



Cheburet v Ngobitwo Farmers Co-operative Society Limited; Kiberut & 2 others (Interested Parties) (Environment & Land Case 24 of 2014) [2024] KEELC 6232 (KLR) (30 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6232 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 24 OF 2014
EO OBAGA, J
SEPTEMBER 30, 2024**

BETWEEN

JEREMIAH K. CHEBURET PLAINTIFF

AND

NGOBITWO FARMERS CO-OPERATIVE SOCIETY LIMITED DEFENDANT

AND

JULIUS KIBERUT INTERESTED PARTY

SIMON CHEMOIYWO INTERESTED PARTY

CONSTANTINE KIMOI INTERESTED PARTY

JUDGMENT

1. On 29th January, 2014, the Plaintiff filed a suit against the Defendant in which he sought an injunction restraining the Defendant from interfering with his 4acres comprised in Block 139 owned by the Defendant. He also sought an order compelling the Defendant to issue him with title for the 4acres. He contemporaneously filed an application seeking injunctive orders against the Defendant.
2. The Application for injunction was heard and the Plaintiff was granted an injunction on 27th March, 2014. On the same date of grant of injunction in favour of the Plaintiff, the interested parties were joined in this suit. As the case was pending, the Defendant facilitated the interested parties to process titles. The 1st interested party obtained his title on 11th September, 2014, the 2nd Interested Party obtained hers on 4th September, 2014 and the 3rd Interested Party obtained hers on 23rd August, 2018.
3. The titles given to the interested parties covered the entire 4acres where the Plaintiff had been shown and was occupying. This necessitated the Plaintiff to file an amended Plaint dated 20th November, 2018 and filed in court on 3rd December, 2018 in which he sought the following reliefs:-



- a. An order for an injunction restraining the defendant by itself, its servants, agents and/or employees from entering, trespassing, alienating, ploughing, sub-dividing or in any other way interfering with the plaintiff's parcel of land known as Block 139 plot No. 203 or more specifically the plaintiff's portion of land on block 139 measuring four (4) acres or thereabouts pending the hearing and determination of this suit. An order for cancellation of all those titles known as SOY/SOY Block 10 (Navillus) 2933 in the name of the 1st Interested party, 2936 in the name of the 2nd interested party and 2937 in the name of the 3rd interested party.
 - aa) An order for an injunction restraining the defendant by itself, its servants, agents and/or employees from entering, trespassing, alienating, ploughing, sub-dividing or in any other way interfering with the plaintiff's parcel of land known as Block 139 plot No. 203 and now known as SOY/SOY Block 10 (Navillus) 2933, 2936 and 2937 or more specifically the Plaintiff's portion of land on Block 139 pending the hearing and determination of this suit.
 - b. An order compelling the defendant to issue title in favour of the plaintiff.
 - c. Costs of this suit.
 - d. Any other relief that this Honourable court may deem fit to grant.
1. The Interested Parties filed their defence and raised a counter-claim in which they sought the following reliefs;-
 - a. A declaratory order that they obtained their respective parcels lawfully and that they belong to them.
 - b. A permanent order of injunction restraining the Plaintiff by himself, his servants, agents and/or employees from entering, trespassing, and alienating, ploughing, subdividing, eviction and or/any other way interfering with the interested parties. Portions of land.
 - c. Damages for losses suffered as a result of the Plaintiff's unlawful activities.
 - d. Dismissal of the Plaintiff's suit.

Plaintiff's Case;

5. The Plaintiff testified that he was a member of the Defendant. The Defendant's membership consisted of six groups namely, Kitale, Kaprobita, Kapsowar, Meibeki and Chepyemit. He came from the Kaprobita group. He paid Kshs.200,000/- to the treasurer of Kaprobita group who then remitted the money to the Defendant.
6. The Kshs.200,000 which he paid was equivalent to 4¹/₂ acres. He also paid Kshs.2000 as registration fees and a further Kshs.50,000. He was shown his 4¹/₂ acres where he settled before subdivision. In 2002, there was a general meeting where it was resolved that members pay survey fees. He paid Kshs.4,100 on 11th November, 2002 through the treasurer of Kaprobita group.
7. The Plaintiff surrendered ½ an acre for public utilities and remained with 4 acres. In 2014 the Plaintiff was informed that surveyors were on his 4 acres and that they were subdividing his land. He went to the chairman of the Defendant who asked him to bring receipts for payment. He decided to come to court where he obtained an injunction stopping the Defendant from interfering with his 4 acres.



