Kajiado/Kitengela/10055 to the detriment of the 17th Defendant.
 - d. A permanent injunction restraining the Plaintiff and or the beneficiaries of the Estate of the deceased acting by themselves, their agents and/or employees from entering into, trespassing, interfering with, harassing, intimidating, evicting and dealing with all the properties belonging to the 17th Defendant known as Kajiado/Kitengela/99006 and Kajiado/Kitengela/10055.
 - e. Costs of the suit and counterclaim and any other orders that the court deems fit to grant.
10. The Plaintiff responded to all the Defendants' claims disputing their rights over the suit property on the grounds that they were illegally and fraudulently acquired.

Evidence of the Plaintiff

- 11. PW1, Lelopa Ole Parsaurei one of the Administrators of the Estate of the late Masaurei Ole Alasejo Mapi, adopted his witness statement dated 21st December 2018 and produced documents marked as P. Exhibit 1-8 as his evidence in this case. He stated that his father passed away in April 2017.
- 12. On cross examination he stated that he was claiming land known as Kajiado/Oloolotikoshi/Kitengela/3 measuring approximately 400 acres which belonged to his father having acquired it from the Group ranch in 1978 although he did not have the original copy of the title. He stated that he and his siblings were born and raised on that land. He stated that his father subdivided the land and gave them a portion sometime in 2013 and that is when they realised that the land had been illegally transferred to other people illegally. He filed this suit in 2018. He confirmed that part of the documents he had presented in court was a mutation form dated 1982 which bore his father's thumbprint which he claims to have been forged, though he confirmed that his father would append his thumbprint on documents. However he did not have a report to show that the said thumbprints were not his father's. He claims that he reported the matter to the Directorate of Criminal Investigations in 2014 although his father had not raised any complaint that his land had been taken. He also confirmed that his father never made a report that he had lost the title deed for the suit property. He stated that in 2018 he saw people invading the suit property claiming they had bought it.



13. When asked about the entries regarding the suit property, he stated that they confirm that the suit property was subdivided into three portions in 1982 and by then he was ten years old. One portion; parcel No. 164 was registered in his father's name and another transferred to Magana Holdings Limited on 4th May 1989. Magana's portion was further subdivided in 1994. He went on to confirm that the records showed that the land was transferred from Magana Holdings Limited to Roma Management for Kshs. 127,500,000 and that the documents produced by the Plaintiff were the same documents produced by the 13th Defendant and could not confirm whether the documents were fraudulent or forged.
14. He also stated he was familiar with the Director of the 11th Defendant one Oscar Mann who bought land from the Parmusa Ole Mepokori family, and was given the name Ole Mepokori after this. He confirmed that he saw him between the year 1998 and 1999 on a portion of the property because that is where he resided together with other white people though, he could not confirm whether he purchased the land from his father. He also stated that Davinder Singh Sikand purchased the land from Oscar Mann. He could not confirm if he was part of any fraud although he was on his father's land.
15. He further stated that the 8th and the 14th Defendants were the ones who fraudulently acquired his father's land in 1982. He stated that his father did not sell the land in 1982 because he (plaintiff) would have known.
16. He indicated that from the records, Simba Cement Company Limited (16th Defendant) purchased the suit property while a restriction was in place and he could not tell whether they had fraudulently transferred the land in its favour and neither had he reported this to the police. When questioned on entry number 10 of 12th February 1999, he confirmed that it showed that the restriction was removed following a Court order though he was not aware of any case regarding the suit property in the past. He also confirmed that he did not have evidence to show that Athi River Mining Company Limited had taken part in any fraudulent transfer. He however maintained that his father did not sell the land because had he done so, he would have "seen the money."
17. On re-examination he stated that the original parcel in his father's name was about 400 acres. After the subdivisions, the resultant parcels should have equally been in his father's name but that was not the case. It was his case that before the subdivision the Land Control Board should have given consent, but there was no record of any consent to subdivide the land. He went on to state that the mutation form should be signed by the owner but in this case, it was signed by four people. He also stated that the notification of discharge was dated 17th march 1982 while the surveyor signed the mutation form on 1st March 1982 before the discharge of charge which was not procedural.
18. He also stated that in March 2015 his father filed a report with the Directorate of Criminal Investigations (DCI) regarding the suit property and the DCI placed the restriction on the title. The DCI did not undertake any investigations necessitating the filing of this suit. On 18th December 2020 the restriction was removed without his knowledge and/or consent. They then sought an order of inhibition in 2021 to restrict any further dealings.
19. He stated that Oscar Mann purchased his property from one Ole Mepokori a long time ago and when he fenced it, they realised that it was part of his father's land. He indicated that as per the mutation form, his father's portion was 100 acres but they did not have the title deed for that portion. He went on to state that the other transactions were not supported by transfer forms, consents from the Land Control Board, payment of stamp duty or any other requisite documents. He also stated that there were no beacons on the land to establish boundaries of the subdivided portions. He added that Simba Cement Company Limited and Davinder Singh Sikand acquired their suit properties during the pendency of



this suit and that Athi River Mining Limited (the 5th Defendant) was the same as ARM Cement Ltd (the 15th Defendant).

