



**Nyaundi & another v Otiemo & another (Environment & Land Case
153 of 2018) [2025] KEELC 603 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 153 OF 2018
CA OCHIENG, J
FEBRUARY 18, 2025**

BETWEEN

**CAROLINE KERUBO NYAUNDI 1ST PLAINTIFF
POSTS & TELECOMMUNICATIONS EMPLOYERS HOUSING COOPERATIVE
SOCIETY LTD 2ND PLAINTIFF**

AND

**GORDON OCHIENG OTIEMO 1ST DEFENDANT
MOSICA PROPERTIES LTD 2ND DEFENDANT**

JUDGMENT

Introduction

1. This is a suit that mainly involves a Cooperative Society (2nd Plaintiff) and a Land Buying Company (2nd Defendant). At one point the directors of the 2nd Plaintiff formed the 2nd Defendant whose core business was in buying and selling of land. Members of the 2nd Plaintiff acquired the plots sourced by the 2nd Defendant and paid for them through a Check off system, which funds were forwarded to the 2nd Defendant through the 2nd Plaintiff. There was an alleged Memorandum of Understanding between the 2nd Plaintiff and 2nd Defendant to govern the arrangement between them but this culminated in a disagreement which was handled by the Ministry of Cooperatives Development. From the pleadings before court, I note except for the 1st Plaintiff, no other member of the 2nd Plaintiff has been a party to this suit to claim any plot. Further, both the 1st Plaintiff and 1st Defendant claim to have purchased the same plot No. 317. The Plaintiffs have hence sought for various orders including cancellation of the 1st Defendant's title. From the Plaintiff, the 2nd Plaintiff's main contention is ownership of the parcels of land, the 2nd Defendant was dealing with.



Pleadings

2. In a Complaint dated the 19th September, 2016 which was further amended on 27th November, 2020, the Plaintiffs pray for Judgment against the Defendants for Orders:
 1. That an Order for a Permanent Injunction be issued restraining the Defendants whether by themselves, their agents and/or servants from trespassing onto, disposing and transferring or in any manner whatsoever interfering with the property known as Plot No. 317 on LR No. 2/155 – Katani – Mavoko now known as LR Mavoko Block 2/10504.
 - 1A) A declaration that the allotment of plot No. 317 on LR NO. 2/155 by the 2nd Defendant to the 1st Defendant was unprocedural and illegal.
 - 1B) A declaration that the processing of title deed number LR No. Mavoko town Block 2/10504 on 25th April 2016 over plot No. 317 in the name of the 1st Defendant was unprocedural, illegal and fraudulent.
 - 1C) An order for the nullification of the Title Deed over Mavoko town Block 2/10504 issued to the 1st Defendant.
 - 1D) That the entries made in the Land Registry in respect of Mavoko town Block 2/10504 transferring the land to Gordon Ochieng Otieno, the 1st Defendant herein, be and are hereby revoked and the same be registered in the name of Caroline Kerubo Nyaundi.
 2. A declaration that the 1st Plaintiff is the rightful owner of property known as Plot No. 317 on LR No. 2/155 – Katani – Mavoko, now known as LR NO. Mavoko Block 2/10504.
 3. An Order directing the 1st Defendant to demolish the illegal structures erected on Plot NO. 317 on LR NO. 2/155 – Katani – Mavoko, Nairobi now known as LR NO. Mavoko Block 2/10504.
 - 3A) A declaration that parcel Numbers
 - 1) Kajiado/ Kitengela/ 16462
 2. Kajiado/ Kapitiei North/11422
 3. Mavoko town 2/39
 4. Mavoko town 2/5153
 5. Mavoko town Block 2/155
 6. Mavoko town Block 2/128
 7. LR No. 12715/397 Athi River
 8. LR No. 12715 /273 Athi River
 9. LR No. 12715 /398 Athi River
 10. LR No. 12715/698 Athi River
 11. LR No. 12715/46 Athi River
 12. LR No. 12715/399 Athi River



13. LR No. 12715/270 Athi River
14. LR No. 12715/199 Athi River
15. LR No. 12715/59 Athi River
16. LR No. 12715/60 Athi River
17. LR No. 12715/61 Athi River

Were purchased by the 2nd Defendant using funds provided by the 2nd Plaintiff.

3Ai. A declaration that the processing of Title Deeds to parcels numbers.

