



Chesang & 3 others v Sirma & 4 others (Environment and Land Case 18, 048 & 24 of 2020 (Consolidated)) [2025] KEELC 7310 (KLR) (28 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7310 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 18, 048 & 24 OF 2020 (CONSOLIDATED)
MAO ODENY, J
OCTOBER 28, 2025**

BETWEEN

CHRISTINA SOTE KIPTUI AND MARGARET JEMUTAI CHEPTO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE GEORGE KIPTUI CHESANG) 1ST PLAINTIFF

ISAAC KIPCHUMBA ROTICH LELKUTWO 2ND PLAINTIFF

AND

MUSA CHERUTICH SIRMA 1ST DEFENDANT

KIPLAGAT NAMUNI 2ND DEFENDANT

NAKURU GRAINS MILLS LIMITED 3RD DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT AND LAND CASE 048 OF 2020**

BETWEEN

NAKURU GRAIN MILLERS PLAINTIFF

AND

ISAACK LELKUTWO DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT AND LAND CASE 24 OF 2020**

BETWEEN

GILBERT MAYIEKA OGATO PLAINTIFF



AND

RAYMOND KIPLAGAT 1ST DEFENDANT

NAKURU GRAINS MILLS LIMITED 2ND DEFENDANT

JUDGMENT

1. This Judgment is in respect of 3 cases with similar parties and issues, being ELC Case No 18 of 2020, ELC Case No. 48 of 2020, and 24 of 2020, whereby counsel agreed that the matters be heard together as they have common issues and witnesses.
2. In ELC Case No. 18 of 2020, the Plaintiffs sued the Defendants vide a plaint dated 4th March, 2020, seeking the following orders:
 - a. A declaration that the 1st Plaintiff is the lawful owner and the 2nd Plaintiff is the beneficial owner of all those parcels of land known as L.R No 22650 and L.R 22651.
 - b. In the alternative, a declaration that title to all those parcels of land known as L.R No 22650 and L.R 22651 registered in the name of the Defendants have been extinguished in favour of the Plaintiffs by the operation of sections 7, 13 and 17 of the *Limitation of Actions Act*, Chapter 22 of the Laws of Kenya and that the Plaintiffs have acquired title to all those parcels of land known as L.R No 22650 and L.R 22651 by adverse possession.
 - c. An order directing the Chief Land Registrar to cancel the registration of the 1st and 3rd Defendant's, as the owners of all those parcels of land known as L.R No 22650 and L.R 22651 and to register the 1st Plaintiff as the proprietor thereof.
 - d. A permanent injunction restraining the Defendants either by themselves, their agents, servants, employees, tenants or otherwise howsoever from entering, trespassing, occupying, charging, carrying on any development or dealing in any way with all or any portion of those parcels of land known as L.R No 22650 and L.R 22651 in any manner whatsoever prejudicial to the interests of the Plaintiffs.
 - e. General damages for trespass and unlawful interference with the Plaintiffs' property rights pursuant to the provisions of Section 75 of the *Land Registration Act*, 2012.
 - f. Costs of the suit with interest till payment in full.
 - g. Any other or further relief this Honourable court may deem fit to grant.
3. The 3rd Defendant filed a counterclaim dated 5th March, 2021, and sought the following orders:
 - a. A declaration that the 3rd defendant is the lawful owner of all those parcel of land known as L.R No 22650 and L.R No 22651.
 - b. The Plaintiff (now Defendant) be restrained by himself, his servants, agents and/or employees from claiming, entering or in any other way interfering with all those parcels of land known as LR No 22650 and LR No 22651.
 - c. Costs of this Counterclaim be paid by the plaintiffs (now defendants).
4. In ELC Case No 48 of 2020, the Plaintiff sued the Defendant vide plaint dated 4th March, 2020 seeking the following orders:



- a. Declaration order that LR 22651 AND LR 22650 measuring 0.200 hectares each belongs to NAKURU GRAIN MILLERS.
 - b. A permanent order of injunction restraining the defendant by herself, her agents, servants and or employees from entering, developing, remaining, trespassing, and or threatening the plaintiff's quiet enjoyment and possession of all that parcel of land known as LR 22651 AND LR 22650 measuring 0.200 hectares each, belonging to NAKURU GRAIN MILLERS. (sic)
 - c. Costs of this suit.
 - d. Any other relief that this honorable court may deem fit to grant.
5. In ELC Case No 24 of 2020, the Plaintiff sued the Defendants vide plaint dated 13th March, 2020 seeking the following orders:
- a. A declaration that title to all those parcels of land known as L.R No 22652 and L.R No 22653 registered in the name of the 1st and 2nd Defendants respectively has been extinguished in favour of the Plaintiff by operation of sections 7, 13 and 17 of the *Limitation of Actions Act*, Chapter 22 of the Laws of Kenya and that the Plaintiff has acquired title to all those parcels of land known as L.R No 22652 and L.R No 22653 by adverse possession.
 - b. An order directing the Chief Land Registrar to cancel the registration of the 1st and 2nd Defendants, as the owners of all those parcels of land known as L.R No 22652 and L.R No 22653 respectively and to register the Plaintiff as the proprietor thereof.
 - c. A permanent injunction restraining the Defendants either by themselves, their agents, servants, employees, tenants or otherwise howsoever from entering, trespassing, occupying, charging, carrying on any development or dealing in any way with all or any portion of all those parcels of land known as L.R No 22652 and L.R No 22653 in any manner whatsoever prejudicial to the interests of the Plaintiff.
 - d. General damages for trespass and unlawful interference with the Plaintiff's property rights pursuant to the provisions of Section 75 of the *Land Registration Act*, 2012.
 - e. Costs of the suit with interest till payment in full.
 - f. Any other or further relief this Honourable court may deem fit to grant.
6. The 2nd Defendant filed a counter-claim dated 5th March, 2021, and sought the following orders:
- a. A declaration that the 2nd Defendant is the lawful owner of all those parcels of land known as L.R NO 22652 (IR 213675) and L.R No 22653 (IR 192061).
 - b. The plaintiff (now defendant) be restrained by himself, his servants, agents and/or employees from claiming, entering or in any way interfering with all those parcels of land known as LR NO 22652 (IR 213675) and L.R No. 22653 (IR 192061).

Plaintiffs' Case

7. PW1 Robert Simiyu, an Assistant Director, Land Administration, Ministry of Lands Headquarters, stated that he is in court pursuant to summons served on him dated 2nd February, 2023, to produce three files relating to parcels 22650 and 22651. He testified that he has no files for parcels LR. No. 22653 and 22654 and that he had file No. 180509, which shows the allottee as Kiptui George Chesang who



