

KENYA / JUDGMENT

Kudate v Tikani & 2 others

[2026] KEELC 5451 (KLR)

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COURT

Environment and Land Court

BEFORE

LN Gacheru

CASE / FILE NUMBER

Environment and Land Case E001 of 2024

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Kudate v Tikani & 2 others (Environment and Land Case E001 of 2024) [2026] KEELC 5451 (KLR) (17 September 2026) (Judgment) Neutral citation:

[2026] KEELC 5451 (KLR) Republic of Kenya In the Environment and Land Court at Narok
Environment and Land Case E001 of 2024 LN Gacheru, J September 17, 2026 Between
Stephen Saibulu Kudate Plaintiff and Joseph Timayio Tikani 1 st Defendant Land Registrar,
Narok 2 nd Defendant The Honourable Attorney General 3 rd Defendant

Judgment

1. By the Amended Complaint dated 4 th March 2025, the Plaintiff herein Stephen Saibulu Kudate, brought this suit against the Defendants Joseph Timayio Tikani , the Land Registrar, Narok and The Honourable Attorney General seeking for judgment against the Defendants jointly and severally for; a. A declaration that all parcel of land known as CISMARA/MAJI MOTO/2760 belongs to the plaintiff. b. A permanent order of injunction restraining the Defendants by themselves, their agents, servants and all other persons acting under them from entering, remaining or dealing or in any way interfering with the plaintiff's parcel of land known as CISMARA/MAJI MOTO/2760. c. Any other relief that this Honourable Court may deem fit to grant in the circumstances. d. Costs of this suit e. A declaration that it is illegal to have two titles of the same property in circulation. f. The Sub County Land Registrar, Narok South/East/West/North be ordered to recall/revoke or cancel the title deed issued on 28 th August 2023 in favour of the 1 st Defendant. 2. In his claim, the Plaintiff averred that he is the registered proprietor of the land parcel known as CISMARA/MAJI MOTO/2760, as per the Certificate of title issued on 27 th March 2013, and that he is entitled to the said land at the exclusion of everyone else, unless he consents. 3. The Plaintiff averred that the 1 st Defendant has forcibly invaded his land against his wish and intends to disposes him of his property. He particularized the alleged interference as follows: a. Denying the Plaintiff peaceful enjoyment of the land. b. The 1 st Defendant has unlawfully laid false

claim to ownership of the suit parcel. c. Instigating an intrigue scheme to displace the plaintiff from his ancestral land that he has traditionally and historically occupied. 4. The Plaintiff also pleaded fraud and misrepresentation and particularized them as follows: a. Processing and issuing of title dated 28 th August 2023 in respect of land parcel CISMARA/MAJI MOTO/2760 in favour of the 1 st Defendant while aware that there is a title issued on 27 th March 2013 held by the Plaintiff. b. Presenting false registration documents to the Narok Land Registry to the effect that the 1 st Defendant is the one eligible to be registered as absolute proprietor of CISMARA/MAJI MOTO/2760. c. The 1 st Defendant by misrepresentation and deceit misled the Lands Registrar into believing that the 1 st Defendant is actually the owner of the suit property. d. The Defendants caused the registration of the suit property in favour of the 1 st Defendant without the knowledge or consent of the plaintiff. e. Issuing tow titles of the same property CISMARA/MAJI MOTO/2760 without recalling and/or revoking the earlier title issued on 27 th March 2013 hence two titles in circulation. f. Concealing material facts from the Land Registrar regarding the status of the suit property. g. The 1 st Defendant misrepresented himself to the Lands office as the bonafide owner of the suit property. h. Processing and obtaining title deed for the suit property which land belongs to the plaintiff. i. Unlawfully asserting rights of ownership of the suit property which land belong to the plaintiff. 5. The Plaintiff further averred that he suffered the following damage: a. Deprivation of peaceful and quite enjoyment of his land b. Denial of the opportunity to develop his property. c. Fear of dispossession. 6. As a result of the above claim and allegations, the Plaintiff urged the court to enter judgment in his favor against the Defendants, as prayed in the Plaint. 7. In response to the Amended Plaintiff, the 1 st Defendant filed his Amended Statement of Defence dated 3 rd April 2025, wherein he denied all the averments contained in the Plaintiff's claim. 8. The 1 st Defendant averred that he is the registered owner of all that property known as CISMARA/MAJI MOTO/2760, and also alleged that he holds a certificate of title by dint of being a member of Majimoto Group Ranch. 9. Further, the first 1 st Defendant averred that a Petition was filed in 2017, by members of the Majimoto Group Ranch over irregular allocation of land to persons that were not members of the Group Ranch, and that Judgment was entered in favor of the Petitioners in ELC Narok Petition No. 268 of 2017 on 8 th July 2022, and that among the Orders issued was the allocation of the land to members of Majimoto Group Ranch according to the primary register. He also averred that the court declared the allocation of land to non-members at the expense of members of the Group Ranch was illegal. 10. The 1 st Defendant denied any knowledge of the alleged occupation of the suit land by the Plaintiff of the suit property. He also averred that that the Plaintiff has never been in occupation of the land. 11. The 1 st Defendant further averred that the suit land CISMARA/MAJI MOTO/2760, is as a result of the subdivision of CISMARA/MAJI MOTO/8, and which was held for the benefit of its members, and that it was not ancestral land. He also averred that he was only allocated the suit land as a member of the Majimoto Group Ranch . He added that land parcels arising from the subdivision of CISMARA/MAJI MOTO/8, can only issue to members of Majimoto Group Ranch which the Plaintiff was not and neither is the Plaintiff a purchaser for value. 12. The 1 st Defendant denied all allegations of

