



REPUBLIC OF KENYA



KENYA LAW
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**Mungai v Chelimo & 4 others (Environment & Land Case
20 of 2015) [2025] KEELC 2989 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2989 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 20 OF 2015**

**A OMBWAYO, J
MARCH 28, 2025**

BETWEEN

ELIUD MACHARIA MUNGAI PLAINTIFF

AND

CAPRICE CHELIMO 1ST DEFENDANT

**PAUL BII & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3
OTHERS 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff commenced the present suit vide an amended plaint dated 1st October, 2021 against the Defendants seeking the following orders:
 - a. A declaration that the registration of the suit property Plot No. Nakuru/Municipality/Block 29/910 in the name of the 1st and 2nd Defendants is null and void and should be cancelled.
 - b. The 1st and 2nd Defendants do execute the necessary and relevant conveyance documents to effect registration in favour of the Plaintiff as the proprietor of parcel of land Plot No. Nakuru/Municipality/Block 29/910 and/or in the alternative the Deputy Registrar do execute the necessary and relevant conveyance document in case the 1st Defendant declines to execute.
 - c) Mesne profits and interest thereof.
 - d) Eviction and permanent injunction restraining the Defendants either by themselves, their agents, servants' workmen and or relatives from trespassing, entering, using, occupying the suit land, restricting the Plaintiffs use and occupation of parcel of land Plot No. Nakuru/Municipality/Block 29/910 and or interfering with the suit land in any manner whatsoever.
 - e) Interest
 - f. Cost of the suit



- g. Any other relief the Honourable Court deems fit to grant.
2. The 1st Defendant filed his Defence and Counterclaim dated 30th May, 2024 where he denied the allegations in the plaint. He sought for the following orders:
 - a. A declaration that the deceased Richard Chelimo Kaplich and the 2nd Defendant Joseph Korir Langat are the Bonafide owners of parcel of land known as Nakuru/Municipality/Block 29/910.
 - b. An order that the transfer of title in the suit premises in favour of the Plaintiff now Defendant pursuant to the judgment made and delivered in this suit on 5th day of December, 2022 be revoked and/or be cancelled and an order that the same reverts to the names of Richard Chelimo Kaplich and Joseph Korir Langat.
 - c. An order that the Plaintiff now Defendant pays the costs of this suit.
3. The 2nd Defendant filed his statement of defence dated 30th May, 2024 where he denied the allegations in the plaint.
4. The 3rd Defendant filed his statement of defence dated 31st May, 2024 where he denied the allegations in the plaint.
5. The 5th and 6th Defendant filed their statement of defence dated 3rd March, 2015 where they denied the allegations in the Plaint.

Plaintiff's case

6. Eliud Macharia Mungai testified as PW1 where his statement dated 27th January, 2015 was adopted as his evidence in chief. It was his testimony that he lived in Block 29/Rhoda. He produced his documents as follows:
 1. Sale agreement- PEX 1
 2. Copy of plaintiff share holder PEX 2
 3. Copies of photographs PEX 3 (a) PEX 3 (b)
 4. Maps as PEX 4
 5. Register as PMFI 5
 6. Statement of Arthur Waweru Macharia
 7. Release order and Bond dated 18/3/2015 PEX 7 (A) - & (b)
 8. Affidavit dated 6/5/2015 PEX 8
 9. Order dated 10/5/2016 PEX 9
 10. Letter to land office dated 19/5/2021 PEX 10
 11. Copy of green card PEX 11.
7. He testified that they did the agreement at Kaplan Stratton advocates which agreement was signed by the administrator. He testified that he was the director at Kalenjini Enterprises. He also stated that his name was in the register and that the documents were stamped by Senior Dr. P M Kinyanjui. He went on to testify that they got the register from the Senator. He testified that he went to the Kenya survey to look for his plot. He added that there was an order from the court which stopped the Defendants