Evidence of the Defendants

20. DW1, Oscar Mann the Director of the 11th Defendant adopted his witness statement dated 21st September 2020. He stated that he purchased the suit properties Kajiado/Kitengela/157 and 5663 on 15th April 1999 from the 10th Defendant and he established his home thereon in the year 2000. He also set up a school for wildlife studies which has accommodated foreign students all these years, and he has never been asked to vacate the suit property. He also stated that he lawfully purchased the property and produced documents to this effect. He thus prayed for dismissal of the suit with costs.
21. On cross examination he stated that he purchased two properties (157 and 5663) from the 10th Defendant for valuable consideration as per the documents produced. The sale was valid as the sale agreement was duly executed and witnessed. He had since been on the land for over twenty years and knew most of his neighbours including Athi River Mining, the 15th Defendant who have been on the land for all those years. He stated that the 10th Defendant's seal was not on the sale agreement, he confirmed it was not there although the documents were signed. He also maintained that he paid Kshs. 2,000,000 as deposit for the purchase price in cash and there was an acknowledgement of the same. He stated that he later subdivided parcel 5663 into three parcels and sold two of them to the 17th Defendant – Davinder Singh Sikand and the transfer effected on 28th May 2019 which was during the pendency of this suit. He stated that he must have informed the 17th Defendant about the suit.
22. On re-examination he stated that he was served with summons for this suit, but there was no Court Order prohibiting him from selling the property. He confirmed that he paid the entire purchase price to the 10th Defendant as per the documents produced as exhibits. He reiterated that parcels 157 and 5663 were adjacent making it look like one property. He also stated that he knew the Plaintiff's father and never at any point did he approach him stating that he had acquired the property illegally.
23. DW2 Professor Moses Okello, the Director at the Centre for Wildlife Management Studies School adopted his witness statement dated 10th September 2020 as his evidence. He stated the school was established in the year 2000 by Oscar Mann the Director of the 11th Defendant and he had worked there from the year 1999. He stated that for all those years, no one claimed that the land belonged to them, adding that some staff were sourced from the local community.
24. On cross examination he stated that Centre for Wildlife Management Studies was a registered entity. He stated that for all those years there was no interference with their occupation on the suit property since the community was aware of their presence. The school had several workers from the local community. He confirmed that the land was fenced. He also stated that he was only involved in the school affairs and could not speak about how the property was acquired by Oscar Mann (DW 1)
25. DW3 Davinder Singh Sikand adopted his witness statement dated 30th November 2020 and produced documents marked D.Exh 1-18 as his evidence. He stated that he purchased the property from one Oscar Mann (DW1) and was entitled to the prayers in the Counterclaim.
26. On cross examination he stated that he purchased a subdivision of Kajiado/Kitengela/ 5663 which had some houses on it. And prior to the purchase, they had leased it from Oscar Mann from 2015 and occupied it since 2016. He confirmed that Daniel Parsaurei one of the Plaintiff's brothers worked as a security guard for Oscar Mann at the school. He stated that most of the staff members were locals. He confirmed that before the purchase, they acquired consent from the Land Control Board, had transfer forms duly executed and titles issued. In respect of parcel 99006; the title was issued on 23rd October



