



**Malei & another (Suing on Behalf of the Estate of Oltokokoi Merit  
Katiyu - Deceased) v Gitari & another (Environment & Land Case  
27 of 2020) [2024] KEELC 4280 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4280 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 27 OF 2020**

**MN GICHERU, J  
MAY 23, 2024**

**BETWEEN**

**ENASO ENE PARISUE MALEI ..... 1<sup>ST</sup> PLAINTIFF  
ROTIKEN OLE MERIT OLTOKOKOI ..... 2<sup>ND</sup> PLAINTIFF  
SUING ON BEHALF OF THE ESTATE OF OLTOKOKOI MERIT KATIYU -  
DECEASED**

**AND**

**JOSEPH BRADELY WAWERU GITARI ..... 1<sup>ST</sup> DEFENDANT  
LANGATA PRESBYTERIAN INVESTMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiffs seek the following reliefs against the defendants.
  - a. A permanent injunction against the defendants to restrain them from trespassing, accessing, tilling, alienating, developing or in any way using land originally known as Kajiado/Kaputiei-North/800 which was subdivided into Kajiado/Kaputiei-North/43966 and 43967 and further into Kajiado/Kaputiei-North/64760 to 65103.
  - b. An order nullifying and revoking the subdivisions of LR 800 into 43966 and 43967 and the subsequent subdivision of LR 43966 into parcels Numbers 64760-65103.
  - c. A declaration that the issuance of the title deed regarding LR No 800 and LR 43967 to the 1<sup>st</sup> defendant and LR 43966 (now subdivided into parcels Numbers 64760 to 65103 ) to the second defendant was invalid, null and void.



- d. A declaration that the sale and issuance of the title deeds regarding LR Numbers 64760 to 65103 to the 3<sup>rd</sup> to 167<sup>th</sup> defendants were invalid, null and void.
- e. An order cancelling/revoking the title deeds issued to the 1<sup>st</sup> defendant with regards to LR No 800 and LR No 43967 and to the 2<sup>nd</sup> defendant with regards to LR 43966 and the subsequent subdivisions regarding parcels Numbers 64760 to 65103 to the 3<sup>rd</sup> to 167<sup>th</sup> defendants.
- f. An order of mandatory injunction compelling the Land Registrar Kajiado to transfer LR No 800 back to the name of the deceased pending succession.

**This is as per the amended plaint dated 29/10/2020.**

2. The plaintiffs' case is as follows. Both of them are the children of Oltokokoi Merit Katiyu who is deceased and who left behind 10 dependants.

Secondly, the deceased owned LR Kajiado/Kaputiei-North/800 measuring 125.6 hectares or 310 acres.

Thirdly, in the deceased's lifetime, he did not distribute the suit land amongst his dependants.

Fourthly, in the year 2016, the family found out that the estate of their deceased father had been secretly, illegally and fraudulently distributed. They made a report to the police and also instructed counsel to find out what the problem was and take remedial action.

Fifthly, a search at Kajiado Land Registry established that the land was fraudulently transferred to the 1<sup>st</sup> defendant by two sons of the deceased William Sonyoi and Johnson Nkatison.

Sixthly, the 1<sup>st</sup> defendant subdivided the suit land into parcels numbers 43966 and 43967 and transferred the former to the second defendant.

Seventhly, the second defendant further subdivided LR 43966 into smaller parcels which are LR Nos 64760 to 65103.

Eighthly, in Miscellaneous High Court Case No 18 of 2019, the court nullified the process that led to the transfer of the suit land to the 1<sup>st</sup> defendant. This means that the 2<sup>nd</sup> defendant acquired part of the suit land through a void process and has no right over LR 43966 and the subsequent subdivisions that created 143 parcels which are numbers 64760 to 65103. The High Court referred this dispute to this court so that it may cancel the title deeds issued to the defendants.

Ninthly, the suit land was transferred to the 1<sup>st</sup> defendant pursuant to the sale agreement made between him and the 3<sup>rd</sup> and 4<sup>th</sup> defendants to the counter claim on 7/7/2003, even before the grant was issued to the vendors.