- from mining sand but they did not stop. He testified that the 1st and 2nd Defendants have never been on the land. He further testified that the 3rd Defendant evicted him from the land.
8. He added that his son was charged in 2015. He added that the 4th Defendant was sued for trespass.
 9. It was his testimony that he entered the suit land in 1976.
 10. Upon cross examination by Olonyi for the 3rd Defendant, he stated that he went to Kalenjin Enterprises to get his plot. He further stated that he was shown the trespasser. He stated that he bought a share from Arusei before he had obtained a certificate of lease. He confirmed that people had balloted. He also confirmed that the register was tampered with. He added that he did not know about rectification of register or why his name was not found. PW1 admitted that he did not have evidence that the Defendants had scooped sand. He stated that he was the registered owner and that he did not know how the Defendant acquired it. He admitted that the consent did not have the name Arusei. He stated that the land was developed by other people.
 11. Upon cross examination by Cheruiyot for the 2nd Defendant, he confirmed that he was a member of Kalenjin Enterprise and that he had bought shares in 1975 from Kiplagat Chepkwony. He further stated that he bought land from Kiplagat Arusei who sold him shares. He added that he went to Kalenjin Enterprises to be shown Arusei's land. He stated that the 3rd and 4th Defendant were restrained from excavating sand. He also stated that he had a shareholder's card PEX 2 with the Plaintiff's name.
 12. Upon re-examination he stated that Plot no 913 was in the name of Isaiah Chemitei Arusei. He added that it was crossed with a question mark. He also stated that entry no 873 had the name Arusei. He stated that he got the register of Kalenjin Enterprises from the senator of Nakuru Dr. Kinyanjui after the company declined to give him a copy. He stated that the treasurer was Christopher Koech (deceased). He added that he went there in 1979 and added that he could not recall the date he got the documents. He produced the register as PEX5.
 13. Upon cross examination by Olonyi for the 1st Defendant, he confirmed that the Nakuru senator was not an official of Kalenjin Enterprises. That marked the close of the Plaintiff's case.

5th & 6th Defendant's case

14. Emma Sitienei, the Nakuru Land Registrar testified as 5th DW1 where she testified that she had the members register for parcel number 873 and 910. She testified that the current registered shares of the land belonged to Isaiah Cherotich. She further testified that Arusei number was 879 and that parcel number 910 belonged to Kaplich and Joseph K Langat. She went on to testify that there were no amendments. It was her testimony that the Plaintiff's name did not appear in the register. She testified that they do not prepare the register and added that there was no fraud. She testified that they did the reporting. She produced the register as DEX I
15. Upon cross examination by Magatta for the Plaintiff, she stated that she came to Nakuru in August 2024. She confirmed that the register did not show the year it was opened. She further confirmed that the register was substituted on 17th March, 2004. She stated that parcel number 910 belonged to Kaplang and Joseph K. Langat. She was referred to PEX 11 where she confirmed that it was for 910. She further stated that the green card showed 2 names and that the name of Kaplang was missing. She added that the 1st Defendant's name was in the register. She confirmed that the green card showed the names of the 1st and 2nd Defendants. She admitted that there was no discrepancy. She admitted that the names in the green card should be in the registrar. She stated that it was not permanent. She stated that



she could not tell whether the 1st Defendant's name was extracted. She confirmed that Arusei's name appeared on plot number 873. She added that the registrar provided 913 as Samuel Kamau Njoroge.

16. Upon cross examination by Olonyi, she stated that the registered owner of 910 were the 1st and 2nd Defendant. She stated that the 1st Defendant's register was similar to hers but the Plaintiff's register was not similar. She stated that the title was issued on 28th November, 2006. She confirmed that the issuance was proper in law. She stated that the Plaintiff could not be registered as proprietor of 910 due to the register.
17. Upon cross examination by Cheruiyot, she stated that she relied on the register to issue titles. That marked the close of the 5th and 6th Defendants case.