interference, fraud and misrepresentation, and averred that he acquired the suit property lawfully through the office of the 2nd Defendant. He also denied that the Plaintiff has suffered any damage due to his acts or omissions. 13. Consequently the 1st Defendant urged the court to dismiss the Plaintiff's suit with costs. 14. In response to the Amended Statement of Defence, the Plaintiff filed his Reply to Defence dated 25th April 2025, in which he basically denied the contents of the said Defence and averred that the 1st Defendants is in illegal occupation of the suit land. 15. After the close of pleadings and Pre-trial conference, the matter proceeded to hearing by way of viva voce evidence. Plaintiff's Case 16. PW1, Stephen Saibulu Kudate adopted his witness statement dated 15/1/2024, as part of his evidence in chief, and further testified that the Defendant invaded his land CISMARA/MAJI MOTO/2760, measuring 28.3 Ha. Further, that he obtain this parcel of land in 2013, and he produce a copy of the title as exhibit PEXHIBIT 1 to confirm since acquisition. 17. It was his further testimony that when he obtained the said parcel of land, he started using it and took a loan from Cooperative Bank on 29/10/2013 and 11/1/2016, which amount of money he used to build thereon using the title as a collateral. 18. Further, that the 1st Defendant invaded his land which he reported to the Police under OB No.4. Pw1 produced a Certificate of electronic evidence as PEXHIBIT 2 and copy of OB NO 04/04/01 PEXHIBIT 3. 19. PW1 further testified that the Land Registrar, Narok issued the 1st Defendant with another title, and that his title has been cancelled. He also denied being a party to ELCCPET NO. 268/2017, which allegedly cancelled his title and that his land was not mentioned in the said judgment- ELC Petition No 268 of 2017. 20. On cross examination, Pw1 admitted to have known Majimoto Group Ranch, which had a huge track of land. Further, that his land is a sub division of Majimoto Group Ranch Land, and that he has a copy of the title deed, but the original title was at home. Pw1 also testified that he conducted a search, but did not have a Green card of the said title. 21. Pw1 also admitted to having seen the title issued to the 1st Defendant on 28th August 2023 ,and the Green card whose last entry was on 29/8/2023. He admitted that the Green card did not have his name. 22. It was his further testimony that the suit land is not his ancestral land, and that he bought his portion from one Fred Sankale ,but he did not have any Sale agreement. However, he did not produce any document to show that Fred Sankale sold the said land to him. It was his admission that the said parcel of land originally belonged to Majimoto Group Ranch, wherein he was not a member. 23. On Re- exam, Pw1 testified that he did not have a Green card, and he was expecting the Land Registrar produce it. Further, that his parcel of land measures 28.3 Ha, while the title deed for the 1st Defendant is 19.24 Ha, and that those are two different sizes. 24. PW1 further testified that he lives and keeps his cattle on the suit land, and reiterated that he bought the suit land from one Fred Sankale, who was a member of Majimoto Group Ranch ,through its officials. That the official search was in his Supplementary Affidavit sworn on 12/3/2024. The 1st Defendant's Case 25. Dw1, Joseph Timayio Tikani, adopted his witness statement dated 22nd July 2024, as his evidence in chief and also produced his list of documents as DEXHIBIT 1-5. It was his further testimony that the suit land belongs to him. Further, he produced his further list of documents as DEXHIBIT 6-7. 26. Upon cross examination, Dw1 testified that he has never claimed against the Plaintiff. It was his testimony that he was the Petitioner No.