- was allocated Residential Plot No. 11 Nakuru Municipality by letter dated 4th March, 1996, signed by his colleague S. M. Osodo for the Commissioner of Lands.
8. PW1 testified that the allottee accepted the offer vide a letter dated 1st April, 1996, and sent a cheque of Kshs. 55,055/= and the Government issued him with a receipt No. D444678 dated 16th April, 1996.
 9. It was his evidence that no lease was prepared, and, that on 18th January, 2018, their office wrote to the Director of Surveys requesting a deed plan to enable them to process the lease. It was PW1's testimony that thereafter, their office received a DCI's (Directorate of Criminal Investigations) letter requesting for information on the allottees of parcel Nos. 22650 and 22651 and to confirm the authenticity of their allotment letters. He testified that it was signed by CCIO (County Criminal Investigation Officer) Nakuru West P. Ambani.
 10. PW1 testified that he was instructed by the Director to deal with the matter, and photocopied the three files and wrote to CCIO Nakuru and rendered an explanation, which was the last correspondence in the file. It was his testimony that the first file No. 180509 was for parcel No. 22650 owned by George Kiptui.
 11. PW1 further testified that his letter to the DCI concluded that the document was in favour of Kiplangat Namuni and Musa Sirma because by the time they were allocated, the plot was unavailable having been allocated to Kiptui. PW1 testified that file number 180509 is for un-surveyed Plot No. 11, and after the survey it became plot 22651.
 12. PW1 further testified that file No. 291919 relates to un-surveyed Plot No. 11 Nakuru Municipality LR 22651, and that the two files are for the same parcel. PW1 testified that file 299818 is in court and it relates to un-surveyed Plot No. 10 Nakuru Municipality LR No. 22650.
 13. PW1 testified that the signature on the letter of allotment is suspicious and a photocopy of a letter of allotment was used to open the file, and if a copy is to be used, it must be certified. PW1 testified that the person who opened the file did not authenticate if the letter was genuine, and noted if a file in relation to land rent opened with the records section upon its opening. PW1 testified that in respect of Kiptui's file, it was noted but the other two were not.
 14. Mr. Simiyu stated that he noted payments were done in 2016 rather than within the appropriate period when the offer had lapsed and the land was not available for allocation to Moses Sirma and Kiplangat. It was further his evidence that Mr. Kiptui had accepted the offer and that in file No. 299819, one C.O. Onyango is said to have signed the letter of allotment, which signature he stated did not belong to him.
 15. PW1 produced the certified copies of the three files as, File No. 180509 – PExh.1A (a)-, File No. 299818 – PExh.2A (a)-, and File No. 299819 – PExh.3A (a). PW1 testified that PMFI-4 is a letter of allotment for Joe B. Chepkok for un-surveyed Plot No. 10 Nakuru Municipality signed by S. M. Osodo, which was allocated vide file No. 199818 to Musa Sirma signed by C. O. Onyango. PW1 testified that he never got any other file for LR. 22650.
 16. Upon cross-examination by Mr. Kemboi (holding brief for Mr. Biko and for the 3rd defendant), PW1 referred to his report and stated that it was written on File No. 180509 but refers to three files. PW1 stated that it confirms Musa Sirma's and Kiplangat's documents are suspicious and void and it says the plots were not available for allocation.
 17. It was PW1's evidence that Kiptui was allocated the plots vide file No. 180509 and that only one allotment letter for plot No. 11. He stated that file No. 299819 is for plot No 11 and file No. 299818 is for plot No. 10, respectively. He also confirmed that he has no allotment letter in Kiptui's favour in the file and further that file Nos. 299819 and 299818 are not in respect of George Kiptui. He stated



- that LR. 22651 is the one with two allotment letters and LR 22650 has only one allotment letter. PW1 also stated that in his report to the CCIO and he never stated that the signatures were suspicious.
18. PW1 stated that the premium was paid to the government in respect of file Nos.299819 and 299818, and that there is no complaint or report of any suspicion on the two files. He confirmed that the title deeds are in the names of Kiplagat Namuni and for plot Nos. 22650 and 22651. PW1 stated that Musa C. Sirma and Namuni Kiplagat have the titles to Plot Nos. 22650 and 22651 respectively. He stated that PMFI-4 is an allotment for Joe B. Chepkok which was never paid for, and that there is an allotment in his name for the same land.
 19. Upon cross-examination by Mr. Kipkenei, PW1 stated that he does not have the certificates of title for LR 22650 and LR 22651, in court, and that LR 22650 was issued to Musa Sirma and the lease was issued by the Lands office. Further that LR.22651 has a lease in favour of Kiplagat Namuni and that is the information one would get from their office.
 20. Upon cross-examination by Mr. Opar, PW1 was shown PExh.1A (b) (Finding No. 2) and he stated that he has not indicated to Kiplagat that the allocation had lapsed. PW1 stated that he does not know why the payment was accepted while the allocation had lapsed.
 21. Upon re-examination by Mr. Konosi, PW1 testified that the report at Finding No. 1 states George had accepted the offer, and upon being shown the first sentence in the report, stated that he was referring to only one plot being LR.22651. PW1 testified that they have two files for LR 22651 and file No. 180509 contains the proper documents, and that one was fraudulent and one was genuine. PW1 testified that he could not get the file for parcels 22653 and 22654.
 22. PW2 Silvester Musevo Osodo, adopted his witness statement dated 5th June, 2022, as part of his evidence in chief, and testified that he is currently working with the National Land Commission as a County Coordinator based in Taita Taveta County.
 23. Upon cross-examination by Mr. Biko, PW2 informed the court that he stated at paragraph seven of his statement that he never signed the letter of allotment for Musa Sirma. He stated that a person by the name C. O. Onyango, who was his colleague but passed away, is the one who appeared to have signed for Kiplagat Namuni.
 24. Upon re-examination by Mr. Konosi, PW2 testified that he signed the letter of allotment for Kiptui Chesang for LR 22651 and he referred to PExh.3A (1) and stated that he can only comment on what he did.
 25. PW3, Dr. Isaac Kiplimo Ngetich, adopted his witness statement dated 30th May 2022, and stated that he is a Surgeon by profession and lives in Soilo, Nakuru county. It was his evidence that he knows Isaac Lelkuto, the 2nd plaintiff and the 1st plaintiff Ogato Mayieka.
 26. Upon cross-examination by Mr. Biko, PW3 stated that he knows Hon. Musa Sirma as a Member of Parliament for Eldama Ravine, but he is not a land owner in respect of this matter. He stated that this is the information he got from his neighbours and as a resident of the area. PW3 stated that he came to court to give evidence on behalf of the plaintiffs.
 27. Upon cross-examination by Mr. Opar, PW3 stated that he is the owner of LR No. 22654 which he acquired in 2002, and that when he bought the land, there were no fences. He stated that they were later shown their parcels and he may not remember the exact date when Isaac bought the land.
 28. PW3 informed the court that in his statement, he said that he bought the land from an initial allottee, but did not have any reason to go into the history of the land. It was his testimony that the land initially