8. Despite the Defendant having knowledge of the injunction, they went ahead to assist the Interested Parties to get titles. He prays that the titles in favour of the Interested Parties be cancelled as he has been on his four acres for 23 years and that he has secured the 4 acres by fencing them.

Defendant's Case;

9. The Defendant through its treasurer Joseph Kipyator Chesire testified that the Defendant was incorporated on 28th February, 1994 with the sole purpose of acquiring property for its members according to the amount contributed. In 1996 members agreed to start contributing money for purchase of land. The monies were being deposited in the Defendant's account at Co-operative Bank, Eldoret.
10. It was agreed in a general meeting held at Soy in 1997 that an acre was to be sold for Kshs.45,000/-. Members were encouraged that they at least pay up for one acre. The interim officials identified land at Soy which was being sold by Lonrho Agribusiness (East Africa) Limited.(Lonrho). As negotiations were going on, members were contributing depending on the size of land they wanted.
11. An agreement was entered into with Lonrho on 4th November, 1999. The first payment of Kshs.15,126,000/- was made on 10th March, 1998. The Defendant acquired Parcel Nos.19, 20, 118, 130, 136, 137 and 139. Members were given until December 1999 to complete their payment as the last instalment for these parcels were due then. The last payment for the acquired parcels was made on 11th January, 2000.
12. Some members including the Plaintiff did not make their payment on time as agreed. The Defendant advised members to continue making payments so that the Defendant could acquire Parcel 146. The society was unable to raise the Kshs.7,000,000/= which was required to acquire Parcel 146. They only managed to raise Kshs.3,000,000/=. When it became apparent that the members could not raise the required amount, the members were advised to collect their refunds.
13. Most members collected their refunds but the Plaintiff refused to collect his refund which is held by the Defendant to date and is available for collection. Later the Defendant subdivided Parcel 139 and 140 and gave to paid up members. The Defendant denies that the Plaintiff was part of Parcel 139 and that his claim on plot No.203 is unfounded.

First Interested party's case ___;

14. The 1st Interested party testified that he purchased two acres from Florence Sumukwo in 2007 at a price of Kshs 160,000/- vide sale agreement dated 9.3.2007. He stated that Florence who has since passed on handed over all her original documents to him. He further stated that he cultivated the two acres from 2007 to 2013 before the Plaintiff moved in to cultivate the same land in 2014. He later processed and obtained title for his land on 11.9.2014. The land is currently occupied by the plaintiff.

Second Interested party's case;

15. The 2nd Interested party testified that he was a member of Ngobitwa Farmers Co-Operative Society Limited. He purchased one share at Kshs 45,000/- which was equivalent to one acre. He paid Kshs 42,000/- on 1.8.1999. He had earlier on paid Kshs 10,000/=. He took possession of his one acre which he gave to a neighbour to take care of on his behalf. He later processed title which he obtained on 4.9.2014 but the land is occupied by the Plaintiff.



Third Interested Party's case;

16. The 3rd Interested party testified that she is a member of Ngobitwa Farmers' Co-Operative Society. She purchased one share at Kshs 45,000/= which was equivalent to one acre. She cultivated the one acre once and went back to Marakwet. She came back only to find that the plaintiff had occupied her land. she stated that she obtained title to her land on 23.8.2018 but the land is occupied by the Plaintiff.