1. Kajiado/ Kitengela/ 16462
2. Kajiado/ Kapitei North/11422
3. Mavoko town 2/39
4. Mavoko town 2/5153
5. Mavoko town Block 2/155
6. Mavoko town Block 2/128
7. LR No. 12715/397 Athi River
8. LR No. 12715 /273 Athi River
9. LR No. 12715 /398 Athi River
10. LR No. 12715/698 Athi River
11. LR No. 12715/46 Athi River
12. LR No. 12715/399 Athi River
13. LR No. 12715/270 Athi River
14. LR No. 12715/199 Athi River
15. LR No. 12715/59 Athi River
16. LR No. 12715/60 Athi River
17. LR No. 12715/61 Athi River

In the name of the 2nd Defendant was unprocedurally illegal and fraudulent.

3Aii. A declaration that the subdivisions by the 2nd Defendant of parcel numbers

1. Kajiado/ Kitengela/ 16462
2. Kajiado/ Kapitei North/11422
3. Mavoko town 2/39
4. Mavoko town 2/5153
5. Mavoko town Block 2/155



6. Mavoko town Block 2/128
7. LR No. 12715/397 Athi River
8. LR No. 12715 /273 Athi River
9. LR No. 12715 /398 Athi River
10. LR No. 12715/698 Athi River
11. LR No. 12715/46 Athi River
12. LR No. 12715/399 Athi River
13. LR No. 12715/270 Athi River
14. LR No. 12715/199 Athi River
15. LR No. 12715/59 Athi River
16. LR No. 12715/60 Athi River
17. LR No. 12715/61 Athi River

Into small plots was unauthorized, illegal and fraudulent.

3Aiii. An order for the rectification of entries made in the parcels

1. Kajiado/ Kitengela/ 16462
2. Kajiado/ Kapitei North/11422
3. Mavoko town 2/39
4. Mavoko town 2/5153
5. Mavoko town Block 2/155
6. Mavoko town Block 2/128
7. LR No. 12715/397 Athi River
8. LR No. 12715 /273 Athi River
9. LR No. 12715 /398 Athi River
10. LR No. 12715/698 Athi River
11. LR No. 12715/46 Athi River
12. LR No. 12715/399 Athi River
13. LR No. 12715/270 Athi River
14. LR No. 12715/199 Athi River
15. LR No. 12715/59 Athi River
16. LR No. 12715/60 Athi River
17. LR No. 12715/61 Athi River



and the sub – divisions thereof in the name of the 2nd Defendant and a direction that the Registrar of lands do register the parcels and the sub divisions therefrom in the name of the 2nd Plaintiff.

3Aiv. In the alternative and without prejudice to 3Aiii, above, if the parcels and sub – divisions therefrom have changed hands, an Order be made that the 2nd Defendant do pay the 2nd Plaintiff an amount equivalent to the current value of parcel numbers: -

Kajiado/ Kitengela/ 16462
Kajiado/ Kapitei North/11422
Mavoko town 2/39
Mavoko town 2/5153
Mavoko town Block 2/155
Mavoko town Block 2/128
LR No. 12715/397 Athi River
LR No. 12715 /273 Athi River
LR No. 12715 /398 Athi River
LR No. 12715/698 Athi River
LR No. 12715/46 Athi River
LR No. 12715/399 Athi River
LR No. 12715/270 Athi River
LR No. 12715/199 Athi River
LR No. 12715/59 Athi River
LR No. 12715/60 Athi River

17. LR No. 12715/61 Athi River
and the sub divisions therefrom.

4. That the 1st and 2nd Defendants be ordered to pay damages for trespassing onto the 1st and 2nd Plaintiffs' aforesaid parcels of land.
 5. Costs of the suit.
 6. Interest on 3Aiv, 4 and 5 above.
 7. Any other relief this Court may deems fit to grant.
3. The 1st Defendant in his Statement of Defence dated the 17th October, 2016, denied the averments in the original Plaint except the descriptive and the jurisdiction of this court. It contended that the prayers sought by the Plaintiffs were unavailable to them and they are not entitled to the same. He stated that on or about 5th October, 2015, he purchased Plot No. 317 from Jackson Odhiambo Okello through Mosica Properties Limited. He confirmed that he is the registered owner of LR No. Mavoko town Block 2/10504, otherwise known as Plot No. 317 with effect from 25th April, 2016. He reiterated that he is a purchaser for value of the suit premises being LR No. Mavoko town Block 2/10504 otherwise known as Plot NO. 317.