- belonged to Engineer Chesang however he is not aware that the allotment was issued to Hon. Musa Sirma. PW3 further stated that he is neither aware that the land was allocated to Raymond Kiplagat nor know the occupants. Further, Isaac and George Ogato do not occupy the land and he does not know the people who erected the structures.
29. Upon cross-examination by Mr. Kipkenei, PW3 stated that he does not know the people holding titles to the land, and that prior to the occupation by the goons, there were people residing on the land. PW3 stated that Mr. Ogato's caretaker was tiling and the 2nd plaintiff was using the land. PW3 informed the court that he would be surprised if titles were issued to Nakuru Grains Ltd.
 30. Upon re-examination by Mr. Konosi, PW3 testified that some goons came in 2020 and cut trees, fenced and occupied the land, and that he does not know Hon. Sirma as his neighbour. He testified that Mr. Ogato has been his neighbour since 2002, and that the goons chased away the caretaker and started building.
 31. PW4, Isaac Kipchumba Rotich Lelkuto, adopted his witness statements dated 4th March 2020 and 5th June 2020 respectively as his evidence in chief and produced a list of documents as PExh.No. 4 to 25.
 32. Upon cross-examination by Mr. Biko, PW4 stated that Mr. Chesang died in 2010 and he acquired his parcel in September 2010. He stated that before he died, they had discussed the sale of the land, when he settled in Soilo in 1999. PW4 stated that Chesang's plots were adjacent to his and since he was not staying around there, he told him to take care of his plots.
 33. PW4 stated that when he returned, he was informed that he wanted to dispose of the parcels, and he was given priority, settled on the price and then he went to Garissa. Mr. Chesang was later involved in an accident and passed away. PW4 further stated that the whole family was aware of the sale and later on they wanted to raise fees for their children, and they sat and agreed that they would complete the sale agreement.
 34. PW4 testified that they wrote the sale agreement dated 8th September 2010, drafted by Karen Wanderi Advocate, with the son, Albert Chesang, and Chesang's second wife, Margaret Chemtai Cheptoo about four months after Chesang's death. He stated that he was not shown a grant of letters of administration at the time of signing the agreement and that he did not know whether they had filed a Succession Cause.
 35. It was his testimony that he knew Joe B. Chepkok who was the owner of LR No. 22650 and had acquired an allotment on 13th March, 1996. Further that Chesang's family gave him the allotment, which Chesang had bought from Chepkok vide an agreement dated 12th July, 1996, where Chepkok signed a transfer form. PW4 informed the court that he met Chepkok, who passed away three months later in 2018. PW4 stated that he neither had a lease nor title to Joe B. Chepkok's parcel, and that the Chesang family later took their letters of administrators on 19th April, 2018.
 36. PW4 informed the court that plot No. 11 LR No. 22651 is amongst the list of properties in the Grant, and plot No. 10 LR No. 22650 is not in the grant as it was not in Chesang's name. PW4 further stated that he does not know that Hon. Sirma transferred his rights to Nakuru Grains Ltd and that Mr. Kiplagat Namuni also forcefully took over the plot on 1st March, 2020 and the properties are registered in the defendant's names. It was PW4's testimony that he bought the land for Ksh.650,000/= and that he had not paid in full.
 37. Upon cross-examination by Mr. Opar, PW4 was shown the sale agreement dated 8th September, 2010 and stated that the description of the vendors were that they were administrators of the estate of Chesang. PW4 was also shown the letters of administration and he stated that they were in the



- names of Christine Sote and Margret Jemutai Cheptoo, and that Albert's name does not appear as an administrator. PW4 went on to state that there is a cheque dated 6th September, 2010 to Albert Kiptui and Margret J. for Kshs. 500,000/=, payment for Kshs. 50,000/= - on 4th February, 2013, Kshs. 100,000/= - on 8th May, 2014 to Albert Kiptui for the payment of the plot. PW4 stated that he has not paid the full purchase price and the payment was due on 9th March, 2011.
38. PW4 confirmed that there is no transfer in his name, and that he did due diligence but the files were missing in the registry. PW4 stated that he was in occupation when he entered into the agreement and the land was fenced but he did not have a structure as he was using it for farming. PW4 stated that he does not know the owner of plot No.10.
39. Upon cross-examination by Mr. Kipkeni, PW4 stated that he is not aware that the parcels of land are in Nakuru Grains Ltd's name. Upon cross-examination by Mr. Kemboi, PW4 stated that the plots and the allotment letters do not indicate LR 22650 and 22651.
40. Upon re-examination by Mr. Konosi, PW4 was shown the allotment letter dated 13th March 1996 and testified that the LR No. is shown as 22650 for plot No. 10 and letter of allotment of plot No. 11 is LR No. 22651, respectively. He further testified that he was not able to complete the payment as the titles were missing, and further that the estate of the late Chesang does not have any issue with his purchase of the two parcels of land. PW4 testified that he fenced the plots and planted trees as shown in the photographs produced.
41. PW5, Gladys Sarara adopted her witness statements dated 13th March 2020, and 7th April 2022, as part of her evidence in chief and produced the documents attached to the statement as PExhb.No.26 to 34.
42. Upon cross-examination by Mr. Opar, PW5 stated that her husband bought LR No. 22653 from Kenneth Kamiren who signed a consent letter to the Commissioner of Lands, of which she admitted that the same was not dated and does not know whether the Commissioner of Lands received it. She further stated that she does not know whether there was an allotment letter and that the allotment letter states that the parcel belongs to Temnor Trading Co. Ltd.
43. PW5 stated that she knows that the land belonged to Kenneth Kamiren and does not know whether he had a title, further that the transfer had not been effected in her husband's name. PW5 informed the court that they entered into an agreement for the sale of the suit land, at a consideration of Kshs. 250,000/= whereby they paid a deposit of Kshs. 20,000/= with a balance of Kshs. 230,000/= which was later paid in full. PW5 stated that there is no one occupying the suit land and plot No. 22652 belongs to her.
44. Upon re-examination by Mr. Mogire, PW5 testified that they bought the suit land in 2002 from Kenneth Kamiren who gave them the allotment letter. She testified that they have been utilizing the suit land and paid the full purchase price. It was her testimony that they were evicted from the suit land in March 2020 and Kenneth promised to transfer the land but he never did so to date.
45. PW6, Evans Mogere, adopted his witness statement dated 28th May 2021 as part of his evidence in-chief.
46. Upon cross-examination by Mr. Opar, PW6 stated that he was instructed to fence the suit plot and he was paid for the work. He stated that he built a structure for the work and one for a caretaker, Peter Gichana. He further testified that he was cultivating the suit land and there were structures when he went to fence the land, but there was nobody in occupation of the suit land.
47. Upon re-examination by Mr. Mogire, PW6 testified that he started using the land in 2015 and constructed a structure and fence in 2018. He testified that he was given the work by Gilbert Ogato and built a site house and a toilet, but does not know who is occupying the suit land.