1st Defendant's case

18. Mathew Kibet Kaplich testified as DW1 where his statement dated 30th May, 2024 was adopted as his evidence in chief. He testified that the 1st Defendant was his father. He produced documents from his list of documents dated 30th May, 2024 as 1st DEX 1-1st DEX 6. He testified that his first document were the 1st Defendant's death certificate and letters ad litem. He also testified that he had a copy of title deed. NKR/Municipality/Block 29/910 and the sale agreement between Isaiah Cherotich Arusei and the Plaintiff dated 20th November, 1997. He added that he had a covering letter from the chief of Kaptembwa location dated 13th February, 2024. He also testified that he had a copy of Registration for Kalenjin Enterprise or Rift Valley Enterprises Ltd relating to Nakuru/Municipality/Block 29/910 belonged to his father and Joseph Korir Langat who were shareholders of Kalenjin Enterprises. He testified that Block 29/873 belonged to Arusei Isaiah Cherotich. It was his testimony that there were 4 people who lived in the land. He also testified that his father sold his portion to the 3rd Defendant who later sold to other people.
19. He testified that Block 29/910 was not owned by Isaiah Cherotich Arusei. He testified that Arusei instead owned Block 29/873.
20. Upon cross examination by Magatta, he confirmed that his late father together with the 2nd Defendant were shareholders of Kalenjin Enterprises. He confirmed that shareholders were given cards. He admitted that he did not have the shareholders card for his father. He stated that he had not presented to the court but that they were in the register. He added that they were registered as 29/910. He admitted that the register had alterations. He stated that it was initially Kaplang's. He further admitted that Kaplang did not exist. He also admitted that Kaplich's name was not in the register.
21. He confirmed that he was familiar with part of the procedure of buying shares. He admitted that he did not have any documents. He stated the 2nd Defendant's statement did not mention his father. He also stated that his father sold half of his land to the 3rd Defendant. He admitted that he did not have the agreement and that he could not recall the time. He stated that he was told by his father in 2023 that he sold the land. He confirmed that there was an agreement between the 3rd and 4th Defendant while his father's name was not on the agreement. He was referred to the 1st DEX 4 where he stated that the plot belonged to the 1st and 2nd Defendant and not Isaiah Cherotich Arusei. He was referred to the register where Plot 873- Isaiah Cherotich Arusei, 915- Isaiah Cherotich Arusei there was a question mark and 910 –with a question mark.
22. He stated that he was not aware of the person who lived in 910. He added that the 3rd Defendant sold to them. He stated that the registered owners were the 1st and 2nd Defendant registered on 28th November, 2006. He stated that the 3rd Defendant took over the land in a year.



23. Upon re-examination, he was referred to PEX 5 where he stated that he was not aware where the Plaintiff got the register. He added that he was shown entry No 913 that had a question mark. He also stated that it showed duplicated plot No 910 had documents required. He stated that the evidence that got shares was in the register. He further stated that the registration was attached to Kaplich from Kapling. He admitted that the name Arusei was not in the register. He stated that the 1st Defendant had informed him that the 3rd Defendant bought land. He went on to state that the agreement was between Musa Arap Bii and Joseph Monari Orizeno. He admitted that his father's name was not in the agreement since he was not selling the share as he had already sold to the 3rd Defendant. He stated that half of the acre was occupied by the 3rd Defendant's people.

2nd Defendants case

24. Joseph Korir Langat testified as DW2. He produced his statement dated 30th May, 2024 which was adopted as his evidence in chief. He also produced the following documents:
1. copy of the letter of the chief 2nd DEX 1.
 2. copy of sale agreement 2nd DEX 2
 3. Copy of shareholder identification card Kibet Chumo 2nd DEX 3
 4. Certificate of ordinary shares in the name of Kibet Tunai Juma 2nd DEX 4.
 5. Copy of clearance receipts for transfer of shares 2nd DEX 5.
 6. Agreement of transfer of shares from Joseph Kenei to the 2nd Defendant 2nd DEX 6.
 7. Copy of sale agreement between Kobot Tuwei Chumo and Joseph Kenei. 2nd DEX7. He testified that the shares were transferred from Kobot Tunei to Kenei to Were and that he applied to Kalenjin Enterprises so as to have himself listed in register under entry number 910.
 8. Copy of receipt of survey dated 3rd May, 1986 2nd DEX 8.
25. It was his testimony that he bought shares from Joseph Kenei in 11th January, 2002. He testified that the 1st owner was Kipkurui arap Barapa, 7th December 2001 while the second number was 5/137 at page 8 of the members registration. He testified that he was issued with certificate number 3583. He testified that Kipkurui Arap Barapa sold to Kibet Chuma on 5th October, 1997. He added that it was sold to Kenei on 7th December, 2001 who later sold to him on 11th January, 2002. It was his testimony that he liaised with the Kalenjin Enterprises and his name was entered in the register entry under number 910. He added that he had applied for a title through Kalenjin Enterprises where he paid Kshs.2000.
26. He testified that he was issued with a receipt and a Certificate of title issued in 2006. He stated that the title was in the name of the 1st and 2nd Defendant. He testified that he got half share of the property. He also testified that the names in the register reflected both of them.
27. Upon cross examination by Magatta, he confirmed that the title was issued in the year 2006 and that it was for an acre. He added that the 1st Defendant was deceased. He stated that his share was 0.6. He confirmed that the title did not indicate the shares. He stated that they applied for shares together. He denied that he transacted with him. He stated that Kalenjin enterprises should explain why they put in the same entry. He further stated that he was not aware of any transactions between the 1st Defendant and Kalenjin Enterprises. He stated that it was the company's decision to share the property. He admitted that he did not have any documents from Kalenjin Enterprises. He stated that the 3rd Defendant was in control and possession of the suit property. He went on to state that before Kaplich