10 in Petition No. 268 of 2017, wherein the Petitioners had sued the Officials of Majimoto Group Ranch, and not the Plaintiff herein. He admitted that the said Judgment in the above Petition did not reflect Land Parcel No. 2760, the subject matter herein. Further, that Judgment did not cancel Land title No. 2760, although it was among the titles to be cancelled. 27. Upon further cross examination, Dw1 testified that the Plaintiff's title is among the cancelled titles, even though he did not seek its cancellation. He admitted that the Plaintiff's title was issued first on 27/3/2013, and his was issued on 28/8/2023, but the Plaintiff's title was among the cancelled titles. Accordingly, he admitted that his land is less than the one issued to the Plaintiff, and that he does not live on the said land. 28. Dw1 also testified that his title was issued by the new officials, while the old officials were removed. He insisted that the Plaintiff is not a member of Majimoto Group Ranch, and that if a member sells his land, the buyer cannot own land in the said Group Ranch. 29. On cross examination, Dw1 testified that he petitioned the court in Petition No. 268/2017, because he had not been allocated any land, and that he was issued with a title deed after the court's Judgment. He also admitted that non members can acquire land at the Group Ranch, after purchasing from members. 30. Dw2, James Twala, adopted his witness statement dated 22/7/2024, as his evidence in chief, and further testified that he was the Chairperson of Majimoto Group Ranch. He also testified that the suit land belongs to the 1 st Defendant, and that the 1 st Defendant was a Petitioner in Petition No. 268 of 2017. It was his further testimony that the Group Ranch's parcel of land was sub divided into various parcels, to be allocated to its members, but there were illegalities and that is why they filed the above referred Petition. He confirmed that he was also a Petitioner –ELC Petition No 268 of 2017. 31. It was his further testimony that the court gave an order for regularization, hence the Group Ranch Officials ensured that the members in the primary register got a share, and the plaintiff was not a member. Further, that the 1 st Defendant was a member, and that is why he got a portion of the land from the Group Ranch Land. 32. On cross examination, Dw2 stated that he became the Chairman of the Group Ranch in 2016, and that the previous chairman was one Maone Further, that he was the 2 nd Petitioner in Petition No. 268 of 2017, in which they sued Maone as a former Chairman. Further, that Kudate was not a former official of the Group Ranch, and neither was he a Respondent in the said Petition. Further, that the suit land herein was not mentioned in the Petition, and that the suit land was never cancelled in the above referred Petition. 33. It was also his testimony that when a non-member buys land from a member of the Majimoto Group Ranch, he can become a legitimate member. However, he confirmed that he did not supply the list from the formal officials. 34. On re-examination, Dw2 stated that the title in Kudate's name(the Plaintiff) was among the titles to be cancelled, and that he was not a manager in the Group Ranch. Further, that there was no sale agreement between any member of the Group Ranch, and the Plaintiff. Lastly, he testified that the suit property in the referred Petition was CISMARA/MAJIMOTO/8, being the mother title in the name of Maji-moto Group Ranch. 35. After viva voce evidence, Mr Kamwaro, Counsel for the Plaintiff sought for Summons directed to the Land Registrar Narok, to appear in Court and give the history of this land parcel. On 10/12/2025, the Land Registrar, Mr. Philip Mathew Odidah, appeared in court, and stated that

he was transferred to from Naivasha to Narok in 2023. 36. It was his testimony that Land Parcel No. CISMARA/MAJIMOTO/2760, measures approximately 19.44Ha, and that he has the original Green card. Further, that the said land was first registered on 8/5/2012, and pursuant to members allocation register, this land was allocated to the 1 st Defendant Joseph Timayio Tikani, and that a title deed was issued on the same date. That at the time of registration, there was no other Green card. 37. The Land Registrar also testified that the Records of Majimoto Group Ranch are kept under lock and key because this is an area with a lot of issues and disputes, and that this was due to the Court's orders, as non members had been issued with land in the said Group Ranch . 38. The Land Registrar further testified that a regularized register was prepared, and that he could tell who were members and who were not. He also issued members who did not have titles and Green cards with the same. Accordingly, there were people in the Register who were not members, and who had their titles cancelled, and the same issued to bona-fide members as per the regularized register. It was his testimony that there was no other Green card in respect to the suit land herein, other than the one issued to the 1 st Defendant, Joseph Timayio. 39. On cross examination by Mr. Kamwaro, the Land Registrar testified that any transaction is compiled in the Green card, and that when an official search is conducted, it is the information that is in the Green card that is captured. 40. Further, that there is a difference between the title held by the 1 st Defendant, and the one that he was served by the Plaintiff's Counsel. He admitted to having seen the Judgement in Petition No. 268 of 2017, in his file. He also testified that there is no order to cancel Land Parcel No. CISMARA/MAJIMOTO/2760. 41. Further, that the law does not envisage two titles circulating at the same time over the same parcel of land. It was his testimony that the 1 st Defendant's title was issued on 19/8/2023, and that according to the search served upon him by the Plaintiff's Advocate, another title had been issued in 2013. 42. Ms Moturi for the 1 st defendant also cross examined the Land Registrar, who testified that the suit land has only one Green card, and that he had not seen the Plaintiff's title. Further, that the Plaintiff's title does not exist in their record. He reiterated that the parcel of land in issue measures approximately 19.44 Ha, being acres issued to each member. 43. The Land Registrar also testified that there was no record of the Plaintiff having purchased the suit land from an initial member, and that he was the one who issued searches over Majimoto Group Ranch's land parcels, but he did not issue the search for January 2024, in favor of the Plaintiff. 44. Lastly, one Mary Njeri Njonjo, who works with the Ministry of lands attached to Narok Lands Registry testified, by relying on her Affidavit sworn on 12/3/2026. It was her testimony that she did the search on Land Parcel No. CISMARA/MAJIMOTO/2760, and that there are issues with this particular land parcel. 45. Upon cross cross-examination by Mr. Kamwaro for the Plaintiff, she testified that she conducted the official search over the suit land, and that the Search dated 19/1/2024, is pursuant to the information on the Green card. 46. It was her testimony that according to the search, the suit property is in the name of the Plaintiff. Later on, the suit property was charged to Transnational bank for Ksh. 2,000,000/=. She testified that as at 19/1/2024, there was no other owner of the property other than the Plaintiff. 47. On cross examination by Ms.Moturi for the 1 st Defendant, she testified that the Green card was certified on 26/1/2024, and that there are three entries. She stated that entry