3. In support of their case, the plaintiffs filed the following evidence.
  - i. Witness statement by the 1<sup>st</sup> plaintiff.
  - ii. Copy of grant issued in Cause No 5 of 2020 at the High Court at Kajiado and dated 23/4/2020.
  - iii. Copy of certified proceedings in Kajiado High Court Misc. 18 of 2019.
  - iv. Copy of order issued in Case No 18/2019 and dated 23/4/2020.
  - v. A copy of grant dated 13/2/2004 issued in SRM Kajiado Case No 16/2003.
  - vi. A copy of certificate of confirmation of grant dated 8/6/2006 in case No 16 of 2003.
  - vii. A copy of sale agreement of the suit land dated 9/7/2003.



- viii. Copy of green card for the suit land running from 28/11/1986 to 5/9/2006.
  - ix. Certificate of official search whose details are blurred.
4. At paragraphs 26 and 34 of the amended plaint, the plaintiffs have pleaded particulars of fraud and illegality such as a fraudulent succession process, incapacity of the sellers of the suit land, secrecy, forgery of signatures of the dependants, intermeddling with the estate of the deceased and sale and subdivision of the suit property without the consent of the Land Control Board among others.
5. The 1<sup>st</sup> defendant in a written statement of defence and counterclaim dated 19/6/2020 denies the plaintiffs' claim and avers as follows.

Firstly, the plaintiffs were not the administrators of the estate of the late Oltokokoi Merit Katiyu. The administrators were William Sonyoi and Johnson Nkatison.

Secondly, the deceased was a member of Ilamamen and Embolio Group Ranches and in his lifetime and owned the following parcels.

- i. Kajiado/Kaputiei-North/757 – 71.94 hectares.
- ii. Kajiado/Kaputiei-North/800 – 125.6 hectares.
- iii. Kajiado/Kaputiei-North/851 – 126.1 hectares.
- iv. Kajiado/Kaputiei-North/882 – 75.49 hectares.
- v. Kajiado/Kaputiei-North/890 – 60.39 hectares.
- vi. Two other parcels at Ilmameu Group Ranch.

Thirdly, the deceased transferred all his land parcels directly from the group ranches to his adult children and/or their spouses as follows.

- i. LR 754 – Joseph Kamaiya Ole Saropa – Son in law
- ii. LR 800 – Deceased's name
- iii. LR 851 – Parasauai Ole Malei ( husband of the 1<sup>st</sup> plaintiff- Son in law.
- iv. LR 882 – William Sonyoi Oltokokoi – son.
- v. LR 890 – Rotiken alias Nkotiken – second plaintiff –son.
- vi. A parcel in Ilamameu Group Ranch – Nkoiyio Mukaya –daughter.
- vii. A second parcel in Ilamamen Group Ranch – Marisa Merumu –daughter.

The only dependant who had no land registered in his name was Johnson Nkatison because he was a minor at the time.

6. Fourthly, in the year 2003, the 1<sup>st</sup> defendant was interested in buying land in Isinya/Kaputiei area when he met William and Johnson Oltokokoi. They told him that they were selling the whole of the suit land to enable Johnson who got no land from his father purchase land in Ilmamen Ranch. They agreed on KShs 3 million as the purchase price. Due diligence was conducted and it confirmed that the suit land was registered in the name of the deceased and the two sellers had already filed cause No 16 of 2003 at Kajiado but they had not yet obtained a confirmation of grant. They asked for financial assistance to enable them complete the process. It is then that the duo entered into a sale agreement with the 1<sup>st</sup> defendant in which they were represented by the firm of Seneti and Company Advocates. The 1<sup>st</sup>



defendant was not involved in the process of obtaining the grant or its confirmation. He is therefore an innocent purchaser for value without any notice of defect of title or the process of obtaining the same.