48. PW7, Peter Gichana adopted his witness statement dated 13th March, 2020, as part of his evidence-in-chief, and upon cross-examination by Mr. Kemboi, PW7 stated that he was a caretaker on the suit land from 2020, and the land had a fence.
49. Upon re-examination by Mr. Mogire, PW7 testified that Gilbert Ogato was the one who asked him to take care of two plots. He testified that he was removed from the suit land in 2020, and the suit plot had been fenced when he got into the land.
50. PW8, Albert Kipyegon Kiptui adopted his witness statement dated 17th May, 2022, as part of his evidence in chief, and testified that before the demise of his father, Chesang, they were working with him in the same office, and that he had sold land to Isaac Kipchumba Lelkutwa. It was his testimony that after the burial, in September, they gathered as a family and agreed to sell plot No. 10 & 11 to Isaac Lelkutwa.
51. Upon cross-examination by Mr. Opar, PW8 stated that he does not know how his father acquired plot Nos.10 and 11, but his father paid Kshs 55,055 for the plots. PW8 stated that he does not know whether his father was given a title or lease and that he bought plot No. 10 from Joe B. Chepkok who got the plot on 13th March, 1996. It was PW8's evidence that Joe B. Chepkok did not transfer the plot to his father, but PW8's family sold the two plots after the death of his father.
52. PW8 stated that at the time of the sale, he was not an Administrator of the estate and the purchase price was paid into the accounts of Albert Kiptui and Margaret, into one account. PW8 stated that they sold the land to Isaac for Kshs. 1,055,000/= and the amount was not paid in full. PW8 stated that he does not know that the land had been allotted to Hon. Musa Sirma and further that he only knew Kiplagat Namuni in 2020.
53. Upon re-examination by Mr. Mogire, PW8 testified that his father was given plot No. 10 on 4th March, 1996 and paid the requisite premiums. PW8 testified that he bought plot No. 11 from Joe B. Chepkok whereby he paid the full purchase price, and that the amounts paid in his account were part payment of the purchase price of the suit land.
54. PW9, Richard Kipkurui Chepilat adopted his statement dated 19th May, 2022, as part of his evidence in chief, and upon cross-examination by Mr. Opar, PW 9 stated that the late Chesang was his cousin and the family gave him his briefcases to keep for them. He stated that plot No. 11 was in the name of George Chesang, and does not know whether the plots were allotted to Kiplagat Namuni and Musa Sirma. PW9 stated that currently there is no one in occupation and he was not a witness in the sale agreement.
55. Upon re-examination by Mr. Mogire, PW9 testified that Chesang was allotted plot No. 10 and Isaac Lelkuto took possession but was residing on another plot, and that the family has not objected to the sale of the suit plots.
56. PW10, Margaret Chemutai Cheptoo also adopted her statement dated 5th June, 2022, as part of her evidence in chief and upon cross-examination by Mr. Opar, PW10 stated that her late husband was the owner of plot No. 10 and there was no title to that land as it was yet to be processed. She stated that Plot No. 11 also belonged to her husband. PW10 stated that plot No. 10 was not listed in the Grant of letters of Administration as the process of transfer was still ongoing. She stated that they sold the land after the death of her husband and before grant of letters of administration. PW10 stated that she neither knows Kiplangat Namuni nor Gilbert Ogato.
57. Upon re-examination by Mr. Mogire, PW10 testified that her husband was allotted plot No. 11 and bought plot No. 10 from Joe B. Chepkok. She testified that they sold the plots to Isaac Lelkuto in



2010 and he was taking care of the plots when her husband was alive. It was PW10's testimony that her husband had allotment letters when he sold the parcel and asked Isaac to follow up on the transfer process.

Defendants' Case

58. DW1, Musa Sirma adopted his witness statement dated 18th March 2020 as part of his evidence in chief and stated that he is a Member of Parliament, and that he acquired LR No. 22650 IR No. 191726 on 13th March, 1996 and was issued with a title deed which was annexed to the plaintiff's documents together with his documents. DW1 testified that he applied for allotment and was issued with a letter of allotment. It was DW1's testimony that he paid the necessary premium and was issued with a title deed.
59. DW1 further testified that he has owned this property since 1996 and he is not aware of the plaintiff's claim to the suit land. DW1 testified that he knows Albert Kiptui and Kipchumba Lelkuto who was a Land and Settlement Officer in Nakuru. DW1 testified that he is not aware that he has a beneficial interest in the suit land. Mr. Sirma stated that they trespassed on suit land and he was sued in Nakuru CMCC No. 48 of 2020, which matter was transferred to this court and consolidated and urged the court to dismiss the Plaintiff's case with costs,
60. Upon cross-examination by Mr. Mogire, DW1, stated that he was allotted parcel of land No. 10 on 13th March, 1996 and after survey it became LR No. 22650. It was his evidence that he made an application but he had not brought it to court but has a letter of allotment and a title deed. DW1 stated that he is not aware that J. B. Chepkok was allotted the same parcel of land. DW1 stated that he was not in court when PW1 Robert Simiyu, Land Administrator gave evidence and produced parcel files, and further that he is not aware of any other owner of the suit land apart from himself. DW1 stated that he did not get any restrictions in processing of his title and there is no caveat or restriction in the land registry in Nakuru.
61. Mr. Sirma also informed the court that the condition of the allotment letter was to accept and pay the premium, of which he complied by making the payment on 7th November, 1996. DW1 stated that there were no timelines and that the NARC government blocked all payments from 2003 to 2014 and subsequently he paid the premium in 2016, processed the title and got it in 2017. DW1 stated that he took possession by fencing with a barbed wire and planted trees, further that he is the owner of the suit land but not living on the same. DW1 informed the court that there was no anomaly during the processing of the title.
62. Upon re-examination by Mr. Opar, DW1 testified that at the time he was making payment in 2016, the Commissioner of Lands accepted his payment. He testified that he was not made aware of any other restrictions against the title.
63. DW2, Kiplagat Namuni, the 2nd Defendant, adopted his sworn replying affidavit dated 25th September, 2020, as his evidence and stated that he transferred LR No. 22651 to Nakuru Grain Millers in 2017, which he had done before the filing of this suit. DW2 testified that there was no restriction against his title, that he was the one in occupation before he transferred it to Nakuru Grain Millers. He produced the documents annexed to the replying affidavit as DExhb. No. 1 to 6.
64. Upon cross-examination by Mr. Mogire, DW2 stated that he was allotted un-surveyed plot No. 11 on 13th March, 1996 and which application is in Nairobi. He stated that he accepted the offer and paid the standard premium of Kshs. 55,055/= in 2016. DW2 stated that the allotment letter never stated the date of payment, and that he applied for authority to pay which was granted in 2016 but the said authority is not in the file or in court.



65. DW2 denied that Kiptui Chesang was allotted this land, as he processed the title which was issued in his name in 2017. He also stated that he took possession of the suit land, fenced and planted trees. It was his evidence that he knows neither Christina Sote, nor Isaac Kipchumba Rotich. DW2 stated that he does not know whether George Chesang made payment to the suit land, and that Nakuru Grains Ltd is in occupation.
66. Upon re-examination by Mr. Opar, DW2 testified that it is not true that he fraudulently procured the title to the suit land. He testified that by the time he paid the standard premium, he was not told that the same had been allotted to George Chesang.
67. DW3, Raymond Kipkemoi Kiplagat adopted his statement dated 11th November, 2022, as part of his evidence in chief, and produced a list of documents dated 5th March, 2021, as DExhb No. 7 to 12. He testified that he was allotted the two un-surveyed parcel residential plot Nos. 8 and 9 on 13th March, 1996, and paid for the properties as follows: plot No. 9; File No. 293913 on 7th November, 2016, plot No. 8. File No. 308532 on 7th August, 2018.
68. DW3 testified that the standard premium was Kshs. 55,055/= each for the two plots, which was accepted and issued with a receipt and further that he did not encounter any challenges. DW3 testified that the government had placed a moratorium from 2003 to 2014, and around 2016, the Minister allowed them to pay and he proceeded to process the title deeds. DW3 testified that plot No. 9 upon survey was LR 22653, and was issued with a lease, which he executed and returned to the Ministry of Lands and subsequently was later issued with a certificate of lease.
69. DW3 informed the court that he took possession upon allocation, fenced using cedar poles and would cultivate the suit land. DW3 testified that he is the registered owner of the suit properties and transferred LR No. 22653 to Nakuru Grain Millers Ltd. DW3 testified that nobody has ever told him to move out of the property.
70. It was DW3's evidence that in 2022, when Nakuru Grains Ltd was fencing the plot, one of the workers was mishandled by some people. He also stated that he does not know Gilbert Mayeka Ogato and further that he has never been in possession of the suit land.
71. Upon cross-examination by Mr. Mogire, DW3 stated that he was allotted the suit land on 13th March, 1996 and they made applications to be allotted. DW3 stated that he has not brought the application as it is with the Ministry. He stated that the conditions were that they were to make payment within thirty days, but he did so in in 2016 and 2018. He also stated that he wrote an acceptance letter and he was allowed to pay.
72. It was his evidence that he does not know Keneth Kiptalam Kamuren and it is not true that the plaintiff bought the same from Keneth Kiptalam Kamuren. DW3 informed the court that some ladies were planting beans on the land and he was also tilling the same. DW3 stated that he was in possession of the land and applied to the Nakuru county government to fence which was approved. Further that Nakuru Grain Mills Ltd built a perimeter wall and they went to court to stop the trespassers.
73. Upon re-examination by Mr. Kemboi, DW3 testified that he is in occupation and he put up a fence in 1996. DW3 testified that he did not know the lady who was tilling the land. DW3 testified that they filed a suit in court to stop them from trespassing in CMCC No. 48 of 2020, of which they got an order and continued putting up the fence.
74. DW4, David Tito Koros adopted his witness statement dated 5th March 2021 and stated that he is a Director of Nakuru Grain Mills Limited, is involved in the business of grain milling and farming. He produced a list of documents in the list of documents dated 5th March 2021, as DExhb 1 to 5.