No. 2 dated 29/8/2023, shows that a title was issued to the 1 st Defendant, Joseph Timayio Tikani. She however did not have the parcel file. 48. She admitted that the title deed held by the 1 st Defendant is in concurrence with the Green card of 26/1/2024, and that in fact they do tally. Further, that she issued the search in favor of the Plaintiff, but that the documents are under key and lock, and that the Land Registrar Mr. Philip Odidah is in charge. 49. Further, that she checked the Green card on 2016, and that a different Green card was used for the search that she carried out. That after the search, what is left behind is an extract of the register, which she however did not have a copy of that register. 50. Lastly, she stated that Mr. Odidah took office in 2023, and directed that he was the only one who could issue a search regarding Majimoto Group Ranch. That the files for Majimoto Group Ranch were under lock and key in 2024, and not in 2023. She claimed that as at the time of the search, the file was available to her. 51. Mr. Menge, State Counsel representing the 2 nd and 3 rd Defendants cross examined the witness and , she testified that the dates on the title deed are not the same, and that the Green card was issued on 28/8/2023, while the title deed was issued on 29/8/2023. 52. After the close of viva voce evidence, the parties were directed to file and exchange their respective written submissions, which directives, they complied with. 53. The Plaintiff filed his written submissions dated 14 th May 2026 through the Law Firm of Kamwaro & Co Advocates, wherein he set out the issues for determination as follows; i. Whether the Plaintiff is the sole registered proprietor of parcel of land No. CISMARA/MAJIMOTO/2760 with all the privileges belonging or appurtenant thereto ii. Whether it is legal and procedural to have two titles of the same parcel in circulation iii. Whether the 1 st Defendant is a trespasser on the suit land iv. Whether the plaintiff is entitled to a permanent injunction v. Who should bear the costs of the case 54. On the proprietorship of the suit land, the Plaintiff submitted that Section 26(1) of the Land Registration Act provides that a certificate of title is prima facie evidence of ownership. He further submitted that he has proved that he is the true proprietor of the suit land herein, and that the 1 st Defendant has not denied his trespass. Further, that the 1 ST Defendant's title is not legitimate as it was issued without cancellation of the Plaintiff's title. 55. Further, that he is entitled to protection under Sections 24, 25 and 26 of the Land Registration Act . He relied on the case of Kipsongok vs Albert K.Morogo (2017) eKLR where the court held; “ The evidence on record shows that the suit parcel of land is registered in the names of the plaintiff, and therefore is entitled to the protection under Sections 24,25 and 26 of the Land Registration Act .” 56. The Plaintiff further relied on the cases of Andrea Barasa Manyonge vs Josephat Wanjala [2009] Eklr , and submitted that the evidence adduced is in his favor, and the court should allow his claim. 57. On whether two titles over the same parcel can be in circulation at the same time, the Plaintiff quoted the case of Gitwany Investment Limited V Tajmal Limited & Others (2006) Eklr, where the court stated: “ It is therefore my finding that even if the two Titles produced in evidence were on their face alleged to be validly issued, the one in the possession of PW1, PW2 and PW3 would prevail as it was the first in time.” 58. Further, the Plaintiff relied in the case of Arthi Highway Developers Limited V West End Butchery Limited & 6 others (2015) KECA 816 (KLR), wherein the Commissioner of Land's failure to explain in those circumstances how two land titles of the same land could exist and which

one was genuine was held to be fraudulent. 59. Lastly, the Plaintiff relied on the case of Dr Joseph Arap Ngok Vs Justice Mollo ole Kelwua & 5 others, Civil Appeal No.Nai.60 of 1997, wherein the Court of Appeal reiterated the fact that Section 23(1) of the Registration of Title Act, which guarantees the indefeasibility of title and that the title of such a person can only be challenged on grounds of fraud to which the owner is proved to be a party. 60. On whether the 1st Defendant is a trespasser, and whether he should move, the Plaintiff submitted that the 1st Defendant pulled down his gate, and made a forced entry into the suit property, and that he reported to the said forced entry to the Police, and the 1st Defendant was arrested. Further, that the 1st Defendant was charged in Narok Chief Magistrate's Court, where he did not rebut the accusation, but only maintained that he has a title issued on 28th August 2023. 61. On whether the Plaintiff is entitled to a permanent injunction against the Defendants, he relied on the case of Kenya Power & Lightning Company Ltd V Sherriff Molan Habib (2018) KEHC 5027 (KLR) where the court observed that: " It determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merit of the case after the evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the plaintiff to be protected." 62. Ultimately, the Plaintiff submitted that he has proven that he is the absolute owner of the suit property, and that a permanent injunction should be issued. He urged the court to allow his claim. 63. The 1st Defendant also filed his written submissions dated 10th July 2026 through the Law Firm of Hashi & Co. Advocates, and urged the Court to dismiss the Plaintiff's suit. 64. The 1st Defendant summarized the issues for determination as follows: i. Who between the Plaintiff and the 1st Defendant is the legal owner of CIS MARA/ MAJIMOTO/2760?. ii. Whether the Certificate of Official Search dated 19th January 2024, has been properly adduced as evidence before this Court and its admissibility thereof iii. Whether the Plaintiff has proved the allegations of fraud and misrepresentation as alleged 65. On the issue of legal ownership, the 1st Defendant submitted that since the Plaintiff and the 1st Defendant's title are under challenge, such titles can only be challenged based on fraud, misrepresentation, illegality, procedural impropriety or through a corrupt scheme as provided for under Section 26 of the Land Registration Act . 66. The 1st Defendant relied in the Supreme Court of Kenya decision in Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR) , which underscored that holding a title deed does not automatically mean one lawfully owns the land if the root of title is defective. 67. The 1st Defendant further submitted that based on this jurisprudence, the Plaintiff's claim of indefeasibility of title cannot stand. He also relied on the Court of Appeal's decision in Gathondu (As Administrator of the Estate of the Late Thumbi Kariuki) & 3 others v Registrar & 7 others [2024] KECA 668 (KLR,) where the Court at paragraph 96 stated thus: " Kenyan courts can no longer content to perch on the branch of simply accepting titles as conclusive, incontestable and indefeasible; or the concomitant argument that in the face of two or more competing titles, the first in time automatically prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage,

absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder.” 68. The 1 st Defendant also submitted that although the Plaintiff produced his certificate of title issued on 27th March 2023, when the Land Registrar Mary Njonjo of the Narok Land Registry, testified as to the alleged ownership of the Plaintiff, she did not produce any of the documents alleged to in her Affidavit dated the 12th of March 2026, particularly the Green Card used to prepare the alleged Certificate of Official Search, and the copy of the Certificate of Official Search alluded to. The 1 st Defendant submitted and argued that in fact there is no Certificate of official search produced by the Plaintiff before this court. 69. On whether the Certificate of Official Search dated 19th January 2024, has been properly adduced as evidence, the 1 st Defendant submitted that the Plaintiff produced PExhibits 1-3 as per the List of Documents dated 15th of January 2024, which did not include a Certificate of Official Search. Further, that although the Certificate is attached to the Replying Affidavit dated 12th March 2024, the application to which it is attached to was withdrawn. 70. The 1 st Defendant supported his assertions with the Court of Appeal decision in Kenneth Nyaga Mwige v Austin Kiguta & 2 others [2015] KECA 334 (KLR), where the court made a determination to wit a document only becomes evidence after being tendered through a witness and admitted as an exhibit. A document not produced as an exhibit is not part of the evidentiary record, and cannot be relied upon by the Court. The official search never attained the status of evidence. 71. The 1 st Defendant added that the Official Search never attained the status of evidence, and the Plaintiff deliberately elected to produce only three exhibits. Further, that having omitted the official search, it remained merely a document in the court file. 72. The 1 st Defendant also submitted that the Certificate of official search produced is a picture, and that it breached Section 106B of the Evidence Act by not being accompanied by a Certificate of electronic evidence. 73. The 1 st Defendant also submitted on the legitimacy of the root of the title. On this, he submitted that it is common ground that the suit property is a resultant of subdivision of CISMARA/MAJIMOTO/8 (now-subdivided), and that the resultant subdivisions belonged to Majimoto Group Ranch, and could only be allocated to the members thereof on first allocation/instance. 74. For this submissions, he relied on the case of Registered Group Representatives of Majimoto Group Ranch v Mayone David Matunke & 14 others [2017] KEELC 2890 (KLR) (hereinafter “the Petition”). At Paragraph 194 of the judgement where the court pronounced itself as follows: “ Any member not in the primary register cannot be allocated land on first allocation, and can only acquire such land upon purchase. Companies cannot acquire land privately in Majimoto as they are not members in the primary list thus such allocations are illegal.” 75. The 1 st Defendant brought to the court’s attention the fact that the Plaintiff alleged that the suit land is his ancestral land, while on the other hand he alleged to having bought the suit property from one Fred Sankale, whom he alleged to be a member of the Group Ranch. He submitted that the Plaintiff has presented two mutually exclusive modes of acquisition of land before Court, and implored the court to be guided by the pronouncement in the case of Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] KEELC 1092 (KLR), where it was stated that: “ It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a

break in the chain..... ” 76. It was the 1 st Defendant’s further submissions that the court could not know which narrative is believable, and that Fred Sankale is also not a member of Majimoto Group Ranch, as per the members list produced. That there is no record of the Plaintiff’s ownership at Narok Land Registry, and as such, the Plaintiff’s title is unknown as its root cannot be traced. 77. Lastly, the 1 st Defendant submitted on the legitimacy of his own title. On this, he restated that his title was issued on 29 th August 2023, which he produced together with a certified copy of the Green card indicating its history. Further, he submitted that he is a member of the Majimoto Group Ranch as per its Members register as Member No. 327, and in the regularized area list, he appears at S.N. 2285 who was allocated Parcel No 2760. 78. He submitted that his membership was confirmed by DW-2, Twala Manki, the Chairperson of the Majimoto Group Ranch. He also collaborated the evidence of the 1st Defendant that he was the 10th Petitioner in the Petition NO 268 of 2017, who had been disenfranchised by not being allocated his portion. That Dw2’s testimony that the Plaintiff was not a member of Majimoto Group Ranch, and that he could not receive it on its first allocation/instance supported his claim. 79. On the allegations of fraud, the 1 st Defendant submitted that the Plaintiff failed to prove it to the required standards of proof. Consequently, the 1 st Defendant prayed that the Plaintiff’s suit be dismissed with costs, and that the 1 st Defendant’s title over the suit property be upheld. 80. The court has carefully considered the pleadings, herein the oral and documentary evidence tendered by the parties, the rival written submissions and the applicable provisions of law, and the Court finds the following issues arise for determination: i. Who has the legitimate title over the suit land herein namely parcel no. CISMARA/MAJIMOTO/2760 ii. Whether the Plaintiff has proved the allegations of fraud to the legally required standards of proof iii. Who bears the costs of these proceedings