- 2018 and there was no suit pending at this time. In respect of parcel 100555 the title deed was issued on 12th February 2019 although the discussions had begun in 2018.
27. On re-examination he stated that when he acquired the property, there was no Court order barring any transactions in respect of the same.
28. DW4 Raju Parikh, the Director of Simba Cement Company Limited, the 16th defendant, adopted his witness statement dated 17th March 2023, as evidence in chief. He also produced his bundle of documents as exhibits. He stated that in 2007, he was trading as Athi River Mining Ltd (the 5th Defendant) which was liquidated, and later joined Simba Cement Company Limited. They acquired all the assets of Athi River Mining Ltd from the liquidator on 11th January 2021 and he was not aware of this suit at the time. The liquidator did not mention it. Upon acquisition they went to the suit property together with their surveyor to mark the boundaries, but they were chased away by some people. They reported the matter to the Directorate of Criminal Investigations and the Land Registrar. The report from the Land Registrar confirmed that the property belonged to Simba Cement Company Limited. He prays that the suit be dismissed.
29. On cross examination he stated that other than being chased away from the land by unknown people, no complaint had ever been filed against them. However, they complained that they were chased by unknown people. He added that prior to purchase by the 16th defendant, due diligence was conducted and it was ascertained that the property belonged to Athi River Mining Company Limited. The 16th Defendant was not aware of any restrictions. He stated that they applied to amalgamate the parcels and a title deed for parcel 10809 was issued on 26th May 2021 upon amalgamation. He however confirmed that the mutation form was not stamped by the District Surveyor, nor registered or signed by the Land Registrar.
30. On re-examination he stated that the letter dated 18th December 2020 from the Directorate of Criminal Investigations (DCI) did not state that Simba Cement Company Limited was the owner because by that time it had not been registered as the owner. He stated that it was the Directorate of Criminal Investigations who placed the restriction. Once it was lifted, the transfer was lodged and land registered in their favour and a title deed issued on 26th May 2021. He also stated that he learnt of this suit after the land had been registered in favour of the 16th Defendant.
31. DW5 Alphonse Mukwayu Musyimi, the Director of the 8th Defendant adopted his witness statement dated 10th February 2023 as his evidence in chief. He stated that the 8th Defendant was a land buying/selling company which was incorporated in the 1970s. In 1982, they purchased parcel number 162 from Masaurei Ole Alasejo Mapi. The same was a subdivision of parcel Kajiado/Olooitikoshi/Kitengela 3. Evidence of this subdivision was the mutation form dated 17th March 1982 which bore the late Masaurei's thumbprint. He stated that parcel 163 was sold to Rotino Farmers Limited and parcel 164 remained with Masaurei. The 8th defendant then took possession of parcel 162 and would later subdivide and transfer it to Magana Holdings Limited in 1989. He stated that the transfer of the property from Masaurei to them was legally undertaken stating that the late Masaurei passed away in 2017 without raising any claim to the suit property.
32. On cross examination he confirmed that the mutation dated 1st March 1982 was registered on 17th March 1982 and title issued in the 8th Defendant's favour on 18th March 1982. There was an encumbrance placed in the year 1980 by the Agricultural Finance Corporation for Kshs. 88,000 which was discharged on 17th March 1980 prior to the transfer to the 8th defendant. It is his case that had there been fraud or illegality, the late Masaurei would have raised it. They have been on occupation



- of the property for over 42 years before he passed away in 2017. He stated that the suit property was purchased for Kshs. 2,200,000.
33. On re-examination he reiterated that they sold the land to Magana Holdings Limited on 4th May 1989 and a title issued. He stated that by 14th September 1994, they had already sold the property which entries shows that the title was closed on 14th September 1994 on subdivision and new titles issued. He testified that the mutation form bore the signatures of Karagita East Africa Limited, Rotino Farmers and Masaurei which was to facilitate the mutation and registration. He indicated that he was not aware if the Directors went to the Land Control Board, but that was the procedure. He confirmed that the mutation was registered on 17th March 1982 and titles issued on 18th March 1982.
 34. DW6, Catherine Masyuki the property manager of the 13th Defendant adopted her witness statement as her evidence in chief and produced her bundle of documents as exhibits in this case. She stated that the 13th defendant purchased property Kajiado/Kitengela/5664 on 18th May 2012 from the 12th Defendant for Kshs. 181,200,000 and a title issued on 14th August 2012 having followed the due process as per the documents produced as exhibits. She stated that in 2018 when they went to fence the property, they were chased away by some people and that is when they became aware of the dispute. She stated that the property is yet to be developed because the Plaintiff has made it impossible for them to develop. They await the outcome of this suit. She also sought that their prayers in the Counterclaim be allowed since 13th defendant had illegally acquired the property.
 35. On cross examination she confirmed that due diligence was undertaken prior to the purchase and they confirmed that parcel 5663 and 5664 were subdivisions of parcel No. 162.
 36. DW7 Rosemary wamuyu Mwangi, the Land Registrar kajiado confirmed that as per the Green card in their records, one Masaurei Ole Alasejo Mapi was issued with a title on 24th October 1978 and it was closed on subdivision on 17th March 1982. The subdivisions were parcels 162, 163 and 163. Parcel 162 was registered in favour of Masaurei which was subsequently transferred to Karagita East Africa Limited on 18th March 1982 for Kshs. 200,000 and then to Magana Holdings Limited on 4th May 1989. The register for this parcel was closed on 14th September 1994 on subdivision to parcels 5663 and 5664.
 37. She further stated that parcel 163 was also registered to one Masaurei Ole Alasejo Mapi and transferred to Rotino Farmers Limited on 18th March 1982 for Kshs. 100,000. This parcel was closed on subdivision into parcels 11344, 11345, 11346 and 11347 on 24th February 2000 which were transferred to 2nd, 3rd, 4th, 6th and 7th Defendants.
 38. She also stated that parcel 164 was registered to Masaurei, title deed issued on 6th September 1988 and closed on subdivision on 9th February 2005 giving rise to parcels 21197, 21198 and 19455. She went on to give the history of subsequent subdivisions.
 39. On cross examination she stated that she did not have the entry book for the year 1982 and she had not seen the transfers or application for consent to the Land Control Board for parcel 162. She stated that for parcel 163 there were copies of transfer and consent from Land Control Board. She confirmed that there was a restriction put on 11th November 2019 which was removed although she did not have copy of the letter seeking its removal. She stated that the letter from Director of Criminal Investigation dated 18th December 2020 stating that restriction be removed was enough to cause removal of the restriction.
 40. At the close of the oral testimonies parties tendered final written submissions.