Plaintiff's submissions;

17. The plaintiff submitted that he was a member of the Defendant who was a fully paid up member. Before the process of survey commenced, he was shown where to reside in Block 139. After survey was carried out in 2006, he was shown the beacons for his portion which had been reduced from 4 ½ acres to 4 acres. The half-acre was given out for Public utilities. He fenced his portion where he is residing todate.
18. The plaintiff further submitted that in 2014 surveyors came and illegally subdivided his four acres into three portions. He was not notified of the subdivision of his land. He submitted that the Interested parties obtained their titles with convenience of the Defendant in defiance of a court order given on 27.3.2014. He stated that he had been in occupation of his land since 2000 and that the interested parties have been elsewhere and only came up to claim his land after they obtained illegal titles. The plaintiff relied on the case of Musa Kiptai Mulwo –Vs- Ngobitwa Farmers' Co-Operative Society Limited & 3 others (2019) eKLR which had similar circumstances as in this case.

Defendant's submissions;

19. The Defendant submitted that this suit is res-judicata in that there was another case being E&L Case No. 977 of 2012 (Formerly HCCC No. 261 of 2006) where the present plaintiff was also a plaintiff. This suit was dismissed and that therefore this one is res judicata. The Defendant therefore submits that this court does not have jurisdiction to entertain this suit.
20. The Defendant relied on the case of Henderson –Vs- Henderson (1843 – 60) All ER 378 where it was held as follows:-

“... where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of re judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to very point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.

21. The Defendant also relied on the case of owners of the Motor Vessel “ Lillians” –Vs- Caltex Oil (Kenya) Ltd (1989) KLRI where it was held as follows:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no



basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” (underlined for our emphasis).

22. The Defendant submitted that the plaintiff did not make payment in time and that payments started in 1996 and according to the sale agreement between the Defendant and Lonrho East Africa Limited the completion date was 31.12.1999. It submitted that the plaintiff made his first payment on 17.2.2000 and that therefore he was not entitled to benefit from Block 139. It further submitted that the last payment for phase I was on 11.1.2000. The Defendant submitted that it embarked on Phase II where it was to purchase Block 146 but due to low contributions, it could not manage the seven million required hence the refund which the plaintiff refused to take.
23. On the issue of Defendant flouting the injunction issued by the court, the Defendant submitted that the Plaintiff failed to register the order with the Land Registrar.

Interested parties submissions;

24. The Interested parties submitted that the Defendant had the sole discretion on where to allocate each member and that such discretion was exercised when the Defendant decided to allocate them the suit property. It was submitted that the 1st interested party purchased his two acres from one Florence Sumukwo who was a member of the Defendant; that there was no ambiguity as to the identity, size and location of the plot sold; that the 1st interested party took possession of the two acres in 2007 and started cultivating it until 2012 when the Defendant asked him to stop so that they could have ample time to put their documentation in order.
25. In December 2013, the Defendant showed him his two acres upon completion of the survey process and in 2014, he started ploughing the land in preparation for planting season. The plaintiff thereafter came and started harrowing the same land. The 1st interested party further submits that the claim by the plaintiff is unfounded. It is the interested parties submission that the plaintiff was unable to clear his portion of payment in time. A new register was opened and the Defendant was in the process of purchasing Block 146 where the plaintiff was supposed to be allocated. It was however not possible to purchase this block as members did not raise enough money. The block was taken by a different party. The parties were asked to go for refund but the plaintiff refused.
26. The interested parties submitted that the titles held by them are indefeasible and relied on section 24 (a) of the [Land Registration Act](#) which provides as follows:-

“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; and;”
27. The interested parties also relied on section 25 of the [Land Registration Act](#) 2022 which states as follows:-
 1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject— (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.



(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

28. The interested parties further relied on Section 26 (1) of the [Land Registration Act](#) which states as follows:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except -”

29. The interested parties relied on the case of [Joseph Arap Ngok – Vs- Justice Moiwo Ole Keiwa & 5 others eKLR Nairobi Civil Application No. 60 of 1997](#) where it was held as follows: -

“Section 23(1) of the Act gives absolute and indefeasible title to the owner of the property. The title of such owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title holder under the Act. It is our law, and law takes precedence over all other alleged equitable rights of title. In fact, the Act is meant to give such sanctity of title, otherwise the whole process of registration of title and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

30. The interested parties submitted that the Plaintiff had not proved his case. They relied on section 107 of the [Evidence Act](#) which provides as follows:-

“When the question is whether a person is alive or dead, and it is shown that he or she was alive within thirty years, the burden of proving that he or she is dead is on the person who affirms it.”