died, he sold his shares to the 3rd Defendant. He stated that the 3rd Defendant was in possession of the whole property in 29/910. He added that the 3rd Defendant bought half of the land from the 1st Defendant. He stated that he gave out the original title. He stated that he was shown his property by the Kalenjin Enterprises. He also stated that he was not aware that half of the property was for sand harvesting or that the 3rd Defendant had sold half of the property. He went on to state that the 3rd Defendant never told him that he had been selling sand. He stated that the 3rd Defendant informed him of this case in 2015 and that he was not served until after judgment. He was referred to 2nd DEX 3 where he stated that it belonged to Kobot Chuma. He confirmed that the share card had a place for plot number but there was no number. He was also referred to 2nd DEX 7 where he admitted that there was no acknowledgement. He also admitted that he did not have a register showing that Kobot was ever entered in the register. He confirmed that there was no register showing Bararpa Kipkirui or Joseph Kenei. He stated that they were transacting outside Kalenjin Enterprise.

28. Upon re-examination, he stated that the parcel of land 29/910 was in their names and the 1st Defendant's. He added that there was no dispute between him and the 1st Defendant. He stated that he became a proprietor in 2021 and that the original owner was Kipkurui Arap Bararpa. He stated that his name was in the register No 910. He further stated that they purchased shares and they were cleared.
29. Bernard Kipkenei Koskei testified as DW3. He testified that he had documents relating to Nakuru/ Municipality Block 29/910 Rhonda. It was his testimony that he was a director of Rift Valley Enterprise (Kalenjin Enterprises). He added that he had the C.R 12 confirming the same. He further testified that from the register for Nakuru Municipality Block 29, the plot in question was captured. He testified that No 910 was registered in the names of the 1st and 2nd Defendants. He testified that it was initially Kaplang but it was Kaplich. He testified that he did not know whose ID No.253054 belonged to. He went on to testify that plot No.29/873 belonged to Isaiah Cherotich Arusei ID No.4125618. DW3 was referred to PEX 5 where he denied that the same was the register from Kalenjin Enterprises. He testified that for one to be a member of Kalenjin Enterprise, he was to pay a member's fee. He went on to explain that the membership fee was converted to a land share certificate and the member was issued with a land share certificate that showed the amount paid. He testified that the share certificate included; the date of issue, name of member, share purchased and last address. He testified that a member would be allowed to pay 50 shillings for survey fee payable at DCs place. He added that the member was then issued with a receipt that bore the name of the member and the person paying. He testified that the receipt had a serial number.
30. DW3 was referred to 2nd DEX7 where he testified that the receipt number was AE209/080 paid by Kipkurui on 5th May, 1996. He went on to testify that on top of the document there were writings with serial number 137 which showed the member details in the register. He testified that the details of the member were contained on page 8 of the members register at Entry number 137. He testified that Barobas ID was No.2410225. He was referred to 2nd DEX 4 where he testified that the same was a share certificate. He confirmed that it was illegible. It was his testimony that the share certificate should contain the serial number and letter head indicating the certificate of ordinal shares. He added that it should have the member's name and the number of shares. He testified that the certificate should also be counter signed. He was referred to 2nd DEX 5 where he testified that it was a receipt for payment of facilitation fees of Kshs. 2000/= for transfer of shares. He testified that the receipt was to be countersigned by the person receiving the money. He explained that the next step was a clearance certificate to enable him be issued with a title deed.
31. He testified that they kept custody of documents and they ensured that title deeds were issued. It was his testimony that balloting took place in the beginning while others were allocated. He testified that Block 29 was balloted through a secret ballot. He added that the number given was the plot number.