Analysis and Determination

i. Who has the Legitimate Title over the Suit Land Herein Namely Parcel No. CISMARA/MAJIMOTO/2760 81. On the legitimacy of title over the suit property namely land parcel no. CISMARA/MAJIMOTO/2760, it is not sufficient for a party to wave a title as proof of conclusive ownership and indefeasibility of title. It is not in dispute that both the Plaintiff and the 1st Defendant produced title deeds bearing the same parcel number. The central question before this Court is therefore not merely who holds a title document, but whether the root of such title has been demonstrated to be lawful and traceable. (See Dina Management Ltd vs County Government of Mombasa & 5 Others (supra). 82. The jurisprudence emerging from the superior courts is now settled that where competing titles are presented before a court, the inquiry does not end with the production of a certificate of title. The Court must interrogate the process through which such title was acquired, and determine whether the holder can satisfactorily demonstrate a lawful root of title. See Clark vs Njoroge & 3 others (2026) KECA 718(KLR). 83. The court relies on various decided cases and specifically the Supreme Court decision of Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR) ,where the court restated the Court of Appeal’s determination in Munyu Maina v Hiram Gathiha Maina Civil Appeal No 239 of

2009 [2013] eKLR, where the Court stated thus: [Paragraph 93] “where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register” 84. The Plaintiff relied heavily on the fact that his title deed was issued earlier in time being 27 th March 2013, while that of the 1 st Defendant was issued on 28 th August 2023. However, chronology alone is no longer the decisive test. This Court must examine the legality of the process that culminated in the issuance of the title. 85. At the hearing, PW1, the Plaintiff herein admitted that the suit property is a sub division of the land parcel originally owned by Majimoto Group Ranch. This court has considered the certified Green card in the 1 st Defendant’s list of documents at page 11 of his trial bundle, and it corroborates this testimony. 86. The Plaintiff in his Plaint Amended on 4 th March 2025, at paragraph 7(3) on “particulars of interference” stated “instigating an intrigue scheme to displace the plaintiff from his ancestral land that he has traditionally and historically held.” 87. The Plaintiff basically alleged that the suit property descended to him as part of his ancestral land. In this regard, the Plaintiff ought to have adduced evidence of succession and the property descending through transmission from his parents or whoever was holding it in trust. This is the only way the Plaintiff can acquire a title under his name under such a claim. 88. Section 61 of the Land Registration Act 2012 states that: 1. If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on the production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words "as executor of the will of [deceased]" or "as administrator of the estate of [deceased]", as the case may be. (2) Upon confirmation of a grant, and on production of the grant the Registrar may, without requiring the personal representative to be registered, register by transmission— (a) any transfer by the personal representative; and (b) any surrender of a lease or discharge of a charge by the personal representative. (3) In this section, "grant" means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor. 89. Having gone through the certified Green card at page 11 of the 1 st Defendant’s trial bundles, there is no such entry in the register. Further, the Plaintiff did not adduce any evidence to challenge the 1 st Defendant’s Green card. 90. The only logical conclusion to make is that the suit land is not the Plaintiff’s ancestral land, and especially when the Plaintiff admitted that it belonged to Majimoto Group Ranch. 91. During his testimony, PW1 changed tune and testified that he bought the suit land from one Fred Sankale, who was a member of Majimoto Group Ranch. However, the Plaintiff did not produce a list of members of the said Group Ranch, in which the said Fred Sankale appears. The 1 st Defendant on the other side produced a certified copy of Majimoto Group Ranch Member List at page 83-211 of his trial bundle. In the same list, the 1 st Defendant appears as member number 327 at page 96 of his trial bundle. 92. At the very least, the Plaintiff ought to have produced the alleged sale agreement or availed the alleged vendor Fred Sankale to testify in court regarding the said transaction. This, he did not do, and as