4. The 2nd Defendant filed an Amended Defence dated the 15th March, 2021 where it denied the averments in the further amended Plaintiff except the descriptive. It denied that the 1st Plaintiff's claim of ownership of Plot No. 317 upon LR No. 2/155 Mavoko as set out in paragraph 3 of the Amended Plaintiff and contended that the entire parcel formerly known as Mavoko town Block 2/155, lawfully and beneficially belonged to it. It further denied that it purchased any land for and on behalf of the 2nd Plaintiff or using any money or resources belonging to the 2nd Plaintiff or that the 2nd Plaintiff had any authority to allocate any plot from Title No. Mavoko town Block 2/155 to the 1st Plaintiff. The 2nd Defendant contended that it never used any funds from the 2nd Plaintiff to purchase properties listed in paragraphs 3Aiii and 3iv of the further amended Plaintiff. Further, that all properties purchased and registered into its name were duly purchased using its own funds and at no time did the 2nd Plaintiff avail to or remit any funds to it nor that the properties were registered in the names of the 2nd Plaintiff. It stated that as the lawful owner and registered proprietor of LR No. Mavoko town Block 2/155, it lawfully carried out a subdivision and allotted the plot initially to Jackton Okello on 30th September, 2003, which plot the said Jackton Okello sold and transferred to the 1st Defendant, who was then issued with a Letter of Allotment dated 12th January, 2016 and subsequently obtained a Title Deed in respect to Mavoko town Block 2/10504 dated the 25th April, 2016. Further, there was no court order barring it from dealing with the said land. It averred that the case that had been pending at the Machakos Law Courts between the 2nd Defendant and 2nd Plaintiff being HCCC 337 of 2009 was withdrawn on 15th October, 2012. It reiterated that the Plaintiffs have not provided any documents of title to prove that they own the land as claimed. Further, that this suit discloses no cause of action against both Defendants and the Plaintiffs are not entitled to the reliefs claimed.
5. The matter proceeded for hearing where the Plaintiffs had three witnesses while the Defendants called two witnesses.

Evidence of the Plaintiffs

6. The Plaintiffs herein claim they are the proprietors of the suit lands as set out in the Plaintiff. Further, that the Defendants fraudulently and unprocedurally dealt with the same, to their detriment. The 1st Plaintiff contended that she is the rightful owner of property known as Plot No. 317 on LR No. 2/155 – Katani – Mavoko, now known as LR NO. Mavoko Block 2/10504 (suit plot), which she purchased from one Pacifica Kemunto Omambia, who had been a member of the 2nd Plaintiff. She contended that the Defendants trespassed on her plot and she hence sought for them to be restrained therefrom. She also sought for damages for trespass. The 2nd Plaintiff contended that there was conflict of interest since directors of the 2nd Plaintiff also created the 2nd Defendant, operated in one office for some time and commenced fraudulently dealing with the 2nd Plaintiff's properties. They highlighted various parcels of land, which the 2nd Defendant had dealt with, to their detriment and sought for cancellation of the said titles or compensation for the land at the current market value. The Plaintiffs produced the following documents as exhibits which included:

Sale Agreement between the 1st Plaintiff and Pacifica Kemunto Omambia dated 23.7.2010; Acknowledgment of payment of the purchase price by Pacifica Kemunto Omambia dated 25.8.2010; Property Transfer Agreement by 2nd Plaintiff evidencing transfer of Plot No. 317 L.R. No. 2/155 – Katani – Mavoko town Block 2/10504 dated 25.8.2010; Letter of Allotment dated 25.8.2010; Beacon Certificate No. 1327 Dated 25.8.2010; Ministry of Co operative Development and Marketing inquiry Report; Letter by the 2nd Plaintiff to the Registrar of Lands dated 13.5.2009 and 25.11.2009 prohibiting adverse dealings on the suit property; Notification to the Public on the Daily Nation Newspapers of