7. Fifthly, upon the conclusion of the transaction, the 1<sup>st</sup> defendant obtained vacant possession of the suit land which he fenced in the year 2006. The actual sale and transfer took place in September 2006 after the confirmation of the grant on 5/9/2006. Later on, the 1<sup>st</sup> defendant subdivided the suit land in the year 2011 into parcel Numbers 43966 measuring 80.94 hectares and 43967 measuring 80.94 hectares. In the year 2013, he sold LR 43966 to the second defendant which took possession and subdivided the land into 343 parcels being Numbers 64760 – 65103 which have been sold to various third parties.
8. Sixthly, the plaintiffs have always been aware that the suit land was sold to the 1<sup>st</sup> defendant since 2006 when he took possession. High Court Miscellaneous Cause No 18 of 2019 was filed to defeat the lawful and procedural sale of the suit property in a conspiracy hatched by the plaintiffs and administrators of the estate of the deceased. That suit was limited to setting aside the confirmed grant but did not challenge the 1<sup>st</sup> defendant's title hence the referral of the dispute to this court. The High Court did not therefore determine the legality or validity of the 1<sup>st</sup> defendant's title to the suit land. For the above and other reasons, the 1<sup>st</sup> defendant seeks the dismissal of the plaintiffs' suit against him.
9. In addition to the defence, the 1<sup>st</sup> defendant has filed a counterclaim against the plaintiffs and William Sonyoi, Johnson Nkatison, Job Momanyi Nyasimi and the Land Registrar Kajiado seeking the following reliefs against them jointly and severally.
  - a. An order of permanent injunction restraining all the above named, whether by themselves, invitees, and/or otherwise whomsoever from entering upon or trespassing, constructing or continuing with the construction of any structures, offering for sale, selling, disposing of, charging, subdividing, dealing, alienating, occupying, managing, letting or otherwise using, residing and remaining or representing to any person that it is the duly registered owner or in any way whatsoever interfering with the plaintiff's proprietary rights including the right to quiet possession of all that piece of land known as Kajiado/Kaputiei-North/43967, Kajiado County.
  - b. An order of injunction restraining the defendants in the counterclaim whether by themselves, their agents, servants, employees invitees, and/or otherwise whomsoever from making or causing to be made by any land registrar any further restrictions, caveats and/or cautions on LR No 43967.
  - c. A declaration that the sale and disposition of the suit land, i.e. LR 800 by the 3<sup>rd</sup> and 4<sup>th</sup> defendants in their capacity as the administrators of the estate of the late Oltokoikoi Merit Katiya (deceased) to the plaintiff herein was valid, legal and lawful and the plaintiff has acquired a good title thereto.
  - d. A declaration that the plaintiff herein is the legitimate and registered owner of LR 43967 measuring 80.94 hectares.
  - e. A declaration that the subdivision, sale and disposal of LR 43966 by the plaintiff herein to the Langata Presbyterian Investment Limited acquired a good title thereto.
  - f. A declaration that the restrictions lodged by the DCI prohibiting all dealings on 22/9/2016 vide letter reference No CID/SEC/4/4/Vol. IX/27 of 19/8/2016 and by the 5<sup>th</sup> defendant herein vide letter No NON/JNM/080/2018 dated 31/5/2019 against the plaintiff's property. i.e. LR 43967 are illegal, null and void.



- g. An order directing the 6<sup>th</sup> defendant herein to remove and cancel from the register the restrictions mentioned in (f) above.
- h. An order of eviction of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants herein and all their agents, servants, employees, invitees and/or any other person from LR No 43967.
  - i. General damages against all the defendants herein.
  - j. Costs of the suit.
  - k. Interest on (i) and (j) at court rates from the date of filing of the counterclaim till payment in full.
  - l. Any other order that the court may deem fit and just to grant.
- 10. The case in the counterclaim is as follows. In January 2013, the 1<sup>st</sup> defendant sold LR 43966 to the second defendant who took possession. He retained LR 43967. In 2016 the second defendant fenced off its land and the 1<sup>st</sup> defendant reinforced his fence for his own land.
- 11. Suddenly in August 2016, the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the counterclaim filed a complaint with the Directorate of Criminal Investigations falsely claiming that they did not sell the whole suit land but only a portion thereof and that they had not been paid the entire purchase price. The DCI registered a restriction against LR No 43967 which prohibited all dealings with the land. Investigations by the DCI found the claim by the 3<sup>rd</sup> and 4<sup>th</sup> defendants to be false and baseless. No further action was taken by the DCI.
- 12. Three years later in 2019, the defendants colluded and filed High Court Miscellaneous Case No 19 of 2019. They claimed to be destitute and to have nowhere to live as they had been disinherited following the sale of their land. This was also false because they own the land shown in paragraph (5) above. The High Court referred the dispute to this court and also issued an order of restriction against the suit property on 23/4/2020. It also set aside the confirmed grant of 8/6/2006.
- 13. Instead of filing the suit directed by the High Court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants on the advise of the 5<sup>th</sup> defendant invaded the suit and with goons and hirelings and cut down trees, dug holes and erected temporary structures. The 1<sup>st</sup> defendant reported the matter at Isinya Police Station. The only action that the police took was to send two police officers to the land who stopped the construction. They said they could not evict the defendants without a court order. The 5<sup>th</sup> defendant who is an advocate of the High Court has misled the other defendants that they have a decree from the High Court revoking the 1<sup>st</sup> defendant's title to the land. He has also instructed them to invade the land even when there is a restriction against dealing with the suit land issued by the same High Court. For the above and other reasons, the 1<sup>st</sup> defendant prays for judgment against the defendants in the counterclaim together with costs.
- 14. In support of his defence and counterclaim, the 1<sup>st</sup> defendant filed the following evidence.
  - i. Witness statements by the 1<sup>st</sup> defendant and Tom Onyango Advocate dated 19/6/2020 and 18/2/2022 respectively.
  - ii. Copy of sale agreement dated 9/7/2003.
  - iii. Copy of stamp duty assessment slip.
  - iv. Copies of vouchers and cheques date from 9/7/2003 to 7/9/2006 showing payment of the purchase price to the 3<sup>rd</sup> and 4<sup>th</sup> defendants.