provided by section of the Evidence Act , 119 an adverse inference may be drawn that his evidence would have been adverse to the Plaintiff's case. See the case of Gatonye & 2 others vs Kinyua (2025) CEHC11706 (KLR) and 22 nd July 2025" where the court cited the case of Nesco Services Ltd vs CM Construction Ltd (2021) Eklr and held that: " Where a party has custody or is in control of evidence and that party fails or refuse to tender or produce, the court is entitled to make adverse inference that such evidence was produced. It would to such party" 93. Section 3(3) of the Law of Contract Act is coined in mandatory terms to the effect that "no suit shall be brought upon a contract for the disposition of an interest in land unless the contract upon which the suit is founded is in writing, is signed by all the parties thereto; and the signature of each party signing has been attested by a witness who is present when the contract was signed by such party." 94. The Plaintiff has done so little to comply with these provisions, neither did he produce or provide any proof of payment for the said land, Land Control Board Consent to transfer or a registered instrument of transfer to explain how he obtained his alleged interest in the suit property from the said Fred Sankale. 95. The burden of proof was on the Plaintiff to prove these allegation and facts. Section 107 of the Evidence Act as read with Section 108 of the same Act provide that:"whoever desires any court to give Section 107 judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person....." Section 108 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." 96. Based on the above provisions of the law as contained in the Evidence Act , and the evidence before this court, it is evident that the court cannot determine with certainty that the Plaintiff bought the suit land from the said Fred Sankale. The court also rely on the principle of adverse inference which allows the court to draw an adverse inference against the Plaintiff in the absence of evidence which the Plaintiff ought to have produced to support his case. See the case of Kimotho vs KCB (2003) EA 108 where the court held that: "Adverse inference should be drawn upon a party who fails to call evidence in his possession" 97. Lastly, the court finds and holds that the Plaintiff has not approached this court with candour. The plaintiff cannot plead ownership of the suit land through ancestry at paragraph 7(3) of his pleadings, while claiming purchaser's rights during hearing. Such a departure from his pleadings is not permissible. These are two mutually exclusive claims that cannot exist at the same time. Further, it is an attempt by the Plaintiff to amend his pleadings orally in open court, a procedure foreign in our courts. 98. A claim founded on ancestral ownership cannot, at the same time, be reconciled with a claim founded on purchase. In the circumstances, this Court is unable to place reliance on the Plaintiff's shifting and contradictory account of how he allegedly acquired the suit property. The inconsistency not only undermines the credibility of his case, but also lends credence to the 1st Defendant's contention that the Plaintiff has failed to establish a lawful and ascertainable root of title to the suit land. 99. In the case of Karumbi v Nursing Council of Kenya (NCK) (Civil Appeal E1063 of 2025) [2026] 8617(KLR) (Civ) (18 June 2026) (Judgment) the court relied in the case of Daniel Otieno Migore v South Nyanza Sugar Company Limited (2018) eKLR, where the court held that: Parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from." 100. In the

instant case, the Plaintiff cannot plead ownership through ancestry, then mid trial switch tone and claim purchaser's rights contrary to his own pleadings. Accordingly, the Plaintiff is a non member of the Majimoto Group Ranch, and could not be allocated the suit land in its first allocation/instance, and neither could he acquire a legitimate title by purporting purchase from a non-member. 101. In Petition No. 268 of 2017, at page 55 of the 1 st Defendant's trial bundle and specifically paragraph 194, the court stated thus: " Any member not in the primary register cannot be allocated land on first allocation and can only acquire such land upon purchase. Companies cannot acquire land privately in Majimoto as they are not members in the primary list thus such allocations are illegal." 102. Regarding the legitimacy of the 1 st Defendant's title, the 1st Defendant demonstrated that he was a registered member of Majimoto Group Ranch, and that the suit property was allocated to him pursuant to the regularization exercise undertaken after the Judgment in the said Petition No. 268 of 2017. 103. The evidence of the 1 st Defendant was corroborated by DW2, the Chairman of Majimoto Group Ranch, who confirmed that the 1st Defendant was a bona fide member entitled to allocation, while the Plaintiff was not a member of the said Group Ranch. The 1 st Defendant appears as member number 327 of the Majimoto Group Ranch as contained at para 96 of the 1 st Defendant's trial bundle. 104. The Court has carefully read and considered the decision in Petition No 268 of 2017, at page 12-64 of the 1 st Defendant's trial bundle. It is clear that the 1 st Petitioner appears as Petitioner No 10, while DW2, the current Chairperson of this Group Ranch appears as Petitioner No 2. Throughout the said Judgment, it is clear that the mother title is over land parcel No NAROK/CIS-MARA/MAJIMOTO/8. The suit property herein CISMARA/MAJI MOTO/2760, is a resultant sub-division of this mother title or parcel of land, a fact that was not disputed by any of the parties herein. 105. The main issue in the said Petition was that some members whose names appear on the primary register had been shortchanged by not being allocated their rightful portions. In its Judgment in the above Petition, the court at paragraph 219(d) ordered that the District Land Adjudication and Settlement Officer, the 12 th Respondent to regularize the allocation of land parcels in, Majimoto Group Ranch to the original owners in accordance with the original member list. 106. At part f, the court further ordered the District Land Registrar Narok, the 11 th Respondent to revoke all titles in respect of public and communal properties which have been issued in the name of the private individuals including but not limited to CISMARA/MAJI MOTO/2171, 2078, 2076,2077, 2086, 461, 2165,654,2749 and 730 immediately and that if the revocation is not done within 14 days, the titles stand revoked and the land reverts to Majimoto Group Ranch. 107. These orders clearly extend to all the resultant subdivisions of the mother title or the mother parcel of land, so as to regularize the allocations to the rightful members of the Group Ranch according to the primary register. It is by effecting these court orders and regularizing the allocations, that the 1 st Defendant came to be in possession of his title. 108. More importantly, the Land Registrar Mr. Philip Mathew Odidah, who was summoned by the Court as an independent witness, testified on 10/12/2025, that the official records in the Lands Registry reflected the 1st Defendant as the registered proprietor of the suit property. The land Registrar further testified that the suit parcel of land was allocated to the 1st Defendant pursuant to the members' allocation register. He further testified that there existed no other green card relating to the suit property, and that the Plaintiff's alleged title did not exist in the official records under his custody. 109. The evidence of the Land Registrar (Mr