He testified that the property was in an area that initially had been regarded as waste land. He testified that the land had been degraded by sand mining. He further testified that it had not been allocated. DW3 testified that the activity had been abolished by NEMA. He added that he had submitted the register to the Ministry of lands.

32. Upon cross examination by Magatta, he confirmed that the company changed from Kalenjin Enterprises to Rift Valley Enterprises due to the tribal connotation. He admitted that he could not recall when it changed. He confirmed that the company could sue or be sued and that its registered office was at Kaptembwa Chiefs Office. He confirmed that the property belonged to one of their members. He further confirmed that the company had not less than 4,000 members. He added that the last AGM was in 2019. He also stated that he became a director in 1999 and that as the director, he could represent the company. He stated that he was summoned to court. He further stated that the register was prepared on 17th March, 2004 while the company was registered in 1969. He added that it started its transaction of land buying and allocating in 1971. He confirmed that there was a list that existed before the current list. He also stated that the register for Block 29 was signed on 17th March, 2004. He stated that there was a register before 2004 and a primary document where the information was found. DW3 stated that he did not know the Plaintiff but that he knew Chistopher Koech (deceased) who was the treasurer or secretary. He was referred to PEX 3 where he stated that the same was made in 1998. He also stated that the map was never amended. He stated that Isaiah Arusei appeared at 8/73. He added that entry No.913 had Isaiah Arusei with question marks. He stated that 910 had the Plaintiff. He added that the Plaintiff's map and register were made in 1998. He stated that the names in the title deed had two names of the 1st and 2nd Defendants. He confirmed that the title was issued by the land Registrar after clearance by Kalenjin Enterprise. He was referred to the 1st DEX 3 where he stated that the alteration in entry No.29/910 was made on a date he was not aware of. He confirmed that the document was stamped by Kalenjin Enterprises. He also confirmed that the allocation was not dated. He stated that the clear entry was for the 2nd Defendant.
33. He explained that when names were issued, it meant that they were joint owners. He stated that he could not recall whether joint ownership was given. He went on to state that they both applied to Kalenjin Enterprises and were given one number. He stated that from the records, they were both allocated the land. He added that they applied for allocation of the same parcel and were both allocated. He stated that balloting was done before 2006. He added that the waste land was rehabilitated.
34. Upon re-examination, he stated that Rift valley Enterprises had no connection with the senator. D. M Kinyanjui. He stated that the senator was not an official of the company. He further stated that the registration by the Plaintiff was not a company document. He also stated that there was a register earlier than 2004 but it was not before court. He stated that there was no title issued before 2004. He confirmed that in the year 1998, Block 29 had not been surveyed.

3rd Defendant's case

35. Paul Bii testified as 3rd DW1 where his statement filed on 3rd June, 2024 was adopted as his evidence in chief.
36. Upon cross examination by Magatta, he stated that the Plaintiff was his neighbour. He stated that he lived in Block 29/1188. He was referred to PEX 9 where he stated that he was not aware of the court order dated 10th May, 2016. He stated that he had an advocate. He denied having harvested sand. He stated that he found the Plaintiff harvesting sand where he sought forgiveness and agreed not to come to his land again. He stated that the criminal case was Nakuru CMCC No.527 of 2015. He was referred to PEX 8, his affidavit dated 10th May, 2016 where he denied having withdrawn the case. He also denied having signed the affidavit. He stated that Arthur Wainaina Macharia was involved in the



case since he had been arrested in respect of sand harvesting. He added that he was arrested and charged for entering his land. He was referred to PEX 7 (A) being a release order and PEX 7 (B), bond. He stated that the 1st Defendant had sold him the land in 2013 for Kshs. 200,000. He stated that he paid all the money to him. He admitted that there was no sale agreement. He was referred to 1st DEX 3 where he stated that the 1st Defendant sold to him his half part of the land. He confirmed that the title was in the names of the 1st and 2nd Defendants. He further confirmed that he did not pay a portion of the money to the 2nd Defendant but that he was aware. He stated that he had sold the land to several people before the case was filed. He added that he had four plots in Block 29. He further stated that he had sold a portion of 910 to Kaplich Mathew Kibet, Philip Ongeko Mulelo and Bell Kathembi. He stated that his portion was half an acre which he had sold the whole of it. He also stated that ½ of the land was a quarry which had since been rehabilitated and constructed on. Upon re-examination, he was referred to PEX 9 where he stated that he had not been served with the order. He further stated that he had complained that the Plaintiff had harvested sand in his land after which he was arrested and charged. He confirmed that he was given the original title by the 1st Defendant. That marked the close of the Defence case.