75. DW4 testified that he is aware of the suit properties, which his company bought in 2017 from Mr. Raymond and Nahum Samuel. He testified that Mr. Musa Sirma owns No. 22650, 22651, 22652, and they were in the process of transferring LR No. 22650. It was his testimony that before the purchase, he visited the property in 2017, they negotiated the sale and conducted due diligence by conducting a search through his lawyers. He testified that the properties were unoccupied, vacant and unencumbered. It was his testimony that there was no indication of double allocation.
76. DW4 testified that they later entered into a sale agreement and are currently in possession of the properties registered in Nakuru Grains Mill Ltd's name. DW4 further stated that in 2021, there were people who came to the land but they moved to court for an injunction which was granted. DW4 testified that he does not know John Chesang but he understands that he is deceased.
77. He also testified that he does not know Gilbert Mayieka Ogato. It was his testimony that when they went to the property in 2017, it was vacant, and nobody was in occupation. Further, that they were able to get titles in the name of the company and no one claimed ownership of the suit parcels. DW4 testified that it is not true that they fraudulently got the titles to the suit land and prayed that the matter be dismissed with costs and an order for injunction against the Plaintiffs.
78. Upon cross-examination by Mr. Biko, DW4 stated that he filed CMCC No. 48 of 2020, which he prayed that the orders sought be granted. He stated that he neither has interacted with Christina Kiptui, Margaret Chemutai, Albert Kipyegon Kiptui, nor know them. Further that they do not have any title to the suit properties.
79. Upon cross-examination by Mr. Opar, DW4 stated that he bought the properties at a consideration of Kshs. 6,000,000/=. Upon cross-examination by Mr. Konosi, DW4 stated that he has the plaint filed by Christina Kiptui and Isaac Kipyegon and he cannot see the photographs counsel was referring to. DW4 stated that he visited the suit land in 2017 and he cannot remember the exact date, and that LR Nos. 22650, 22621, 22653 and 22654 were vacant. DW4 stated that on 1st March, 2020, he was at his residence in Milimani and that they were constructing a perimeter fence on the suit parcels of land. Further that there were trees on the parcel of land.
80. DW4 stated that there was no structure on LR No. 22652. DW4 referred to page 57 of the list of documents and stated that he can see debris in the photograph due to the tussle caused by people who had destroyed his iron sheet structure. He stated that the debris was on the farm and when he moved to the property to develop; some goons were brought and destroyed the iron-sheet structure (site structure) which he had constructed a few days before the demolition.
81. DW4 denied that it is his workers who destroyed the structure and that he lost sixty pieces of iron-sheets and he is not aware that Musa Sirma was served with a court order. He also stated that his wife was never served with a court order and went to court vide CM's court No. 48 of 2020 where they got orders of injunction restraining the other parties from interfering with the construction.
82. DW4 stated that the file was transferred and consolidated with the current proceedings which order was later rationalized when they were consolidated. DW4 informed the court that there was an application to cite the directors of defendants for contempt dated 12th March, 2023 and that the proceedings of CM's court No. 48/2020 were stayed by March 2020. It was DW4's evidence that by the time the proceedings were stayed, they had already completed the construction of the perimeter wall, and that it is not true that there was a site house on the first property.
83. DW4 was referred to PExhb No. 11A and stated that parcel file No. 180509 was relating to Kiptui George Chesang in respect of LR No. 22651, but stated that he did not come across the information



that plot No. LR No. 22651 was allocated to Kiptui George Chesang vide a letter of allotment dated 4th March, 1996. DW4 stated that he does not know the documents apart from the title which his advocates used for due diligence.

84. It was his testimony that his lawyers did due diligence and told him that the suit property was clean and unencumbered, hence it is not true that the properties were not available for allocation in 2017. DW4 referred to PExhb No. 12A and stated that he does not agree that the titles were fraudulently obtained. He stated that they purchased parcel Nos. 22652 and 22653 from Raymond but they have not completed the transfer process. He stated that when he went to the site, there were no structures on the suit land.
85. Upon cross-examination by Mr. Opar, DW4 referred to the plaint dated 13th March, 2020 and stated that there are no particulars of fraud. He stated that he was not the allottee of the two titles, but Raymond Kiplagat. Further that in ELC No. 18 of 2020, there is no particulars of fraud pleaded against the 3rd Defendant (Nakuru Grains Ltd). He stated that the Report by the Director Land Administration did not cancel the allocation to Musa Sirma. DW4 stated that the report acknowledges that Musa Sirma and Mariam were allocated the two parcel of land, which he bought.
86. DW4 stated that this court issued orders of status quo to be maintained and they are still in occupation, and that the debris came from the property, of which he attached a photograph in the lower court file.
87. Upon cross-examination by Mr. Biko, DW4 stated that when he conducted due diligence there was neither a caution nor a caveat on the title. He stated that he was never shown any competing title or any beneficial ownership claims by the plaintiffs. DW4 stated that he has not been charged in court with any case in respect of the suit land.

Plaintiffs Submissions

88. Counsel for the Plaintiff filed submissions dated 20th May, 2025 and identified the following issues for determination in respect of ELC Case No 18 of 2020:
 - a. Whether the Plaintiffs are the lawful and beneficial owners of the suit properties?
 - b. Whether the 1st and 2nd Defendants obtained titles to the suit parcel of land fraudulently?
 - c. Whether the 1st and 2nd Defendants could pass a proper title devoid of fraud?
 - d. Whether the Defendant's counter claim is merited?
 - e. Whether the plaintiffs are entitled to damages for trespass and if so what is the quantum?
 - f. Who should bear the cost of the suit and counter claim?
89. On the first issue, counsel submitted that the deceased accepted the allotment letter, fulfilled the conditions of the allotment letter before his demise. Counsel submitted that the 2nd Plaintiff was in the process of procuring the title when he was notified that the Defendants had procured titles to the suit parcels of land. Counsel submitted that they were to procure the title to the suit land but found the files for the suit parcels of land missing at the Land Registry.
90. Mr. Konosi, submitted that the Plaintiffs are the proprietors of the two parcels of land having been allotted and fulfilled the requisite conditions and relied on the cases of Republic vs City Council of Nairobi & 3 Others (2014) eKLR, Rukaya Ali Mohamed vs David Gikonyo Nambachia & another Kisumu HCCA 9/2004 and Ali Gadaffi & another vs Francis Muhia Mutungu & 2 others [2017] eKLR.