31. They submitted that unlike the Plaintiff, they have been able to prove that they are entitled to the suit property which they obtained through a proper and lawful process.

32. The interested parties relied on the case of Samuel Ambasa & 3 others –Vs- Stella Ingasia (2022) eKLR where the court emphasized on the need for a party who asserts that certain facts exist had to prove the same.

33. On the issue of fraud, the interested parties relied on the case of Koinange & 13 others –vs- Koinange (1986) KLR 23 where it was held that a party alleging fraud has the burden of proving such and the allegations of fraud must strictly be proved to a standard higher than ordinary civil cases. Still on this point the interested parties relied on the case of Mbuthia Macharia –vs- Anna Mutua Ngwiga & another (2015) eKLR where the court relied on the case of Rantilal Gardhanbhai Palel – vs- Lalji Makanji (1967) EA 314, PWM –vs- JMM (2019) eKLR and Samuel Gitari Ngiria –vs- Judith Wambui Mithike (sued as the legal representative of the Estate of John Mungu Wagake) & others (2021) eKLR.

34. The 1st Interested party submitted that he is entitled to general damages as a result of the disruptive activities of the Plaintiff. In this regard he relied on the case of Bhangwan Singh Kalsi –Vs- National Housing Co-operation (2017) eKLR where the Court held as follows:-

“The question of general damages for trespass is well settled. Once trespass is established or proved, then a party need not prove that he suffered any damages or loss. It is trite law that



trespass to land is actionable per se. I find that the plaintiff is entitled to general damages for trespass which was occasioned by the Defendant.”

Analysis and determination;

35. I have carefully considered the evidence adduced by the parties herein as well as their submissions. There is no dispute that the plaintiff was a member of the Defendant. The issues which emerge for determination are as follows: -

- i. Whether this suit is res judicata;
- ii. Whether the plaintiff paid fully for 4 ½ acres;
- iii. Whether there was a strict requirement that members who were to benefit from Block 139 had to make all their payments by 31.12.1999;
- iv. Whether the Plaintiff was put in possession of the 4 ½ acres for which he paid for;
- v. Did the Defendant embark on purchase of Block 146 and if so what was its fate;
- vi. Whether the interested parties were shown the same location where the plaintiff is occupying;
- vii. Whether the plaintiff was ever asked to go for a refund;
- viii. Was the Defendant right in processing title for the interested parties on land which was being occupied by the plaintiff;
- ix. Are the parties herein entitled to their respective claims in the main suit and counter claim;
- x. Which order should be made on costs.

i. Whether this suit is res judicata;

36. The Defendant is arguing that this suit is res judicata. That there was ELC No. 977 of 2012 which was dismissed. The plaintiff herein was the 5th Defendant in that case. The Defendant did not say in which manner this suit was dismissed. It is not known whether this case was heard on merits or not. I have however looked at the plaint which is in the Defendant’s bundle of documents. In that plaint, the plaintiffs were seeking among other prayers for a declaration that the Defendant was holding Block 139 in trust for them. There is no doubt that indeed the Defendant had been registered as owner of Block 139. This registration was indeed in trust for the members who had contributed their monies for its purchase. As it turned out, this property was subdivided and given out to members according to their contributions.