The Plaintiff's submissions

41. They are dated 13th may 2024. They raise four issues for determination;



- i. A permanent injunction restraining the Defendants, their kin, agents, servants or any one claiming under them from doing or suffering to be done any act or omission that will any way interfere with extent, boundaries and/or acreage of Land Reference Number Kajiado/Ololoitikoshi/Kitengela/3 or any subsequent subdivisions thereof.
 - ii. General damages for fraud and loss of use.
 - iii. Mesne profits since 1982.
 - iv. Costs of this suit.
42. Counsel submitted that the original parcel Kajiado/Ololoitikoshi/Kitengela/3 was illegally subdivided and thus the 8th – 14th Defendants did not have good title to pass to the other defendants.
 43. Counsel further submitted that the records presented by the Land Registrar Kajiado, clearly show that upon subdivisions, parcels Nos.162 and 164 were registered in the names of the 8th and 14th defendants respectively. Further that the 8th Defendant did not produce a single document to rebutt the plaintiff's contention that they fraudulently obtained a title to the suit property. It is further submitted that the mutation lodged in the land Registry on the 17th March 1982 was irregular and invalid having incorporated strangers who purported to sign and lodge it on behalf of the registered owner.
 44. Counsel also submitted that the 8th and 14th Defendants did not have good title to pass to any of the Defendants as their titles were obtained through fraud. That the resultant titles from the sub-divisions of Kajiado/Ololoitikoshi/Kitengela/162 and 163 are all fraudulent and a nullity in law. He has put forward the case of *In re Estate of Raphael Ngugi (Deceased) (2022) eKLR*.
 45. Counsel further submitted that the Defendants have conceded that they did not conduct due diligence before acquiring the suit properties. They could not claim to be bona fide purchasers for value without notice. He has put forward the (sock) case of *Dina Management Limited Vs. County Government of Mombasa & 5 Others (2023) KESC 30 (KLR)*.

It is also submitted that the 16th Defendant caused the transfer of Title Numbers Kajiado/Kitengela/11344-11347 into its name from the 15th Defendant while the restriction was in place. The Director of Criminal Investigation had launched investigations into the acquisition of the suit properties.

Further that the 17th Defendant purchased Title Numbers Kajiado/Kitengela/99006 and 100555, from the 11th Defendant while this suit was pending. The 17th Defendant's claim that he was not aware of any adverse claims over the suit properties cannot be true as it ought to have done due diligence. He has put forward the cases of *In re Estate of Raphael Ngugi (supra)*; *Katende Vs. Haridar & Company Limited (2008) 2 EA 173* as guided by the Court of Appeal in *Weston Gitonga & 10 Others Vs. Peter Rugu Gikanga & Another (2017) eKLR*. That a claim for a bona fide purchase for value without notice cannot accrue where the very root title was obtained fraudulently and illegally.

46. It is further submitted that all the impugned title deeds registered in the names of the Defendants ought to be cancelled and revoked.

The 8th Defendant's submissions.

47. They are dated 8th July 2024. Counsel submitted that it is not in dispute that Masaurei Ole Alasejo Mapi (the deceased) was the registered owner of Kajiado/Ololoitikoshi/Kitengela/3 and its sub-division parcel No.162; that when the 8th Defendant acquired parcel NO.762, the Deceased was alive. He did



not lay any claim to the suit property during his life time. It is also submitted that the 8th Defendant was in physical possession without any claim from the deceased or his sons from the year 1989.