- v. Copies of ID Card for the 3<sup>rd</sup> and 4<sup>th</sup> defendants.
  - vi. Copy of certificate of official search for the suit land dated 30/6/2003.
  - vii. Copies of pleadings and orders in Succession Cause No 16 of 2003 at Kajiado.
  - viii. Correspondence between the advocates for the purchaser and the vendors at the time of purchase of the suit land.
  - ix. Copy of mutation form for the suit land dated 18/10/2011.
  - x. Copies of green cards and mutation forms for LR 757, 800, 851, 882 and 890.
  - xi. Embolio and Ilmamen Group Ranch sheets numbers 4, 7, 1, 2, 3 and 4.
  - xii. Copies of photographs showing illegal structures on LR 43967.
  - xiii. Witness statements by the 3<sup>rd</sup> and 4<sup>th</sup> defendants dated 19/8/2016.
  - xiv. Other relevant documents.
15. The second defendants through counsel on record filed a written statement of defence. It is dated 24/6/2020. In the defence it is averred as follows.
- Firstly, LR Kajiado/Kaputiei-North/43966 was purchased by the 2<sup>nd</sup> defendant in good faith, for valuable consideration and without notice of any alleged fraud or defect in title and therefore it obtained a good title.
- Secondly, upon the registration of the 2<sup>nd</sup> defendant as the owner of land, it caused the land to be subdivided into 343 parcels all of which are registered as LR Numbers 64760 to 65103 whereby the register for LR 43966 was closed and it ceased to exist. A consideration of Kshs 65 million was paid by the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant as consideration.
- Thirdly, the plaintiffs acted in bad faith by failing to join the 2<sup>nd</sup> defendant in High Court Miscellaneous Cause No 18 of 2019 despite knowledge that it is the registered owner.
- For the above and other reasons, it prays for the dismissal of the plaintiff's suit against it with costs.
16. In support of its case, the 2<sup>nd</sup> defendant filed the following evidence.
- i. Witness statement by E.K. Wagaiyu, a director and shareholder of the 2<sup>nd</sup> defendant.
  - ii. Copy of sale agreement for the suit land, copy of official search dated 9/1/2013, copy of application for consent of the land control board and the consent itself, copy of valuation for stamp duty and pay in slips for the same and copy of instrument of transfer dated 10/10/2013.
  - iii. Other relevant documents.
17. The plaintiffs filed a reply to defence and a defence to counterclaim dated 9/12/2020 in which they aver as follows.
- Firstly, they generally denied the 1<sup>st</sup> defendant's counterclaim.
- Secondly, the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the counterclaim are the administrators of the estate of their deceased father as per the order of the High Court which has not been set aside.
- Thirdly, the 5<sup>th</sup> defendant was struck off from the suit in a ruling dated 8/10/2020.