37. In the instant case, the plaintiff is seeking to protect what he had been allocated but which was later given to the interested parties in unclear circumstances. Though the issue of res judicata was raised in the Defendant’s defence, it was not pursued in time as per the owners of the motor vessel “Lillians” case supra. On 29.6.2019 the Defendant filed a preliminary objection on res judicata case but never pursued it. This was so because the Defendant was very much aware that this suit was not res judicata. If the Defendant was convinced that this suit was res judicata, it should have raised that issue at the earliest time possible and not raise it at the tail end of this case. This case is not res judicata as the issues which were in ELC 977 of 2012 were quite different from the issues herein. I therefore find that this case is not res judicata.

ii. Whether the plaintiff paid fully for 4 ½ acres;



38. There is no contention that a share which was equivalent to one acre was going for Kshs 45,000/= The plaintiff paid registration fees of Kshs 2000/= on 17.2.2000. On the same day of registration, he paid Kshs 150,000/= for shares. On 11.3.3.2000, he paid another 50,000/= for shares. On 11.11.2002, he paid Kshs 4,100/= for survey fees. On 21.1.2006 when final survey was done, he paid another 1,200/= being further survey fees. It is therefore clear that the plaintiff fully paid for his 4 acres which he is occupying after surrendering $\frac{1}{2}$ an acre for public utilities.
- iii. Whether there was a strict requirement that members who were to benefit from Block 139 had to make all their payments by 31.12.1999;
39. The Defendant is trying to argue that all members who were to benefit from Block 139 had to make their payments by 31.12.1999. There is nothing on record or evidence to show that this was the position. The truth of the matter according to evidence is that in 2000 upon the plaintiff registering and paying for his shares for $4\frac{1}{2}$ acres, he was shown where to reside pending the survey process. In 2006 when the actual survey was conducted, he was shown beacons for his four acres after $\frac{1}{2}$ an acre was surrendered for public utilities. His four acres fell on block 139. As there is no evidence that members who were to benefit from Block 139 had to pay by 31.12.1999, I find that there was no such requirement and the Defendant cannot use the non existent requirement to deprive the plaintiff of his land.
- iv. Whether the Plaintiff was put in possession of the $4\frac{1}{2}$ acres for which he paid for;
40. The plaintiff testified that upon payment of the monies equivalent to $4\frac{1}{2}$ acres, he was put in possession of his $4\frac{1}{2}$ acres. He has remained on the 4 acres which remained after he surrendered $\frac{1}{2}$ an acre for public utilities in 2006 when survey was carried out. He fenced the four acres where he is staying todate. During the hearing of this case, DW1 Joseph Kipyator Chesire who is treasurer of the Defendant testified that the plaintiff was given land in Block 139 which he referred as to phase one on temporary basis.
41. When DW2 was cross examined by Mr. Kipkenei for plaintiff, he stated that he did not know when payments for phase one terminated. It is therefore clear that the plaintiff was put in possession of his land which was in Block 139 and that is where he has remained todate.
- v. Did the Defendant embark on purchase of Block 146 and if so what was its fate;
42. The Defendant stated that it embarked on the process of purchasing Block 146 which was costing Kshs 7,000,000/=. That the members managed to raise only Kshs 3,000,000/=. The Defendant stated that, the plaintiff was to benefit from Block 146 which never materialized and that members including the plaintiff were to go for a refund. There is absolutely no evidence to show that there were such plans to purchase Block 146.
43. There was no evidence adduced to show the list of members who were to benefit from the aborted purchase if any of Block 146. The plaintiff's evidence is that upon the survey of 2006, he was shown his 4 cates which he fenced and has remained on the same todate. As the plaintiff was not moved, the Defendant cannot use the purported aborted purchase of Block 146 to move him from his land. I find that there was indeed no such intention to purchase Block 146 as there is no evidence to back the same.
- Vi. Whether the interested parties were shown the same location where the plaintiff is occupying;
44. The 1st Interested party Julius Kiberut testified that he purchased two acres from Florence Tala Sumukwo who was a member of the Defendant. She surrendered all her documents in support of her shareholding to the 1st interested party. While the 1st Interested party was being cross-examined by Mr.