48. Counsel also submitted that the Plaintiff's suit is time barred by the *Limitation of Actions Act* having been brought over 36 years since the 8th Defendant purchased, obtained registration and took possession of the suit property. The suit has been brought 9 years after the 8th Defendant sold it to the 9th Defendant.
49. It is also submitted that the Plaintiff's claim is based on fraud which was committed on March 1982 when the mother title was sub-divided into Kajiado/Kitengela/162, 163 and 164. It should be noted that the Deceased has thumb printed on the documents approving sub division of the said land into three portions. The land Register of the mother Title was closed on sub-division during the life time of the Deceased. The Deceased held onto his portion 164 until the year 1996 when he sub-divided it and the subsequent sub-divisions registered in his name.
50. It is also submitted that the Plaintiff alleges fraud which was discovered on 12th April 2017, when the Deceased passed on. The Plaintiff challenges the sub-divisions of 17th March 1982 which is statute barred as per the Section 4(2) and 26(c) of the *Limitation of Actions Act*.

He has put forward the case of Samuel Samita Meurunyu Vs. Philemon Macharia Newa & 3 Others (2014) eKLR.

The Plaintiff has not proved any fraud on the part of the 8th Defendant. There is no contention that there was privity of Contract between the 8th Defendant and the Deceased. That the 8th Defendant's title is protected under Article 40 of *the Constitution*.

He prays that the suit be dismissed with costs.

The 11th Defendant's Submissions.

51. They are dated 26th June 2024.
- They raise four issues for determination;
- i. Whether the Plaintiffs submissions introduces un-pleaded cause of action against the Defendants.
 - ii. Whether the suit or cause of action against the 11th Defendants as pleaded in the suit is statute barred.
 - iii. Whether the Plaintiff has proved his claim against the 11th Defendants.
 - iv. Whether the 11th Defendant has proved its Counter-claim.
52. Counsel submitted that the Amended Plaint does not particularize the claim on alleged ground of irregularity, and or illegality against the Defendants. He has put forward the cases of Kuria Kiarie & 2 others Vs. Sammy Magera (2018) eKLR; Green & Another Vs. Kazungu & 2 Others (2022) KECA 991(KLR).
- Counsel also submitted that the Plaintiff is bound by his pleadings and cannot go beyond it by introducing a new cause of action. He has put forward the cases of Nairobi City Council Vs. Thabiti Enterprises Limited (1997) eKLR ; IEBC & Another Vs. Stephen Mutinda Mule & 3 Others (2014) eKLR.



53. Counsel submitted that the Plaintiff alleges that the fraud was discovered on 12th April 2017 for the fraud committed on 17th March 1982 which is a period of 36 years of inaction by the deceased or his estate.

The Land Registrar adduced evidence that the Deceased by himself sub-divided and sold portions of the land from the said Kajiado/Kitengela/164 which is a portion and a product of the impugned sub-division.

54. It is also submitted that the 11th Defendant took physical and actual possession of its land through DW1 in 1999 and has been living thereon to date. The said 11th Defendant also leased its subject property to a third party who operated as school with students thereon for 10 years since 2002. The Deceased and the Plaintiff never raised any objections or filed any suit to challenge the 11th Defendants title.

He has put forward the case of Margaret Wairimu Magugu Vs. Karura Investment Limited & 4 Others (2019) eKLR .

It is also submitted that the cause of action herein is statute barred. The suit against the Defendants is statute barred and the same ought to be dismissed in limine.

55. Counsel also submitted that the Plaintiff has not satisfied the threshold set out by Section 26 (1) of the *Land Registration Act* to impeach the 11th Defendant's title. The 11th Defendant is a bona fide purchaser of value. He has put forward the cases of; In Re Estate of Raphael Ngugi (Deceased) (2022) eKLR; Weston Gitonga & 10 Others Vs. Peter Rugu Gikanga & Another (2017) eKLR; Demutilla Nanyama Pururmu Vs. Salim Mohamed Salim (2021) eKLR; Kuria Kiarie & 2 Others Vs. Sammy Magera (2018) eKLR.

It is submitted that the plaintiff have not demonstrated by way of evidence that the deceased did not sub-divide the mother title, sell and transfer to the 8th and 14th Defendants.

56. It is submitted that the 11th Defendant has been in open, uninterrupted and continuous possession of its land adverse to the Plaintiffs since 1999 when it occupied it. This was proved by photographic evidence, documentary evidence and evidence of DW2 that it leased the subject property to a school for a period of ten (10) years from the year 2002. The 11th Defendant is entitled to the reliefs sought in the Counter-claim with costs.

The 13th Defendants Submissions.