91. On the second issue, counsel submitted that the 1st and 2nd Defendants were fraudulently allotted the suit parcels of land where they proceeded to have the titles to the same registered in their names. Counsel relied on Section 24 and 26 (1) of the [Land Registration Act](#) and the following cases: Quiver Development Kenya Limited vs Tapataiya & 3 others [2024] KEELC 439 (KLR), Munyu Maina vs Hiram Gathiha Maina [2013] eKLR, Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another, Eldoret ELC Case No 609B of 2012 and Torino Enterprises Limited vs Attorney General (Petition 5 (E006) OF 2022) [2023] KESC 79 (KLR).
92. Counsel submitted that the Plaintiffs have pleaded to various particulars of fraud of the 1st and 2nd Defendant's by fraudulently obtaining an allotment letter for unsurveyed plot number 10, which had initially been allotted to Joe B. Chepkok and proceeded to process a title deed for the same. Counsel also submitted that the Plaintiff testified that unsurveyed plot number 10 had initially been allotted to Joe B. Chepkok who had paid the requisite fees and obtained proprietorship over the same, hence the said plot was no longer available for reallocation to any party and his allotment was never cancelled.
93. Mr. Konosi, further submitted that offer which was purportedly given in 1996 was accepted after 30 days, when it had already lapsed, hence it would not be used to grant a valid title to the Defendants and relied on the case of Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) Neutral citation: [2023] KESC 79 (KLR)
94. On the third issue, counsel submitted that the 1st and 2nd Defendants having obtained their titles fraudulently, could not have passed a proper title to the 3rd Defendant and as such, the title held by the 3rd Defendant is fraudulent and cannot grant the 3rd Defendant legitimate ownership.
95. Counsel further submitted that if the court was to find that the Defendants were properly issued with the titles, counsel asked the court to find that since the Certificates of Title indicate that the term of the lease began from 1996 and there being unchallenged evidence that the Plaintiffs have been in occupation since 1996, then the Plaintiffs acquired title of the two parcels by adverse possession. Counsel relied on the Nemo dat Quod non habet principle and the case of Diamond Trust Bank of Kenya vs Said Hamad Shamisi & 2 Others [2015] eKLR.
96. On the fourth issue, counsel submitted that if the Defendant's titles are found to be valid and since the lease of 99 years began in 1996, then the counterclaim is time barred under the [Limitation of Actions Act](#) and relied on the case of Presbyterian Church of East Africa (Uthiru Church) & another vs Kihoro & 3 others (Civil Appeal 303 of 2018) [2022] KECA 49 (KLR).
97. On the fifth issue, counsel urged the court to grant general damages of Ksh 15,000,000/= and relied on the case of Kibowen v Ruto & 15 others (Environment & Land Case 174 of 2015) [2024] KEELC 6998 (KLR) (24 October 2024) (Judgment) Neutral citation: [2024] KEELC 6998 (KLR). On the sixth issue, counsel submitted that the Defendants should be condemned to pay the costs of the suit and the counterclaim. Counsel relied on Section 27 of the [Civil Procedure Act](#) and the case of Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others SCK Petition No 4 of 2012 [2014] eKLR.
98. In respect of ELC Case No 24 of 2020, counsel identified the following issues for determination:
 - a. Whether the Plaintiff's claim of adverse possession is merited?
 - b. Whether the defendant's counterclaim is merited?
 - c. Whether the plaintiffs are entitled to damages for trespass and if so what is the quantum?
 - d. Who should bear the cost of the suit and counterclaim?



99. On the first issue, counsel submitted that the Plaintiff having been in occupation of the suit properties for more than twelve years, then the titles to the suit properties have been extinguished in favour of the Plaintiff. Counsel relied on Sections 7, 13, 17 and 38 of the [Limitation of Actions Act](#) and the following cases: *Mtana Lewa vs Kahindi Ngala Mwangandi* (2005) eKLR, *Celina Muthoni Githinji vs Safiya Binti Swalleh & 8 others* (2018) eKLR, *Kasuve vs Mwaani Investments Limited & 4 others* 1KLR 184 and *Wambugu vs Njuguna* (1983) KLR 172.
100. On the second issue, counsel submitted that the Defendant's counterclaim lacks merit as the Defendant's titles were illegally obtained. On the third issue, counsel submitted that the Plaintiffs are entitled to damages for trespass. On the fourth issue, counsel submitted that the Plaintiff should be awarded costs and relied on Section 27 of the [Civil Procedure Act](#) and the cases of: *Morgan Air Cargo Limited vs Everest Enterprises Limited* [2014] eKLR and *Exparte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd.*

3RD DEFENDANT'S SUBMISSIONS

101. Counsel for the 3rd Defendant filed submissions dated 24th July, 2025, and identified the following issues for determination:
- a. Whether the plaintiffs have the locus to bring or institute this suit/suits.
 - b. Who between the plaintiffs and the defendants are or is the lawful registered owner of LR No 22650, LR No 22651, LR No 22652 and LR No 22653?
 - c. Whether the defendants have a good title devoid of fraud?
 - d. Whether the prayers for Orders of Adverse possession have been proved and when does computation of time begin in an order for adverse possession?
 - e. Are the defendants entitled to the prayers sought in the counter-claim?
 - f. Who bears the costs of the suit?
102. On the first issue counsel submitted that the 1st and 2nd Plaintiff are not the registered owners of the suit property, and that the purported allotment and or purchase to and from one Joel B. Chepchok was based on irregular and invalid records. Counsel further submitted that these properties as claimed do not fall anywhere in the grant which was confirmed in 2018 upon being issued on 20th September, 2016. Counsel relied on the cases of *Elijah Nderitu Gachaga vs Francis Gakuu & 2 others* [2019] eKLR, *Trouistik Union International & Another vs Jane Mbeyu & Another* (2008) IKLR (G&F) 730, *Julian Adoyo Ongunga & Another vs Francis Kiberenge Bondeva* (Suing as the Administrator of the Estate of Fanuel Evans Amudavi (Deceased) eKLR, *Elizabeth Ndulu Mathuva & 2 others vs Joseph Mbiu Muthiani & Another* (2008) eKLR and *Torino Enterprises Limited vs Attorney General* (Petition 5 (E006) of 2022 [2023] KESC 79 (KLR).
103. On the second issue, counsel urged the court to find that the plaintiffs have not shown on a balance of probabilities that they had a right to be on the suit land and that the same was infringed upon by the Defendant. Counsel relied on Sections 24, 25 and 26 of the [Land Registration Act](#), 2012.
104. Mr. Kemboi further submitted that the plaintiffs even after "selling off allotment letters" have failed to explain their failure to process titles to the land they claimed to have owned for the last 29 years as they alleged. Further that the plaintiff(s) are claiming on behalf of the estate of the late GEORGE KIPTUI CHESANG as administrators of his estate, over land which they confirm, that they had already sold and transferred to the 2nd plaintiff through the second wife one MIRIAM CHEPTOO, and the step



son one ALBERT KIPTUI. Counsel stated that the plaintiffs have no rights accruing from the said allotment letters as they have slept on their imaginary rights for way too long.