Philip Odidah), was particularly significant because the register is the primary record of ownership under the Land Registration Act . While the Plaintiff produced a title deed, he failed to demonstrate the entries in the register that culminated in its issuance. Indeed, the very foundation upon which his title rested remained unexplained. 110. In contrast, the 1 st Defendant not only produced his title deed ,but also established the chain leading to its issuance through the Group Ranch records, the regularized register and the evidence of the Land Registrar. Consequently, this Court finds and holds that the 1st Defendant established a lawful and traceable root of title, while the Plaintiff failed to demonstrate the legal process through which he acquired the suit property. ii. Whether the Plaintiff has Proved the Allegations of Fraud to the Legally Required Standards of Proof 111. Section 26 of the Land Registration Act 2012 states that: 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. 112. In the case of *Steyn v Ruscone* (Civil Suit 291 of 2013) [2025] KEHC 6196 (KLR) (Commercial and Tax) (16 May 2025) (Judgment) Neutral citation: [2025] KEHC 6196 (KLR), the court restated the test for fraud as follows: [Parahraph 50] “The burden of proof in fraud claims is notably higher than that required in ordinary civil proceedings. In *Railal Gordhanbhai Patel v Lalji Makanji*, [1957] EA 314, the court held that although the standard falls below that of proof beyond reasonable doubt, it is above the ordinary balance of probabilities. Allegations of fraud must be proved with clarity, precision, and cogency.” 113. The Plaintiff herein pleaded numerous particulars of fraud against the Defendants. Beyond the pleadings, the Plaintiff did not tender evidence capable of establishing that the 1st Defendant forged documents, misrepresented facts to the Land Registrar, procured registration through deceit or participated in any fraudulent scheme. 114. The evidence adduced instead showed that the 1st Defendant obtained registration following the regularization exercise undertaken after the Judgment in Petition No. 268 of 2017, affecting Majimoto Group Ranch. Further, the Plaintiff did not produce any document demonstrating that the process was manipulated in favour of the 1 st Defendant. 115. Again, the Court noted that the Land Registrar testified that even though there was no order specifically cancelling parcel number CISMARA/MAJIMOTO/2760, however, regularization and compliance with orders at paragraph 219(d and f) in Petition number 268 of 2017 would definitely affect this parcel. Equally, no evidence was tendered showing that the 1st Defendant influenced the Lands Registry to act unlawfully. 116. Therefore, from the above analysis and in the circumstances herein, the allegations of fraud remain mere assertions unsupported by cogent evidence. The Plaintiff has therefore failed to discharge the burden imposed by Sections 107, 108 and 109 of the Evidence Act . 117. Similarly, the prayer for a permanent injunction must fail because such relief is predicated upon proof of a legal right deserving protection. The Plaintiff has failed to establish such a right. The prayer seeking cancellation of the 1st Defendant's title is equally unmerited. On the contrary, the evidence on record favours the legitimacy of the 1st Defendant's registration. iii.

Who Bears the Costs of this Suit? 118. It is trite law that costs follow the event as was illustrated by the Supreme Court of Kenya in the case of Jasbir Singh & 3 Others V Tarlochan Singh Rai & 4 Others [2014] Eklr wherein the court stated that the award of costs would normally be guided by the principle that, “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails.....” 119. In the instant suit, the Plaintiff’s suit is found not merited, and thus the 1 st Defendant is the successful litigant, thus he is entitled to costs, which should be borne by the Plaintiff herein. 120. In the end, and for the reasons set out above, the Court finds and holds that the Plaintiff has failed to prove his case on the required standard of a balance of probabilities, and his claim cannot stand. 121. Accordingly, the Court makes the following orders a. The Plaintiff has failed to prove his case on the required standard of balance of probabilities, and consequently, the Plaintiff's suit is hereby dismissed in its entirety b. The court finds and holds that the Plaintiff has failed to establish any legal basis for the cancellation of the title held by the 1 st Defendant over land parcel No.CISMARA/MAJIMOTO/2760. c. The costs of this suit are awarded to the 1 st Defendant. It is so Ordered. DATED, SIGNED AND DELIVERED VIRTUALLY, AT NAROK THIS 17 TH DAY OF SEPTEMBER 2026. L. GACHERU JUDGE Delivered online in the presence of: Elijah Meyoki Court Assistant Mr Kamwaro for the Plaintiff Ms Hashi for the 1 st Defendant Mr Menge for the 2 nd Defendant and the 3rd Defendant

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