57. They are dated 19th September 2024.

They raise six (6) issues for determination;

- i. Whether the acquisition of the suit land by the 8th and 14th defendants from the deceased was lawful.
- ii. Whether the sale to the 13th Defendant was legally tenable.
- iii. Whether the 13th Defendant was an innocent purchaser for value without notice.
- iv. Whether the Plaintiff is entitled to the prayers sought.
- v. Whether the 13th defendant is entitled to prayers sought in the Counter - claim.
- vi. Who should pay costs?



It is submitted that the Plaintiff had the onus of proving allegations made in the Amended Plaint of illegal and fraudulent sub-division of Kajiado/ Olooloitikoshi/Kitengela/3. He has put forward the case of Emfil Limited Vs. Registrar of Titles Mombasa & 2 others (2014) eKLR .

58. Counsel submitted that, the deceased passed away in 2017, and for 35 years did not claim the initial sub-divisions were fraudulent and/or claimed his property back.

The allegations of fraud and/or illegality have not been proved as the Mutation form was approved by the Plaintiff's father and no evidence was tendered to prove that the thumb print thereon does not belong to the deceased. The deceased did not raise the issue during his lifetime. The claim is also time barred under Section 7 of the *Limitation of Actions Act*. He has put forward the cases of Mehta Vs. Shah (1965) E.A. 321; Gathoni Vs. Kenya Co-operative Creameries Limited (1982) KLR 104; Martha Karwirwa Anthony Vs. Barclays Bank of Kenya Ltd (2019) eKLR which guided the case of Iga Vs. Makerere University (1972) EA.

59. It is also submitted that the 13th Defendant's title was acquired in 2012, during the life time of the deceased and even then no claim was brought until 2018 when this suit was filed, about six years later. The right of action cannot stand as the sub-division took place with the knowledge and acquiescence of the deceased. During his lifetime he further sub-divided parcel No. 164. Section 26 of the *Limitation of Actions Act* cannot apply herein as the fraud was not proved.

60. It is submitted that the 13th Defendant is the owner of Kajidado/Kitengela/5664 which it acquired for valuable consideration in 2012. It legally acquired the suit property.

The 13th Defendant is a bona fide purchaser for value without notice. He has put forward the cases of Weston Gitonga & 10 Others Vs. Peter Rugu Gikanga (supra); Katende V. Haridar & Company Limited (supra).

61. Counsel has also submitted that the 13th Defendant's Counter claim ought to be allowed. He has put forward the case of Keiyian Group Ranch Vs. Samwel Oruta & 9 Others (2021) eKLR.

He prays that the costs be borne by the Plaintiff.

The 17th Defendant's Submissions.

62. They are dated 10th June 2024. Counsel submitted that the 17th Defendant's properties were acquired legally formally and free from any encumbrances as shown by the documents tendered.

The Plaintiff's allegation that the deceased's thumb print on the mutation form dated 17th March 1982 was forged, was not proved at all. The plaintiff did not provide any report by a document Examiner or any thumb print which could be compared on the thumb print on the mutation form. He has put forward the cases of Kingoina (suing as the legal representative of Jeremiah Kingoina Obegi (Deceased) Vs. Kingoina & 3 Others (2023) KEELC 18425 (KLR); Gicovi Nyaga & Another Vs. Njagi Nyaga (2021) eKLR.

63. It is also submitted that the 17th Defendant is a bona fide purchaser for value as the certificate of search dated 14th March 2019 showed that the 11th Defendant was the owner of Kajiado/Kitengela/100555. He has put forward the case of Samuel Kamere Vs. Lands Registrar (2015) eKLR . He urges the court to dismiss the Plaintiff's suit with costs and allow the 17th Defendant's Counter – claim.

Analysis and Determination.

64. I have considered the pleadings the evidence on record the written submissions and the authorities cited. The issues for determination are;



