



REPUBLIC OF KENYA



**Oyugi & 3 others v Chief Land Registrar & 4 others (Environment & Land
Case 357 of 2014) [2023] KEELC 16722 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16722 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 357 OF 2014
A OMBWAYO, J
MARCH 29, 2023**

BETWEEN

**JOB OKUNA OYUGI 1ST PLAINTIFF
DOUGLAS ODHIAMBO OYUGI 2ND PLAINTIFF
JOSHUA OGANGO (SUING AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF HEZEKIAH OYUGI) 3RD PLAINTIFF
MARY AKUMU OYUGI 4TH PLAINTIFF**

AND

**CHIEF LAND REGISTRAR 1ST DEFENDANT
ATTONERY GENERAL 2ND DEFENDANT
NYANDO TOGO INVESTMENTS LIMITED 3RD DEFENDANT
CIBIYA FARMS HOLDINGS LIMITED 4TH DEFENDANT
MUHORONI SUGAR COMPANY LIMITED (IN RECIEVERSHIP 5TH
DEFENDANT**

JUDGMENT

1. John Okuna Oyugi, Douglas Odhiambo Oyugi and Joshua Oganga, suing as personal representatives of the Estate of Hezekiah Nelson Oyugi and Mary Akumu Oyugi (hereinafter referred to as defendants) have come to court against Chief Land Registrar, Attorney General, Nyando Togo Investments Limited, Cibiya Farms Holdings Limited, Muhoroni Sugar Company Limited in receivership (hereinafter referred to as defendants)
2. This dispute revolves around the estate of the late Hezekiah Nelson Oyugi. The plaintiffs state that that at all times material to this suit all that parcel; known as LR No.6016/1 West of Muhoroni Town



(hereinafter referred to as the suit property) measuring 82.16 Hectares was registered in the name of Hezekia Nelson Oyugi Ogango (deceased).

3. That the 4th plaintiff is currently carrying out contract cane farming and the crop has been planted in an area measuring approximately 120 acres which cane she supplies to the sugar millers in the nucleus. The 4th plaintiff is and at all material times in actual possession and has developed cane since 1989. The value of the cane is in excess of Kenya Shillings Thirty Million as the same is mature and ready for harvesting.
4. The plaintiffs state that sometimes in 2006 they established that on 2nd October 2002 or thereabouts a Grant of Letters of Administration had purported been issued to them in respect of the Estate of the deceased and an entry presentation number 116 entered onto the title by the Registrar of Titles. That subsequent to that without any colour of right and in further flagrant abuse of the provisions of the law of succession the 1st Defendant on the same day caused to be entered four entries to wit:-
 - a. Presentation Number 117 Transfer (Assent) to Betty and Doreen Oyugi
 - b. Presentation Number 118 Transfer to the 1st defendant for a consideration of Kshs.4,000,000.00/=
5. That on 13th April 2012 the 1st defendant fraudulently caused the transfer of the suit property from the 3rd to the 4th defendant for a consideration of Ksh11, 165,000.00. The plaintiff averred that the Registration of the 3rd Defendant as proprietor by way of Assent was fraudulent, illegal, null and void ab-initio and therefore it was not capable of being conferred to the 3rd Defendant in purported execution of the will of the deceased without the knowledge and consent of the personal representatives of the deceased estate. The plaintiff have particularized fraud as:-
 - a. The defendants knew or ought to have known that the suit property belonged to and was in actual possession of the 4th plaintiff of the deceased estate.
 - b. The 2nd defendant caused, and the 1st defendant obtained the title without the knowledge of consent of the 1st- 3rd plaintiff and the beneficiaries of the estate.
 - c. No application for alienation and or intermeddling with the suit property being property forming part of the deceased estate was made to the High Court in Nairobi HCCC No.1581 of 1992.
 - d. Executing an Assent in purported execution of an alleged will of the deceased yet the deceased died intestate
 - e. No probate proceedings have been taken in the Nairobi HCC No.1581 of 1992 to confirm the will.
 - f. The 1st defendant, with the knowledge of want of authority, purported to effect the transfer in favor of the 3rd defendant without Grant of Letters of Administration.
6. The plaintiff claim that the 1st defendant acted illegally in effecting the transfer to the 2nd defendant. The plaintiffs contend that the manner of the 2nd defendant obtaining registration was fraudulent and unlawful. The plaintiff further contends that the 3rd defendant's registration was illegal hence she could not confer any estate to 4th defendant or any person. The plaintiff further states that the 4th defendants holds the registration of the suit property as constructive trustees in trust for the estate of the deceased person and the entry ought to be rectified. The plaintiffs pray for:-