- Kipkenei he stated that the portion which M/s Florence Sumukwo showed her is not the one for which he has title. He further stated he was shifted from the location he was shown to another one which he found had been fenced.
45. The 1st interested party purchased two acres in 2007. As at the time of purchase in 2007, survey had already been carried out and four acres had been set aside for him. This is how he ended up fencing his portion. It is therefore clear that M/s Florence Sumukwo who sold him the land had been shown her land elsewhere but the 1st interested party was shown land which belonged to the plaintiff.
46. The 2nd interested party testified that he is a member of the Defendant. He purchased one share in 1999. His evidence is that he had been shown a place to cultivate but upon completion of survey in 2006, he was shifted from his original position to where he currently holds title but is occupied by the plaintiff.
47. The 3rd interested party testified that she purchased one share equivalent to one acre in 1996. She was shown where to reside where she cultivated once and went back to Marakwet. When she came back, she found that the plaintiff was occupying the land. she stated upon cross-examination that she resides on land which was purchased by John Cheserem who purchased it from a white settler. From the evidence of the 3rd interested party, it is clear that she has her own land where she is residing.
48. The land which was acquired by the Defendant was owned by a company called East African Tanning and Extract Company Limited. It was never owned by a white settler as she alleges. It is therefore clear from the evidence by the three interested parties that they were shown different portions other than the portion which the Plaintiff was shown. There is an argument by both the Defendant and the interested parties that it is the Defendant who had the discretion to settle the members. Even if the Defendant's officials had discretion to settle their members, they could not use that discretion to settle members who had missed out on other member's land. I therefore find that the interested parties were shown different portions other than the one the plaintiff was shown.
- vii. Whether the plaintiff was ever asked to go for a refund of what he had paid;
49. There is absolutely no evidence to show whether the plaintiff was asked to go for a refund. When DW1 was cross-examined, he stated that the plaintiff was never asked to go for his refund in writing. He also stated that he had no list of members who were refunded. In any case why would one who had been allocated land go for a refund. Besides this, there was no evidence to show that he had been earmarked to get a portion in the so called Block 146. I therefore find that the plaintiff was never asked to go for a refund of the monies he had paid.
- viii. Was the Defendant right in processing title for the interested parties on land which was being occupied by the plaintiff;
50. When the plaintiff became aware that the Defendant was intent on subdividing his land he moved to court and filed this suit. He contemporaneously filed an application for injunction seeking to stop the Defendant from what its officials were intending to do. On 27.3.2014, the court granted an injunction stopping the Defendant from subdividing the property belonging to the plaintiff. When the injunction order was granted, the Defendant's Advocate was present. The interested parties advocate was also present when the interested parties application for joinder was allowed.
51. Despite the Defendant's Advocate being present on 27.3.2014 when injunctive orders were granted, the same advocate went ahead to process titles in favour of the interested parties. The 1st Interested party got his title on 11.9.2014, the 2nd got his on 4.9.2014 whereas the 3rd got hers on 23.8.2018. The Interested parties having been enjoined in this suit on the date injunctive orders were given, they knew



that there was a suit pending in court but they went ahead to provide documents which facilitated processing of title.

52. The Defendant cannot therefore claim that the Plaintiff failed to register the injunction order with the Land Registrar. The Interested parties cannot equally argue that they were not served with any injunction order or that they had no knowledge of the same. Their Advocate knew of the injunction which was given when he was present in court.
53. The plaintiff listed particulars of fraud attributed to both the Defendant and the Interested parties. He went ahead to prove each and every allegation of fraud attributed to the Defendant and the interested parties. A title which is obtained by way of fraud or corrupt scheme cannot stand. It is clear that despite the Defendant and the interested parties knowing that there was a pending case where an injunction had been given, they went ahead through a corrupt scheme to obtain titles. These titles cannot be held to be indefeasible.

Disposition;

54. From the above analysis, it is clear that the counter claim by the interested parties is misconceived. The same is dismissed with costs to the plaintiff. On the other hand, the plaintiff has proved his claim on a balance of probabilities. The same is granted in terms of prayers (a), (aa) (b) and (c).

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 30TH DAY OF SEPTEMBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Mitei for Interested parties.

Mr. Ogongo for Mr. Othuro for Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

30th SEPTEMBER, 2024