Submissions

37. Counsel for the Plaintiff filed his submissions dated 14th February, 2025 where he gave a summary of the case and identified three issues for determination. The first issue was whether the Plaintiff has proved his case on a balance of probabilities. While submitting in the affirmative, he argues that the defense's challenge to PEX 5 which was the register was unsubstantiated given PW1's and DW3's testimony. He argues that the defence witnesses could not explain the alterations on the register. He added that DW3 being the director of the company conceded that the original copy presented in court was different from the one produced by the Land registrar. He further submits that the testimonies by DW1 and DW2 were in direct conflict. It was counsel's submission that the two properties were distinct and that the onus was on the 2nd Defendant to demonstrate how the property at serial no. 137 transformed into the suit property Block 29/910. He also submits that there was no evidence to show that the suit property was jointly acquired or how it came to be jointly registered in the 1st and 2nd Defendants. Counsel relied on the case *Anne Wambui Ndiritu V Joseph Kiprono Ropkoi & Another* [2005] 1EA 334 and *Emfil Limited V Registrar of Titles Mombasa & 2 Others* [2014] eKLR. He further relied on Section 26 (1) of the *Land Registration Act* and Article 40 of *the constitution*.
38. He submits that the Plaintiff demonstrated to the required standard the particulars of fraud as highlighted under paragraph 12 of the amended plaint. It was counsel's submission that on the issue of the property being jointly owned, he argues that upon the death of one joint proprietor, his interest automatically vests in the surviving proprietor. He cited the case of *Kasera & Another V Richard* (Civil Appeal 52 of 2018) [2022] KECA 1025 (KLR). It was his submission that upon the death of the 1st Defendant in 2023, his interest in the suit property vested in the 2nd Defendant and as such, DW1 lacked the locus standi to participate in the proceedings. He argues that his father's interest had already vested in the 2nd Defendant and thus his evidence was inconsequential and ought to be disregarded. He submits that the Plaintiff testified and produced documentary evidence demonstrating how he acquired the suit property. He added that the Plaintiff's testimony remained unshaken unlike the Defendants' that was riddled with contradictions. He submits that the Plaintiff produced the agreement PEX 1 which had the title number of the suit property he purchased from Mr. Arusei. He added that the Plaintiff was also issued with a shareholder's card by the company with the title number. He also submits that DW3's testimony corroborated the Plaintiff's case affirming that he balloted and later executed the agreement.