- a. A declaration that the registration by the 1st defendant to the 2nd, 3rd and 4th defendant over the suit property was null and void ab initio and ineffectual to confer any right, interest or title upon the 2nd defendant and 3rd defendant and finally to the 4th defendant.
 - b. A declaration that the registration of the 3rd defendant names as proprietor of L.R No.6016/1 West of Muhoroni was null and void to confer a good title upon the 4th defendant .
 - c. An order for rectification of the land register by cancellation of transfer to the 4th defendant over L.R No.6016/1 West of Muhoroni so as to restore the suit property to the personal representative as the proprietors.
 - d. In the alternative and without prejudice to (a) and (b) above, a declaration that the 4th Defendant holds registration of in trust for the personal representatives an that the land register be rectified by deleting the name of the 4th defendant and substituting the name of the personal representative as the proprietors.
 - e. An order for rectification of the land register by cancellation of made in favour of the 4th defendant.
 - f. An order for permanent injunction against the 4th and 5th defendant by himself, his agent, servants or assigns restraining then from leasing, transferring, charging, entering upon, developing harvesting the cane developed thereon or wasting or in any other manner howsoever from dealing with L.R No.6016/1 West of Muhoroni.
 - g. General damages for fraud.
 - h. Costs of an incidental to the suit.
 - i. Any other relief that the Court may deem fit and just to grant.
7. The 1st and 2nd defendants deny any fraud and put the plaintiffs to the strictest proof of the allegations.
 8. The 3rd defendant states that the registration of the title of the suit property to it, was legal and the title is indefeasible having been obtained in pursuance to subsisting orders given in the ongoing proceedings in Nairobi Succession Cause Number 1581 of 1992 which the 3rd defendant reserves the right to apply for the said Succession Case file to be brought for reference at the trial of this suit for more particulars and clarity in respect to the suit property.
 9. That further and without prejudice to the foregoing, the 3rd defendant avers that the challenge to the 3rd defendant title herein is misguided and bad in law as the same is res-judicata on the ground that the same was adjudicated fully and procured in pursuance to orders given in Nairobi Succession Cause Number 1581 of 1992.
 10. The 3rd defendant avers that, it lawfully holds the title to the suit property which it lawfully sold to the 4th defendant as a beneficiary of the Estate of the late Nelson Hezekiah Oyugi. Further, the registration on the suit title by assent was not fraudulent, illegal, null or void abinitio as deponed in paragraphs 10,11,12,13,14,15,16,17 and 18 of the plaints. The plaintiffs are put to strict proof thereof, of their averments. No notice of demand was made or notice of intention to sue given and the plaintiffs are put to strict proof thereof.
 11. The 4th defendant case is that he is an innocent purchaser for value and without notice. The 4th defendant denied any fraud or illegality.



12. The 5th defendant states that the property has always been registered in the name of Hezekiel Nelson Oyugi who is now deceased. The 5th defendant claims to have entered into a contract with the 4th plaintiff for the cultivating of cane on a portion of the said property with the knowledge of the 1st 2nd and 3rd plaintiffs. The 5th defendant denies dealing with the 4th defendant.
13. When the matter came up for hearing the plaintiff Job Okuna Oyugi, the administrator of the estate of the deceased testified that he is the 1st born son of the deceased. He relied on the statement dated 23rd December 2014 which was adopted as his evidence in chief. In a nutshell, he testified that the land was being cultivated under the supervision of Mama Mary Oyugi for a long time. He came to court because the property was transferred to another person.
14. On cross examination by Juma, senior state counsel for 1st and 2nd defendants, he states that the letters of administration intestate were issued by the High Court. The assent was signed by someone else and not himself. He states that the signature on the assent is his but he did not sign it. He did not report to police. he did not engage a handwriting expert. The beneficiaries of the fraud are his step mothers. He does not know the perpetrators of the fraud. The assent was between himself and his step mothers. He does not know how the fraud occurred. He does not know how the property was transferred to his Step mothers. He did not register any caveat.
15. On cross- examination by Mr. Opiyo for 3rd defendant, he states that this was not the only property owned by his late father. He stated that they sought orders for assistance of the children and widow and therefore some properties changed hands. He states that 63 properties have so far changed hands with or without court orders. He states that there are 6 signatures on the assent. The 1st signature is his, the 2nd signature is Joshua Ogengo Oyugi and the 3rd signature is for Douglas Odhiambo Oyugi. The 4th signature is for Betty Oyugi and the 5th signature is for Dorean Oyugi . The signatures are witnessed by B. A Okuom Advocates. The document is drawn by Patel and Patel advocates. The property was being managed by the mother. The property belonged to his mother but his step Mother Doreen is a beneficiary and she has rights.
16. On cross examination by Osiemo for 4th defendant, he states that there are 63 properties that have been disposed of. There is no court order on Muhoroni LR 209/9918 that is in the name of Rock Investments Limited. There is no company called Rocky. He admits that the signature on the assent is his but an old one. He admits that Doreen Oyugi and Betty Oyugi held an interest in the land. He states that the signature is his but he does not know the document. He cannot remember all documents he has so far signed because they are many.
17. According to the plaintiff in 2012, the registered owner of the suit property was Nyando Togo Limited. When Cibiya was buying the land, the registered owner was Nyando Togo Ltd. The title given to Cibiya farm Limited was the original.
18. On cross examination by M/s Oduor for the 5th defendant, he states that his mother Mary Oyugi had entered into agreement with Muhoroni sugar for cane farming. Muhoroni sugar was dealing with Mary Oyugi.
19. The 1st and 2nd defendants called Gildine Karani the Land Registrar working with the ministry of lands Nairobi who stated that land L.R No.6016/1 I.R 40291 reads all that lands situate in the west of Muhoroni town in Kisumu District and he produced the parcel file that had a certificate of title. The assent was registered on 2/10/2002. He produced as transfer dated 10th May 2002. He produced a consent dated 5th Mary 2002. He produced a rent clearance certificate dated 5th June 2009. He produced a transfer between the 3rd and 4th defendants. He produced a letter of consent dated 24th November