105. On the third issue, counsel submitted that the Plaintiffs made a failed attempt to bring in PW1 who testified that the letter of allotment held by the 1st Defendant was suspicious and further that the said signature on the letter does not belong to C.O Onyango. Counsel relied on Sections 107 (1) & 109 of the *Evidence Act* and the cases of Mohamed vs Board of Management Pentrose Community School & Another [2023] KEELC 19133 (KLR), Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, R.G Patel vs Lalji Makanji [1957] EA 314, Belmont Finance Corporation Ltd vs Williams Furniture Ltd, Ndolo vs Ndolo [2008] 1KLR and Christopher Ndarus Kagina vs Esther Mbandi Kagina & Another [2016] eKLR.
106. On the fourth issue, counsel submitted that for a claim of adverse possession to succeed, the element of continuous, open and un-interrupted possession is key and it must be proved. Counsel submitted that in the instant suit, the same was not proved since the said possession was interrupted, hence the Plaintiff rushed to court. Counsel submitted that the Plaintiff's wife informed the Court that they were not in occupation and that they put somebody in to occupy on their behalf. Counsel submitted that the element of occupation is in serious doubt since the same has to be proved for a claim of adverse possession to succeed. Counsel urged the court to dismiss the suit with costs to the defendants.
107. Counsel relied on sections 7, 13 & 38 of the *Limitation of Actions Act* and the cases of Mtana Lewa vs Kahindi Ngala Mwangandi (2015) eKLR, Richard Wefwafwa vs Ben Munyifiwa Songoi [2020] eKLR, Francis Gitonga Macahria vs Muiruri Waithaka Civil Appeal No 110 of 1997 and Celina Muthoni Githinji vs Safiya Binti Swalleh & 8 others (2018) eKLR.
108. On the fifth issue, counsel urged the court to allow the counterclaim with costs and relied on the cases of Torino Enterprises Limited vs Hon Attorney General [2023] eKLR, Supermarine Handling Services Ltd vs Kenya Revenue Authority, Civil Appeal No 85 of 2006, Party of Independent Candidates of Kenya vs Mutula Kilonzo & 2 others, HC EP No 6 of 2013, James Koskei Chirchir vs Chairman Board of Governors Eldoret Polytechnic [2011] eKLR and Margret Ncekei Thurairira vs Mary Mpinda & another [2015] eKLR.

Analysis And Determination

109. The issues for determination are as follows:
 - a. Who between the plaintiffs and the defendants are the lawful beneficial/ registered owners of LR No 22650, LR No 22651, LR No 22652 and LR No 22653?
 - b. Whether the 1st and 2nd Defendants obtained titles to the suit parcel of land fraudulently?
 - c. Whether the plaintiffs are entitled to damages for trespass and if so what is the quantum?
 - d. Whether the Plaintiff's claim of adverse possession is merited?
 - e. Are the defendants entitled to the prayers sought in the counter-claim?
 - f. Who should bear the cost of the suit and counter claim?
110. This judgment is in respect of 3 cases as earlier stated of parties claiming and counterclaiming the same parcels of land. The court vide a ruling dated 18th January 2021, in respect of four applications and a preliminary objection dated 4th March 2020, 9th March 2020, 11th March 2020 all filed by the Plaintiffs as well as a Notice of Motion dated 18th March 2020, together with a Notice of Preliminary objection both filed by the 1st Defendant.



111. The court in the ruling dismissed all the Notices of Motion together with the Preliminary objection and ordered that Nakuru CMC ELC Case No. 48 of 2020 Nakuru Grain Millers Vs. Isaac Lelkutwo withdrawn from the subordinate court and transferred to this court and consolidated with this suit for hearing and determination. The Court ordered that ELC No 18 of 2020 shall be the lead file and further that the status quo existing on the parcels of land known as L.R. No. 22650 and 22651 as at the date of delivery of the ruling is maintained pending the hearing and determination of the consolidated suits.
112. Upon consolidation of the suits, the court took the plaintiffs and defendants' evidence together with their witnesses which were lengthy due to the fact that there were three cases to be handled. The Plaintiffs called a total of 10 witnesses and the Defendants four witnesses. The court has enumerated elaborately the evidence of the parties and there will be no need to repeat the same in the analysis apart from mentioning the relevant testimonies when dealing with specific issues for determination.
113. On the first issue as to whether who between the Plaintiffs and the Defendants are the beneficial/registered owners of the suit parcels of land. The history of these parcels of land emanate from alleged allocation in 1996 as can be seen from the Plaintiffs and the defendants evidence.
114. It is the Plaintiff's case that on 4th March, 1996, the late Kiptui George Chesang was offered a grant of un-surveyed plot No 11- Nakuru Municipality shown edged red on plan number R7/95/3 attached to the letter of allotment measuring approximately 0.2 hectares now known as L.R No 22651. It is the Plaintiff's case that on or about 16th April 1996, the late Kiptui George Chesang accepted the offer by paying a sum of Ksh 55,055.00 and immediately took possession of the said property, fenced it off and planted trees thereon.
115. The Plaintiffs also claimed that sometime in early 1996, the late George Kiptui Chesang purchased a leasehold interest in all the parcel of land known as L.R No 22650 from Joe B, Chepkok and took immediate possession after payment of the requisite consideration. It is the Plaintiffs case that sometime in 1999, the 2nd Plaintiff with the permission of the late Kiptui George Chesang took possession of all those parcels of land known as L.R Number 22650 and 22651 with an intention to purchase which he did on 8th September, 2010, from the 1st Plaintiff.
116. The Plaintiffs called PW1 an Assistant Director of Land Administration who was a crucial witness who could have solved the puzzle in this case would he have taken the matter more seriously as an expert witness. PW1 stated that he has no files for parcels LR. No. 22653 and 22654 and that he had file No. 180509, which shows the allottee as Kiptui George Chesang who was allocated Residential Plot No. 11 Nakuru Municipality by letter dated 4th March, 1996 signed by his colleague S. M. Osodo for the Commissioner of Lands.
117. He also confirmed to the court that there was no lease prepared in respect of the land that was allocated to George Kiptui and that on 18th January, 2018, their office wrote to the Director of Surveys requesting for a deed plan to enable them process the lease but before they could get the deed Plan, their office received a DCI's (Directorate of Criminal Investigations) letter requesting for information on the allottees of parcel Nos. 22650 and 22651 and to confirm the authenticity of their allotment letters.
118. PW1 also confirmed that he wrote a report to the DCIO whereby his letter to the DCI concluded that the document was in favour of Kiplagat Namuni and Musa Sirma. He also testified that the signature on the allotment letter was suspicious but on cross-examination, he stated that he did not raise that issue in his report to the DCIO, and further that the person who opened the file did not authenticate if the letter was genuine.