- i. Whether the Plaintiff has proved his claim against the Defendants.
 - ii. Is he entitled to the reliefs sought in the Plaintiff?
 - iii. Whether the 11th, 13th, 16th, 17th Defendants are entitled to the reliefs sought in their respective counter claims.
 - iv. What orders should be issued?
 - v. Who should bear costs of this suit?
65. In summary, the Plaintiff's case is based on the sub division of the mother Title namely Kajiado/Ololoitikoshi/Kitengela/3 measuring approximately 166.41 Hectares registered in the name of Masarei Ole Alasejo Mapi, on the 14th December 1978. The title was closed on sub-division into three parcels namely Kajiado/Ololoitikoshi/Kitengela/162,163 and 164 respectively. A copy of the Green Card was produced as an exhibit in this case.
66. It is the Plaintiff's contention that the sub-division of the Mother Title was illegally and fraudulently undertaken as the thumbprint on the mutation form is not that of his later father. It is his case that the transfer of the sub-division to the 8th and 14th defendants were illegal, null and void.
- He also stated that they discovered the fraud on 12th April 2017 after his father had passed on and that his father never sold the parcels as he would have known.
67. In paragraph 9 of the Amended Plaintiff the particulars of fraud against the Defendants are given.
- It is trite law that whoever alleges must prove.
- Allegations of fraud must be specifically pleaded and proved. In the case of Samuel Samita Namunyi Vs. Philimon Machina Ndiwa & 3 Others (2014) eKLR the court held;
- Fraud is defined in the legal free dictionary as "a false representation of a matter of fact – whether by works or conduct, by false or misleading allegations or by concealment of what should have been disclosed – that deceives and intends to deceive another so that the individual will act upon it to he or his legal injury."
- The plaintiff's allegation of fraud must be proved to the required standard.
68. The Plaintiff's claim is that the thumbprint on the mutation form dated 17th March 1982 is not that of his late father. It was incumbent upon him to prove that the thumbprint was not that of his late father as per Section 107 and 109 of the *Evidence Act*. No evidence was adduced by the Plaintiff by way of a Document Examiners report to show that the said thumbprint was not that of Maseurai Ole Alasejo Mapi. He did not even provide a specimen of a thumbprint for comparison.
- In the case of Kingoina (suing as the legal representative of Jeremiah Kingoina Obegi (Deceased) Vs. Kingoina & 3 Others (2023) KEELC 18425 (KLR); the court stated;
- One is at liberty to thumbprint or sign documents as he may wish or even do both. And it is not hard to find out if a thumbprint on a document is not the impression of the person making it. All one needs to do is conduct a forensic document examination of the thumb impression on the identity card and that in the contested document. In our case, there was a thumbprint on the documents of transfer, and it at all the plaintiff was certain that this was not the thumbprint of his father, then he ought to have been bold enough to take the



documents for forensic investigation. This would have revealed whether the thumbprint on the transfer is not the same as the thumbprint in the identity card.”

Similarly in *Gicovi Nyaga & another Vs. Njagi Nyaga* (2021) eKLR the court stated thus ;

This court’s view is that the challenge to prove the allegation raised by the Appellants on the deceased’s thumb impression was not such a herculean task to disprove, as the Appellants could have simply invited an expert witness in the form of a document examiner to demonstrate to the court the differences between the known thumb print of the deceased and the questionable thumbprint on the WILL...”

The Plaintiff’s claim that the thumbprint on the mutation form dated 17th March 1982 does not belong to his late father, cannot stand and it must fail.

69. It is not in dispute that the sub-division of the mother Title occurred about 36 years ago. The Deceased, Masareui Ole Alasejo Mapi , alias Masareui Ole Alaseso Mapi passed on, on 12th April 2017.

From 1982 to 2017 he never questioned the said sub-division. Infact he retained one of the sub-divisions parcel No.164 which he further sub-divided in 1996.

70. I agree with the 11th Defendants submission that the cause of action arose in 1982.

In the case of *Margaret Wairimu Magugu Vs. Karura Investment Limited & 4 others* (2019) eKLR, the Court of Appeal stated thus;

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

71. It is also in record that the first subdivisions were undertaken in the year 1982. It was only until the year 2018 after the late Masareui died that this suit was filed thirty six years later. The Plaintiff in his testimony acknowledged that his father subdivided the land where they reside on and distributed it to them. Had there have been an illegal subdivision and transfer of the main parcel 3 as claimed by the Plaintiff, wouldn’t have the late Masareui have realised this at the time of subdividing and distributing the remaining parcel? If yes, why did he not take any action against any illegal subdivision? Is it possible that his large tract of land was illegally subdivided but he chose not to follow up on it? This court thinks that this is not possible.

72. Having found that the Plaintiff has failed to prove the allegations of fraud against the Defendants. I find that the suit herein is statute barred. The same goes contrary to Section 7 and 26 (c) of the Limitations of Actions Act.

The Deceased in his lifetime did not bring any claim against the Defendants that his land had been fraudulently subdivided.

73. I find that this an attempt by the Plaintiff to reclaim land which had been legally sold by his late father. He (plaintiff) grew up seeing the Defendants on the land without his father raising any questions. A case in point is DW’1s occupation of the suit parcel for all these years.

74. I find that the sub-division of the mother Title was legally undertaken by the deceased (plaintiff’s father). The plaintiff has failed to prove otherwise and his case fails. I find that he was not able to prove his case as against the defendants on a balance of probabilities and the same is dismissed with costs to the defendants.

Going by the above findings he is not entitled to the reliefs sought in the plaint.