39. The second issue was whether the Plaintiff is entitled to the reliefs sought. Counsel submits in the affirmative and argues that pursuant to the initial judgment that was set aside, the title had already been transferred to the Plaintiff. He submits that on the prayer of eviction, it emerged that the 3rd Defendant had unlawfully sold the suit property to third parties despite the suit still pending. He submits that his actions ought to be reversed. He relied on the case of *Robert Maina Murogo & 4Others V Simon Munene Mbugugia (substituted party for Joyce Wagichugu Mbugugia)* [2018] KECA 463 (KLR). He submits that the 3rd and 4th Defendants ought to pay mesne profits.
40. The final issue on costs, he cited the case in *Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others* [2014] eKLR and urged the court to award the Plaintiff costs of the suit.
41. Counsel for the 2nd Defendant filed his submissions dated 4th March, 2025 where he identified four issues for determination. The first issue was whether the Plaintiff has a valid or equitable claim over the suit property. While submitting in the negative, he argues that the Plaintiff relied on a sale agreement which was not conclusive proof of transfer of shares. He added that the Plaintiff failed to provide any membership certificate, payment receipts or approval from the company acknowledging his acquisition of shares. He submits that there was no evidence of a valid agreement of transfer of shares by the Plaintiff. It was his submission that the Land Registrar and the director of the company denied the authenticity of the register produced by the Plaintiff. He also submits that the Plaintiff failed to demonstrate that he obtained the register from a legitimate source. He argues that failure by the Plaintiff to provide sufficient documentation regarding his ownership and land acquisition should result in dismissal of his claim.
42. The second issue was whether the 2nd Defendant lawfully acquired the suit property. He submits in the affirmative and argues that the director of the company and the 2nd Defendant provided a clear and consistent explanation regarding the joint ownership of the 1st and 2nd Defendant. He submits that the Plaintiff failed to demonstrate that the changes in the register were fraudulent and added that there was no complaint to the company challenging the same. He also submits that there was no evidence of irregularity in the 2nd Defendant's registration.
43. The third issue was whether the 2nd Defendant obtained the title fraudulently. While submitting in the negative, he argues that the 2nd Defendant produced all the necessary documents showing the claim of ownership of the suit property which claim was never challenged. He relied on the case of *Jubilee Insurance Company Limited v Nyaema & 4 others (Civil Appeal E124 of 2022)* [2024] KEHC 6803 (KLR) (Commercial and Tax) and the case of *Kiruwa & another v Weindaba & 7 others (Environment & Land Case 14 of 2021)* [2024] KEELC 1663 (KLR) where the court cited *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000]. It was his submission that it was incumbent upon the Plaintiff to state the actions undertaken by the Defendants which are termed to be fraudulent as well as the illegalities which he has failed to prove.
44. The fourth issue was whether the Plaintiff was entitled to the reliefs sought. Counsel submits in the negative and argues that the Plaintiff's alleged ownership claim was not backed by proper documentation proving he lawfully acquired shares that translate into land ownership. He submits that there was no evidence that the Plaintiff lawfully acquired shares or completed the necessary procedures with Kalenjin Enterprises for land allocation. He further submits that the register produced by the Plaintiff was discredited by both the Land Registrar and the Director of Kalenjin Enterprises, thus he had no legitimate basis to challenge the Defendants' title. He relied on Section 26(1) of the [*Land Registration Act*](#).
45. On the final issue on costs, he relied on Section 27 of the [*Civil Procedure Act*](#) and urged the court to award the Defendants costs.



Analysis and Determination

46. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Whether the 1st and 2nd Defendants lawfully acquired the suit property.
 - b. Whether the Plaintiff is entitled to the prayers sought.
 - c. Whether the 1st Defendant is entitled to the prayers sought in his counterclaim.
 - d. Who should bear the costs of the suit.

Whether the 1st and 2nd Defendants lawfully acquired the suit property.

47. It was the Plaintiff's case that he bought the property from one Arusei. He claimed that he was a member of Kalenjini Enterprises Limited and that he had bought shares from Chepkwony. He produced a sale agreement dated 20th November, 1999 for the suit property Nakuru/Municipality/Block 29/910 at a consideration of Kshs. 150,000/=. Upon cross examination, he admitted that he did not know how the Defendant acquired the suit land.
48. The Land Registrar for the 5th and 6th Defendants testified that she had members register for parcel number 873 and 910. She testified that that parcel number 910 belonged to the 1st and 2nd Defendant and that the Plaintiff's name did not appear in the register. She confirmed that the green card had the 1st and 2nd Defendants names. She admitted that there was no discrepancy and that the names in the green card should be in the registrar. She also confirmed that Arusei's name appeared on plot number 873. It was her case that the 1st Defendant's register was similar to the one they had unlike the Plaintiff's register which was different. She confirmed that the title issued on 28th November, 2006 in the 1st and 2nd Defendant's name was proper in law. She also confirmed that the Plaintiff could not be registered as proprietor of 910 due to the register.
49. The 1st Defendant testified that Registration for Kalenjini Enterprise or Rift Valley Enterprises Ltd relating to Nakuru/Municipality/Block 29/910 belonged to his father, the 1st Defendant and the 2nd Defendant who were shareholders of Kalenjini Enterprises. He testified that Block 29/873 belonged to Arusei Isaiah Cherotich Upon cross examination, he admitted that the register had alterations.
50. The 2nd Defendant confirmed that the 1st Defendant sold his shares to the 3rd Defendant. The Director of Kalenjini Enterprises Limited DW3 confirmed that the register for Block 29 was signed on 17th March, 2004. He further confirmed that Isaiah Arusei appeared at 873 and No.913 with question marks. He also confirmed that the title deed had two names of the 1st and 2nd Defendants which was issued by the Land Registrar after clearance by the company. He added that the company register was not altered.
51. Section 107 of the [Evidence Act](#), Cap 80, states:
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” Further, Section 108 of the Act states:
- “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”