119. The evidence of PW1 laid bare the fact that file No. 299819 is for plot No 11 and file No. 299818 for plot No. 10, respectively, and also confirmed that he has no allotment letter in Kiptui's favour in the file and further that file Nos. 299819 and 299818 are not in respect of George Kiptui.
120. According to PW1, LR. No. LR 22650 was issued to Musa Sirma and the lease was issued by the Lands office, and that LR.22651 has a lease in favour of Kiplagat Namuni and from the files records there has never been a complaint.
121. Upon allotment, a lease is issued and registered, which lease would originate from the Commissioner of Lands with a forwarding letter to the District Land Registrar for purposes of registration.
122. The evidence of PW1 was very crucial as he stated that Kiplagat Namuni and Musa C. Sirma have the titles to Plot Nos. 22650 and 22651 respectively and that there is an allotment letter for Joe B. Chepkok for the same land which was never paid for. This where the problems and the confusion started, as how could an allotment letter in favour of Joe B. Chepkok which was never paid for be sold to George Kiptui. Was it capable of passing interest in land.
123. The Plaintiffs admitted that Joe B. Chepkok sold the allotment letter to George Kiptui which they later sold to the 2nd Plaintiff. The question that begs an answer is whether an allotment letter that was never paid for could transfer an interest in land?
124. In the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) (supra) the Supreme Court held as follows:

“it is settled law that an Allotment Letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein... Suffice it to say that an Allottee in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein. An allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law.”
125. This is where the rain started beating the late Kiptui Chesang, having relied on an allotment letter issued to Joe, B. Chepkok who neither paid for the same nor perfected it through the fulfilment of the stipulated conditions. It is trite that Joe B. Chepkok could not pass any valid title to a third party unless and until he acquired a title to the land through registration. It is on record that neither Joe B. Chepkok nor George Kiptui Chesang acquired titles in respect of the suit parcels of land.
126. The Plaintiffs did not explain, not following up the registration of the title even when there were no restrictions or caveat to the processing of the same. Why did they wait for all these years after allocation to process their titles? An inhibition was placed by the court in 2021 to safeguard the suit parcels pending the hearing and determination of the suit.
127. The Plaintiffs representing the estate of Chesang Kiptui also admitted that they entered into an agreement of sale to the 2nd Plaintiff before they got letters of Administration to enable them have capacity to step into the shoes of the deceased. They purported that the suit land belonged to the deceased Chesang Kiptui and therefore it formed part of the estate.



128. In the case of *Martev Guest House Ltd Vs Njenga & 3 others* (Civil Appeal No. 400 of 2018) [2022] KECA 539 (KLR) 28th April 2022 (Judgment) with dissent – W. Karanja JA) where the court held that:

“the *Law of Succession Act* does not donate power to the “estate of the deceased person” to deal with property forming that deceased’s estate but donates that power an administrator with a will or a personal representative to the intestate estate of a deceased person to deal with the deceased persons property on his/her death”

129. At the time of selling the land to the 2nd Plaintiff, the plaintiffs did not have capacity to do so as they had not taken out letters of administration. This is the position in law, but the Plaintiffs had to prove that the land actually belonged to the deceased.

130. From the above analysis, I find that the Plaintiffs failed to prove that they were the beneficial owners of the suit parcels of land. The Defendants explained the root of their title which entitled them to be registered as owners of the suit parcels of land. The pointers that the Plaintiffs were not beneficial owners of the suit land, were fortified by the evidence by the witnesses they called to give evidence. Starting with PW1, a star witness who stated that there was no lease forwarded for registration in favour of Chesang and that Joe Chepkok never paid for the allotment letter. PW 3 Dr. Ngetich also stated that Isaac Lelkutwo and George Ogato are not in occupation of the suit parcels of land.

131. The Plaintiffs contended that they have been in uninterrupted occupation of the parcels of land known as L.R 22650 and LR 22651 since the year 1996, a period of over 24 years. It is their case that sometime in September 2019, the 2nd Plaintiff while processing titles to the two parcels of land learnt that the 1st Defendant was claiming to be allottee of plot No 10- Nakuru Municipality and one Kiplagat Namuni was claiming to be the allottee of the un-surveyed plot number 11- Nakuru Municipality.

132. The Plaintiffs averred that the 1st and 2nd Defendants fraudulently obtained certificates of title to the suit parcels of land known as L.R No 22650 and 22651 on 10th November, 2017 and that on 25th January, 2018 the 2nd Defendant had transferred L.R No 22651 to the 3rd Defendant.

133. Section 24 of the *Land Registration Act* provides that subject thereto:

- a. 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
- b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of lease.

134. Section 25 of the *Land Registration Act* 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”.

135. Section 26 states as follows:

- “(1) 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; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

136. There was no evidence that the Defendants acquired the titles to the suit parcels of land fraudulently. The Plaintiffs did not perfect the process required after the purported allocation up to the issuance of a lease and lease certificate. The 2nd Plaintiff also admitted that he did not complete the payment of the purchase price even though he claimed that the estate of Chesang had no problem with his lack of completion. This is probably because they could not pass a good title to him. The plaintiffs had an uphill task to prove that they were the beneficial owners of the suit parcels of land.

137. Section 107 of the *Evidence Act* provides that:

“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. (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

138. Section 109 of the *Evidence Act* further provides that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”



139. Fraud must be specifically pleaded and proved by a party who alleges as was held in the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently”

140. The Supreme Court in the case of Dina Management Ltd Vs County Government of Mombasa & 5 others (Petition 8 (E010) OF 2021 KESC 30 (KLR) held that where the registered proprietor’s root of title is under challenge, it is not enough for as proprietor to dangle the instrument of title as proof of ownership. It was the instrument that was in challenge and therefore the registered proprietor must go beyond the instrument, prove the legality of the title, and prove the acquisition was legal, formal and free from any encumbrance including interests, which would not be noted in the register.

141. The Plaintiffs pleaded the particulars of fraud but fell short of proving that the defendants acquired their titles fraudulently. It is the 3rd Defendant’s case that they are the bona-fide owners of those parcels of land known as L.R No 22652 (IR 213675) and LR No 22653 (IR 192061) having been allocated the said parcels of land by the government. It is the Defendants’ case that the 1st and 2nd Defendants proceeded to fulfil all the conditions and proceeded to secure a first registration that is indefeasible and that the 1st Defendant subsequently transferred the said parcels to the 2nd Defendant.

142. Having found that the Plaintiffs are not the beneficial owners of the suit parcels of land and further that the defendants did not acquire the suit parcels fraudulently, it follows that the plaintiffs are not entitled to general damages for trespass.

143. On the issue as to whether the Plaintiffs are entitled to orders of adverse possession, there are conflicting testimonies by the Plaintiffs witnesses on occupation and possession of the parcels of land. PW3 as earlier stated gave evidence that neither Isaac Lekutwo nor George Ogato reside or occupy the land.

144. Similarly, it is trite that a party claiming adverse possession must acknowledge the title. In the case of Haro Yonda Juaje v Sadaka Dzenko Mbauro & Kenya Commercial Bank (2014) eKLR, the Court held that:

“One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff’s averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered *Land Act* and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.”

145. The Plaintiffs claimed the defendants acquired the titles to the suit parcels fraudulently. It follows that the doctrine of adverse possession is not available as an alternative remedy to them. A party cannot benefit from what he terms as an illegality. That limb also fails.

146. I have considered the pleadings, the evidence on record and the relevant judicial authorities and find that the Plaintiffs have not proved their case on a balance of probabilities and is therefore dismissed with costs. I find that the defendants have proved the root of their title and therefore the counterclaim is allowed as prayed with costs. I therefore make the following specific orders:



- a. The Plaintiffs suit ELC No 18 of 2020 is hereby dismissed with costs.
- b. A declaration is hereby issued that the 3rd defendant is the lawful owner of all those parcel of land known as L.R No 22650 and L.R No 22651.
- c. An order of injunction is hereby issued restraining the Plaintiffs (now Defendant) by himself, his servants, agents and/or employees from claiming, entering or in any other way interfering with all those parcels of land known as LR No 22650 and LR No 22651.
- d. The defendants are awarded costs of the counterclaim.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