22.4.2009; Court Orders in Machakos High Court E.L.C 337 OF 2009 dated 16.3.2009 and 25.11.2009 prohibiting adverse dealings on the suit property; The registration of Business name Mosica Properties' on 11th June 2020; A receipt dated 4th April 2002 from Afya Investment Co operative Society Limited to P & T Employees' Housing Society for rent paid; Receipts from the Society for registrations of plots with individuals personal file numbers to plot owners; Receipt No. 518 of for HALKANO PF. 42636 Registration for plot on the same day that Mosica business name was being registered; Minutes of a meeting dated 14th December 2002, 24th November 2002 and 10th December 2002 at Afya Centre of the P & T Employees Housing Society Finance Sub-Committee see the Committee member's name, source of funds from Telkom, Postal Corporation and KCCT, Mosica Properties; Minutes of a meeting dated 14th December 2002 of Mosica Properties Directors at Afya Centre; Minutes of a meeting of the Finance Committee of Mosica Properties dated 9th January 2003; The Society's Treasurer Mr. Alex Isoe Mosei to a Lawyer J.W. Co. Advocates; Notice of a managements Committee at the Society's Office on 11th October 2003, and minutes of the Central Management Committee held on 13th September 2003; A sale agreement between M/s Mita Nzomo Ngwalo and Kasiva Nzomo Ngwalo to Mosica Properties Limited for Mavoko town Block 2/155 dated 24th October 2003; A letter dated 10th January 2003 from M/s J.W. Wambua & Co. Advocates to the chairman P&T Employees Housing Sacco; Minutes of the 19th Annual General Meeting held on 2th October 2004 at Professional Centre; Letter from Telkom Kenya/Postal Corporation to the Society's Secretary; Beacon Certificate No. 303 and Allotment letter No. 1006; Letter dated 11th January 2005 from Mosica Properties to P & T Employees Housing Sacco; Various Letters of Allotment for several Plot Mavoko town Block 2/156 (2/155); A Plot Sale Agreement between Evans Agasa Maroro and Naftali Motanya Asuga on Mavoko town Block 2/155; A search conducted on Mavoko town Block 2/155 on 4th May 2009; A list of all parcel of lands that the funds from the Society was used to acquire from the year 2002 to 2007 and Payments Vouchers dated 24th September 2002.

Evidence of the Defendants

7. The 1st Defendant denied the Plaintiffs' claim and contended that he had purchased the suit plot No. 317 from Jackton Odhiambo Okello and paid the full purchase price. He claimed that after paying the full purchase price, he paid processing fees to the 2nd Defendant that transferred the suit plot to him. He averred that, he took possession of the suit plot but the 1st Plaintiff proceeded to fence and put up a mabati structure thereon, in 2016 despite existence of a court order. He insisted that he is a bona fide purchaser for value.

The 2nd Defendant contended that it is the proprietor of the suit lands. As for Mavoko town Block 2/155, it explained that it entered into a Sale Agreement with the vendor. Further, that the Vendor donated a Power of Attorney to it, to enable it transact on the said lands and process titles to persons that had purchased them. It admitted that it received monies through the 2nd Plaintiff from its members who were deducted through a check off system. It denied that it purchased any land for and on behalf of the 2nd Plaintiff or used any money or resources belonging to the 2nd Plaintiff. Further, it disputed that the 2nd Plaintiff had any authority to allocate any plot from Title No. Mavoko town Block 2/155 to the 1st Plaintiff. They produced the following documents as exhibits:

Copy of the Property Transfer Agreement dated 5th October, 2015; Copy of Letter of Allotment dated 12th January, 2016; Copy of Title Deed Number Mavoko town Block 2/10504; Title deed Mavoko town Block 2/155 issued to Mita Nzomo Ngwalo dated 15.5.2003; Power of Attorney



from Kasiva Nzomo Ngwalo to John Makusi Simiyu dated 13.3.2008; Letter of Allotment No. 336 from Mosica Properties Ltd issued to Jackton Okello dated 30.9.2003; Letter of Allotment No. 2125 from Mosica Properties Ltd on transfer from Jackton Odhiambo Okello to Gordon Ochieng Otieno dated 12.1.2016; Title deed Mavoko town Block 2/10504 issued to Gordon Ochieng Otieno dated 25.4.2016; and Notice of withdrawal of HCC 337/09.