Fourthly, the admission by the plaintiff that he entered into a sale agreement before the grant was issued is a violation of Section 82 of the *Law of Succession Act* which prohibits sale of immovable property before confirmation of grant.

Fifthly, the 2<sup>nd</sup> to 167<sup>th</sup> defendants benefited from a void process which cannot be approved by this court.

Sixthly, it is denied that lack of police action against the 1<sup>st</sup> defendant exonerated him of wrong doing.

For the above and other reasons, they pray for the dismissal of the counter claim with costs.

18. At the trial on 16/11/2021 and 30/5/2023, a total of four witnesses testified. They included the 1<sup>st</sup> plaintiff, the second defendant and his advocate and a representative of the 2<sup>nd</sup> defendant. Each witness after taking oath adopted their witness statement and documents. They reiterated whatever is in their filed evidence. They were then subjected to cross –examination by the counsel for the adverse party.
19. Counsel for the parties filed written submissions on 20/6/2023, 11/9/2023 and 22/11/2023 respectively. The plaintiffs’ counsel identified four issues as follows.
  - i. Whether the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the counterclaim had capacity to sell the suit land.
  - ii. Whether the 1<sup>st</sup> defendant acquired good title.
  - iii. The question of innocent purchaser and whether the 1<sup>st</sup> defendant could pass title to the subsequent buyers.
  - iv. What reliefs should the court grant.

The 1<sup>st</sup> defendant’s counsel identified four issues as follows.

- i. Whether the suit property was validly, lawfully and procedurally transferred to the 1<sup>st</sup> defendant by the 3<sup>rd</sup> and 4<sup>th</sup> defendant to the counterclaim?
- ii. Whether the 1<sup>st</sup> defendant passed a good title to the 2<sup>nd</sup> defendant herein?
- iii. Whether the setting aside of the grant, ipso facto, set aside the sale and transfer to the 1<sup>st</sup> defendant herein?
- iv. Which orders should this court issue?

Counsel for the 2<sup>nd</sup> defendant identified only one issue for determination namely,

- i. Whether the 2<sup>nd</sup> defendant was a bona fide purchaser for value who acquired good and marketable title from the 1<sup>st</sup> defendant and whether it could pass good title to subsequent buyers after the subdivision.

The court had given the order of filing the written submissions in accordance with Order 18 Rule 2(2) *Civil Procedure Rules* so that the plaintiff would be the last to file as the law requires but it would seem that this direction was not strictly adhered to. This means that I will have to make a determination on all the nine issues as identified.

20. I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the parties, the issues identified and the case law cited and I make the following findings.



21. On the first of the plaintiffs' issues, I find that the 3<sup>rd</sup> and 4<sup>th</sup> defendants did not have capacity to sell the suit land. Section 82 (b) (ii) Provides as follows.

“ no immovable property shall be sold before confirmation of the grant”.

It is not disputed that the sale agreement was recorded on 9/7/2003. The grant was confirmed on 8/6/2006 which is almost three (3) years later. By this time, the sale was complete and all that remained was the transfer of the suit land which took place long after the sale. I am not persuaded that the holding in the case of *In the Estate of Julius Mimano (deceased)* (2019) eKLR is to effect that a personal representative of the estate of a deceased can sell immovable property before confirmation of the grant. Even if that were the holding, I find that it would be per incuriam because case law cannot prevail over an Act of Parliament. In our hierarchy of norms at Section 3 (1) (b) of the *Judicature Act*, written laws rank second only to the *Constitution* and not to Case law.

22. Since the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the counterclaim did not have capacity to sell the suit land to the 1<sup>st</sup> defendant, it necessarily follows that the 1<sup>st</sup> defendant did not acquire good title to the suit land.
23. On the third of the plaintiffs' issues, I find that the 1<sup>st</sup> defendant could not pass title to the subsequent buyers. It has been held by the Supreme Court of Kenya in the case of *Dina Management Limited –versus- County Government of Mombasa and 5 others* that the Constitutional Protection of right to property does not extend to property found to have been unlawfully acquired. The court held at paragraph 111 of the judgment dated 15/7/2021;

“ Article 40 of the *Constitution* entitles every person to the right to property subject to limitations set out therein. Article 40 (6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> registered owner did not acquire the title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of the *Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser”.