52. It is this court's view that the Plaintiff alleges fraud on the part of the Defendants in acquiring the suit property and that the register was tampered with. The onus is therefore on the Plaintiff to prove the same.
53. The Court of Appeal in Mombasa, Civil Appeal No. 312 of 2012- Emfil Limited Vs Registrar of Titles Mombasa & 2 others [2014] eKLR held as follows:
- “Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities”.
54. Further, the Court of Appeal in Arthi Highway Developers Limited V West End Butchery Limited & 6 Others [2015] eKLR held as follows:
- “It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427: ‘Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged ...’ Section 24(a) of the Land Registration Act provides that:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
55. Section 26(1) of the Land Registration Act further provides that:
- “...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—
- a. on the ground of fraud or misrepresentation to which the person is proved to be a party
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
56. It is not in dispute that there was a title issued by the Land Registrar on 28th November, 2006 in the 1st and 2nd Defendant's name. It is this court's view that the root of the title emanates from the land buying company Kalenjini Enterprises Limited. It is my view that in order to establish its root, this court will need to interrogate the company's register as that was the foundational document in issuance of the title. I have perused the register and it is not in dispute that 910 the suit property was in the name of the 1st and 2nd Defendants. It is also a fact that 873 was issued in the name of Isaiah Cherutich Arusei. The Plaintiff produced a sale agreement with the suit property yet the buyer was Isaiah Arusei instead of the 1st and 2nd Defendants. It was also his case that he bought shares from one Kiplagat Chepkwony in 1975. He also confirmed that he got the stamped register from the then Nakuru senator Dr. Kinyanjui after the company failed to issue him with a copy. DW3 the director of



the company and the Land Registrar both confirmed that parcel number 910 was in the 1st and 2nd Defendant's name and that Dr. Kinyanjui was not a company's official. It is a fact that the said register produced by the Plaintiff was disregarded by the director of the company DW3 and therefore it could not be relied upon. It is my view that in as much as the Plaintiff claimed ownership of the suit property, the sale agreement and the register proved otherwise. It is therefore this court's view that the Plaintiff failed to discharge the burden to the required standard in proving that the Defendants fraudulently acquired the suit property.

57. In the case of *Dina Management Limited V County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) cited the case of *Munyu Maina V Hiram Gathiha Maina* [2013] KECA, where the court held as follows:

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

58. The 1st and 2nd Defendant on the other hand produced the title issued to them on 28th November, 2006 which both the Land Register and the director of the company confirmed. The register from the company confirmed that indeed the suit property was allocated to them through balloting together with the share certificate they were issued with. The Land Registrar confirmed that they relied on the register given to them by the company in issuance of the title deed. She confirmed that the title deed was lawfully issued to the 1st and 2nd Defendants. In addition, the green card also confirmed that the suit property was issued in the 1st and 2nd Defendant's name.
59. In view of the above, this court finds that the 1st and 2nd Defendants established the root of their title and thus the same was lawfully issued.

Whether the Plaintiff is entitled to the prayers sought.

60. Having established that the Plaintiff failed to prove his case on a balance of probabilities, he is therefore not entitled to the prayers sought.

Whether the 1st Defendant is entitled to the prayers sought in his counterclaim.

61. The upshot of the above is that the Plaintiff failed to prove his case on a balance of probabilities. Consequently, the 1st Defendant's counter claim is allowed as prayed. I therefore enter judgment in favour of the Defendants in the following terms:
- a. A declaration that the 1st and 2nd Defendants are the bona fide owners of parcel of land known as Nakuru/Municipality/Block 29/910.
 - b. An order be and is hereby issued directing the 5th Defendant to cancel the transfer of title to the Plaintiff with respect to parcel Nakuru/Municipality/Block 29/910.
 - c. Each party shall bear their costs of the suit. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