Analysis and Determination

8. Upon consideration of the Further Amended Plaintiff, Defences, testimonies of the witnesses, exhibits and rivaling submissions, I note the Plaintiffs have included a dispute revolving around management of its affairs and resources, which this court is devoid of jurisdiction to determine, by dint of section 76 of the Cooperative *Societies Act* and section 13 of the *Environment and Land Court Act*. I will hence not make a determination on issues revolving around how directors of the 2nd Defendant managed the affairs of the 2nd Plaintiffs including the matter of conflict of interest. At this juncture, I find that the only issues for determination are: Who is the proprietor of the suit plot 317 claimed by both the 1st Plaintiff and 1st Defendant? Who purchased LR No. Mavoko town Block 2/155. Whether the Plaintiffs are entitled to the orders as sought in the Plaintiff.

9. As to who is the proprietor of the suit plot claimed by the 1st Plaintiff and 1st Defendant?

The 1st Plaintiff as PW2 testified that she purchased plot No. 317 from one Pacifica Kemunto Omambia. It was her testimony that she paid the full purchase price and took possession of the suit plot. Further, that she is in occupation of the same. PW1 Daniel Aura Suchi claimed the 2nd Plaintiff had issued a Letter of Allotment to Pacifica Kemunto Omambia who had sold suit plot to the 1st Plaintiff. The 1st Plaintiff produced a Sale Agreement between herself and Pacifica Kemunto Omambia dated 23rd July, 2010; Acknowledgment of payment of the purchase price by Pacifica Kemunto Omambia dated 25th August, 2010; Property Transfer Agreement by 2nd Plaintiff for Plot No. 317 L.R. No. 2/155 – Katani – Mavoko town Block 2/10504 dated 25th August, 2010; Letter of Allotment dated 25th August, 2010; and Beacon Certificate No. 1327 dated 25th August, 2010, to prove her claim. The Plaintiffs further produced a few Letters of Allotment the 2nd Plaintiff had issued to some members, in respect to LR Mavoko town Block 2/155, to prove it had a right to issue the same. DW1 Gordon Ochieng Otieno who was the 1st Defendant insisted that he purchased Plot No. 317 from Jacktone Odhiambo Okello and paid the full purchase price. Further, that he paid the 2nd Defendant certain monies to process his title. DW2 John M. Simiyu who was testifying on behalf of the 2nd Defendant confirmed that the 2nd Defendant processed the 1st Defendant's title to the suit plot. The 1st Defendant produced a Copy of the Property Transfer Agreement dated 5th October, 2015; Copy of Letter of Allotment dated 12 January, 2016; Letter of Allotment No. 336 from Mosica Properties Ltd issued to Jackton Okello dated the 30th September, 2003; Letter of Allotment No. 2125 from Mosica Properties Ltd on transfer from Jackton Odhiambo Okello to Gordon Ochieng Otieno dated 12th January, 2016 to prove his claim. It emerged that plot No. 317 emanated from LR No. Mavoko town Block 2/155. Further, that the said land initially belonged to Mita Nzomo Ngwalo and Kasiva Nzomo Ngwalo who entered into a Sale Agreement with the 2nd Defendant for its purchase. I note the said vendors donated a Power of Attorney to one of the directors of the 2nd Defendant being John Makusi Simiyu which was registered on 23rd October, 2008 in respect to LR No. Mavoko town Block 2/155 to do anything over the said land, which DW2 confirmed the 2nd Defendant did. From the evidence tendered before court, it emerged that the LR No. Mavoko town Block 2/155 where the suit plot emanated from, had never been registered in the name of the 2nd Plaintiff nor the 2nd Defendant. Which brings in the question that how come both parties issued Letters of Allotment to purchasers of resultant subdivisions emanating therefrom. On perusal of the impugned Power of Attorney, I note



the vendor Mita Nzomo Ngwalo and Kasiva Nzomo Ngwalo indeed donated powers to John Makusi Simiyu, a director of the 2nd Defendant, to deal with the said LR No. Mavoko town Block 2/155. I note PW1 had even confirmed that the 2nd Plaintiff stopped transmitting monies to 2nd Defendant in 2006. It is hence baffling on how the 2nd Plaintiff issued Letters of Allotment for plots emanating from LR No. Mavoko town Block 2/155, without any written permission from its owner and after it had even stopped transmitting monies collected through check off system to the 2nd Defendant.

On legitimacy of a title, Sections 26 (1) (b) of the [Land Registration Act](#) states that:

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except –

- (a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

In [Munyu Maina Vs Hiram Gathiba Maina, Civil Appeal No.239 of 2009](#), the Court of Appeal held that:

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

See also the case of [Arthi Highway Developers Limited V West End Butchery Limited & 6 Others \(2015\) eKLR](#).