The reasoning in the above case applies to this case because if the 1<sup>st</sup> defendant did not acquire title, those who bought from him could not acquire title either. The same applies to those who bought from the one who bought from the 1<sup>st</sup> defendant.

24. The first and the second of the 1<sup>st</sup> defendant's issues have already been determined by the finding in paragraphs (21) and (23) above. For the avoidance of doubt, the suit property was not lawfully, validly and procedurally transferred to the 1<sup>st</sup> defendant by the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the counterclaim before the grant had been confirmed. Since the property was not lawfully acquired by the 1<sup>st</sup> defendant, the right to property could not extend to unlawfully acquired property as per Article 40 (6) of the *Constitution*.
25. When it comes to third of the 1<sup>st</sup> defendant's issues, I find that the setting aside of the grant by the High Court, ipso facto, did not necessarily set aside the sale and transfer of the suit land to the 1<sup>st</sup> defendant herein. If the 1<sup>st</sup> defendant had proved that sale was not contrary to statute, then, this court could have, all other factors being constant, arrived at a different conclusion.
26. As for the 2<sup>nd</sup> defendant's single issue, I find that it has already been determined by the finding in paragraph 21 of this judgment. The 2<sup>nd</sup> defendant could not pass good title to the subsequent purchasers because it did not acquire good title.



27. In the final analysis, I find three things have been proved.

Firstly, I find that the 1<sup>st</sup> defendant occupied the suit land by fencing and he did this with the consent of the 3<sup>rd</sup> and 4<sup>th</sup> defendants to the counterclaim.

Secondly, the 3<sup>rd</sup> and 4<sup>th</sup> defendants have admitted in their statement to the police that they received Kshs 1.5 million from the defendant. I am satisfied that they received the full Kshs 3 million even though they do not admit it. The 1<sup>st</sup> defendant gave credible evidence of this payment. This evidence was corroborated sufficiently in all the material particulars by the evidence of learned counsel Tom Onyango MBS who I believed.

Thirdly, it has been proved that the family of the late Oltokokoi Merit Katiyu owned at least six other parcels namely Kajiado/Kaputiei-North/757, 851, 882 and 890 in addition to two other parcels at Ilmamen Group Ranch. This lends credence to the evidence by the 1<sup>st</sup> defendant that the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the counterclaim intended to sell the entire suit land to him and committed themselves in writing and gave out all their requisite documents including identity cards. Since the sale was followed by a transmission, the consent of the Land Control Board was not necessary. The only problem with this transaction is that it was prohibited by statute as we have already seen above.

28. In the case of Willy Kimutai Kitilit –versus- Michael Kibet, Civil Appeal No 51 of 2015 at Eldoret, the Court of Appeal held that the doctrines of constructive trust and proprietary estoppel override the Land Control Act because equity is now one of the National Values in Article 10 (1) (b) of the Constitution which binds courts in interpreting any law. It was held in that case that the seller’s action of receiving full purchase price and putting the buyer in possession created a constructive trust in favour of the buyer. The facts of this case are similar to those in the Kitilit Case to the extent of the 50 acres of land that the 3<sup>rd</sup> and 4<sup>th</sup> defendants in the counterclaim admitted to have sold to the 1<sup>st</sup> defendant. It would be unconscionable for the 3<sup>rd</sup> and 4<sup>th</sup> defendants to sell the 1<sup>st</sup> defendant land, let him occupy it and then turn around and say they wish to refund his Kshs 3 million about twenty years later and expect that the money would buy equivalent land now. It would be a gross injustice to the 1<sup>st</sup> defendant.

29. In conclusion, I make the following orders.

- I. The defendants in the counter claim to transfer a parcel of land measuring 50 acres to the 1<sup>st</sup> defendant in the main suit from LR Kajiado/Kaputiei-North/800, failing which the deputy registrar of this court to execute all necessary instruments to effect the said transfer.
- II. Prayers (b), (c), (d) and (e) of the amended plaint dated 29/10/2020 allowed as prayed.
- III. Counterclaim dated 19/6/2020 allowed only in terms of the 50 acres to be carved from the suit land.
- IV. Each party to bear its own costs.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 23<sup>ND</sup> DAY OF MAY 2024.**

**M.N. GICHERU**

**JUDGE**