75. The 8th and the 14th Defendants bought the initial sub-divisions from the original owner Masaurei Ole Alasejo Mapi for valuable consideration. Having found that the sub-division was legally undertaken it follows that they had good title to pass to the subsequent purchasers.
76. Each of the 11th, 13th, 16th and 17th defendants have demonstrated how they acquired the suit properties. The 11th defendant for one has been on the suit property since 1999 with the knowledge of the deceased and the plaintiff.
77. The Land Registrar DW7, gave a history of how the original parcel was first sub-divided on 17th March 1982. I find that the 8th and 14th Defendants Titles are protected under Section 26 of the [Land Registration Act](#).
78. Each of the other defendants 11th , 13th and 17th defendants have proved that they are bona fide purchasers for value without notice. I rely on the case of Weston Gitonga & 10 others Vs. Peter Rugu Gikanga & another (2017) eKLR where it was held as follows;

“Black’s law Dictionary 8th Edition defines “bona fide purchaser” as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

In the case of Katende Vs. Haridar & Company Limited (200* 2 EA 173 it was held;

For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- i. He holds a certificate of title;
 - ii. He purchased the property in good faith;
 - iii. He had no knowledge of the fraud;
 - iv. He purchased for valuable consideration;
 - v. The vendors had apparent valid title;
 - vi. He purchased without notice of any fraud;
 - vii. He was not party to any fraud.”
79. I find that the 11th, 13th, 17th defendants are entitled to the orders sought in their respective counter claims.
 80. Accordingly Judgement is entered for the 11th Defendant in its counter claim as follows:
 - a. That a declaration is hereby issued that the 11th Defendant acquired the property known as Kajiado/Kitengela/5663 and/or subdivisions arising therefrom including but not limited to LR Kajiado/Kitengela/99007 by adverse possession against the Plaintiff.
 - b. That an order is hereby issued that the 11th Defendant acquired the property LR No. Kajiado/Kitengela/5663 and or subdivisions arising therefrom including but not limited to LR Kajiado/Kitengela/99007 by adverse possession against the Plaintiff.



- c. That a permanent injunction is hereby issued restraining the Plaintiff whether by herself or acting through her agents, servants and/or employees from trespassing, accessing, entering into, interfering with, evicting, harassing, intimidating and/or in any manner whatsoever dealing with all that parcels of land known Kajiado/Kitengela/563 and or subdivisions arising therefrom including but not limited to LR Kajiado/Kitengela/99007.
 - d. That costs of the suit and Counterclaim be borne by the Plaintiff.
81. The 13th Defendant is granted the following reliefs;
- a. That a declaration is hereby issued that the 13th Defendant is the rightful owner of property Kajiado/Kitengela/5664 and any restriction placed by the Plaintiff be removed;
 - b. That a permanent injunction is hereby issued restraining the Plaintiff and/or beneficiaries of the Estate of the deceased acting either by themselves, their agents, servants, and or employees from trespassing, entering into, interfering with, evicting, harassing, intimidating and/or whatever manner dealing with all that parcel of land Kajiado/Kitengela/5664 belonging to the 13th Defendant;
 - c. That costs of the suit and counter claim be borne by the Plaintiff.
82. The 17th Defendant is granted the following reliefs;
- a. That a declaration is hereby issued that the 17th Defendant was the bonafide purchaser of properties Kajiado/Kitengela/99006 and Kajiado/Kitengela/10055 and any restrictions be removed.
 - b. That an order is hereby issued directed to the 1st defendant, the Land Registrar Kajiado, to remove any restrictions /inhibitions or caveats registered as LR No. Kajiado/Kitengela/99006 and Kajiado/Kitengela/10055 to the detriment of the 17th Defendant forthwith.
 - c. That a permanent injunction is hereby issued restraining the Plaintiff and or the beneficiaries of the Estate of the deceased acting by themselves, their agents and/or employees from entering into, trespassing, interfering with, harassing, intimidating, evicting and dealing with all the properties belonging to the 17th Defendant known as Kajiado/Kitengela/99006 and Kajiado/Kitengela/10055.
 - d. That costs of the suit and counterclaim be borne by the plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF FEBRUARY 2025.

L.KOMINGOI

JUDGE

In the presence of:

Mr. Karwanda for Mr. Wachira Maina for the Plaintiff.

Mr. Muriithi for Mr. Kingori for the 8th Defendant.

Mr. Litoro for the 11th Defendant.

Mr. Wafula for the 15th Defendant.

Mr. Munene for the 16th Defendant.



Ms. Muthiane for Mr. Makori for the 17th Defendant.

N/A for the 1st to 7th, 8 to 10th, 12th to 14th Defendants.

Court Assistant – Mutisya.