Based on the facts as presented while relying on the legal provisions I have cited and authorities quoted, I find that the 1st Defendant indeed demonstrated the root of his title to Plot No. 317 and how he acquired it. In my view, it was the 2nd Plaintiff who created confusion in allocating Pacifica Kemunto Omambia the said plot, who in turn sold it to the 1st Plaintiff. In the circumstances, I have no recourse but to uphold the 1st Defendant’s Title to Plot No. 317 (now LR No. Mavoko town Block 2/ 10504).

10. As to who purchased LR No. Mavoko town Block 2/155

The 2nd Plaintiff claims it is the proprietor of LR No. Mavoko town Block 2/155 as the 2nd Defendant used its funds to purchase it, which fact is disputed by the 2nd Defendant. PW1 confirmed during cross examination that the 2nd Plaintiff and 2nd Defendant had a Memorandum of Understanding (MoU) which outlined dealings with certain properties. Further, that the MoU allowed 2nd Defendant to be an agent of the 2nd Plaintiff. He claimed majority of properties were purchased with funds from the 2nd Plaintiff. PW1 further confirmed that 90% of the purchased properties were bought by the members of the 2nd Plaintiff, through check off system. He stated that deductions of members monies were done straight to the 2nd Defendant. He confirmed that 2nd Plaintiff stopped transmitting monies to the 2nd Defendant in June, 2006. He argued that the 2nd Defendant was not supposed to sell any parcels of land to third parties. PW3 Richard Oluoch Ochiel disputed the Power of Attorney and claimed the MoU was fake but did not demonstrate what actions the 2nd Plaintiff undertook, if the MoU was indeed fake.



He was emphatic that 2nd Defendant bought Mavoko town Block 2/155 on behalf of the 2nd Plaintiff but did not provide any documents to that effect. DW2 explained that the 2nd Defendant entered into a Sale Agreement with Mita Nzomo Ngwalo and Kasiva Ngwalo for LR No. Mavoko town Block 2/155, that had been issued with a title dated the dated 15th May, 2003. Further, that Mita Nzomo Ngwalo and Kasiva Ngwalo granted a Power of Attorney to John Makusi Simiyu, which enabled the 2nd Defendant process titles for the persons who had purchased resultant subdivisions of LR No. Mavoko town Block 2/155.

From my analysis of the evidence as presented, I opine that the burden of proof was upon the Plaintiffs moreso the 2nd Plaintiff to demonstrate how it purchased LR No. Mavoko town Block 2/155 from the vendor but it failed to do so as there were no documents tendered to prove it. In the circumstances, I have no recourse but to find that even though the 2nd plaintiff transmitted monies to the 2nd defendant and even loaned it, it indeed was not the purchaser of LR No. Mavoko town Block 2/155 from Mita Ngwalo and Kasiva Ngwalo as claimed.

It is my considered view that insofar as the 2nd Plaintiff has raised many pertinent issues as to how its directors were the same as the 2nd Defendant's directors and improperly managed its affairs, I opine that they should have first lodged a claim against them in the Cooperative Tribunal in accordance with the provisions of section 76 of the Cooperative *Societies Act*. In the circumstances, I will not make any determination on prayers 3A, 3Ai, 3Aii, 3Aiii, 3Aiv and 6 since these parcels of land were dealt with, by the same directors of the 2nd Plaintiff and 2nd Defendant and the dispute over them, is one between members of a Cooperative Society. I will hence proceed to strike out these prayers.

On costs, I find that the same should be borne by the 2nd Plaintiff only as it was responsible for the dispute between the 1st Plaintiff and 1st Defendant.

As for the rest of the prayers in the Further Amended Plaint being 1, 1A, 1B, 1C, 1D, 2, 3, 4, 5, I find that the Plaintiffs are not entitled to the said orders as sought therein, as they have failed to prove their claim on a balance of probability and will proceed to dismiss them with costs to be borne by the 2nd Plaintiff only.

I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18th DAY OF FEBRUARY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Maranga Holding brief for Momanyi for 2nd Plaintiff

Ms Osoro for 1st Plaintiff

Rombo for 2nd Defendant

Ms. Muhoro for 1st Defendant

Court Assistant: Joan