2011. He produced letters of administration intestate in the estate of Hezekiah Nelson Oyugi Ogango. He states that the assent was duly executed.
20. The assent was executed by the administrators of the estate intestate. The assets was properly executed. The documents were presented to Land Registrar.
 21. On cross- examination by Mr. Opiyo for 3rd defendant, he stated that they were no objection by the 3rd parties to the entries.
 22. On cross examination by Mr. Osiero for 4th defendant, he states that the transfers on record were proper, legal without fraud
 23. On cross examination by Ochieng for plaintiff he states that he did not see any will or probate. He states that they relied on the assent. The consideration by Nyando Togo was Kshs4,000,000.
 24. The 3rd defendant called Dorine Karipeter Oyugi the director of Nyandi Togo Investment Ltd. She adopted her statement dated and filed on 1st March 2018. She states that that the property was sold due to a court order in file number 1581 of 1992. She signed the assent with Betty Oyugi . It was also signed by Jon Okuna Oyugi the 1st plaintiff. The property was legally passed over to the 3rd defendant. They were given 230 acres out of 2000 acres. They sold the land to the 4th defendants to pay school fees for their children.
 25. The 4th defendant, Newton Omondi Osieno, a businessman relied on his statement recorded on 4th February 2015. He bought the suit property for Kshs11.5 million. He was given the original title deed in respect to the property. The 1st plaintiff's mother was not cultivating the property. He has created 30 leases of small holdings in the farm.
 26. On cross- examination by all counsel, he stated that there were no irregularities. He did not have a sale agreement. There was no restriction on the property but he was presented with the assent. He bought the land from Nyando Togo and not Hezekiah Oyugi. The last witness was Beatrice Wangeci, a court assistant working at Milimani High Court family division who produced Nairobi High Court Succession cause number 1581 of 1992.
 27. During submissions, the plaintiff submitted that section 55 of the Law of Succession Act Cap 160 Laws of Kenya outlaws distribution of capital assets of the deceased without confirmation of grant. According to the plaintiff they have discharged the burden that there was no grant. The plaintiff submitted that the 3rd defendant did not produce any order to sell the property. The plaintiff submits that there was no memorandum in writing in line of section 3(3) of the Law of Contract Act where disposition for the sale of land are required to be writing. The plaintiffs submits that it is doubtful that the 3rd and 4th defendants entered into a valid sale agreement capable of enforcement. There was no evidence of consideration. The plaintiffs further submitted that the late Hezekiah Oyugi died intestate hence the assent was not proper. The plaintiffs are contending that the 3rd defendant had no tittle that it could pass to the purchaser.
 28. The 1st and 2nd defendant submit that the plaintiff are to blame for failing to bring action against the beneficiaries who are their steps mothers. The plaintiffs should not be allowed to gain from their dishonesty. The plaintiff claim of fraud and intermeddling against the 1st and 2nd defendant is not tenable before court. The 1st and 2nd defendants submit that the assent was executed by the plaintiffs and their step mother and therefore the plaintiffs can't run away from the same.
 29. The gravamen of 3rd defendant submission is that the issues raised by the plaintiff revolves around the distribution of the deceased estate and therefore the court lacks jurisdiction to hear and determine the



suit on its merit. Secondly, the 3rd defendant argues that the transfer of the property to the 3rd defendant had not acted with any fraud or illegality as the 1st to 3rd plaintiffs were granted to be administrators of the Estate of the deceased a grant of letters of administration intestate issued on 1st February 1994. The administrators then entered into assent on the 10th May 2002 and vested the property to their stepmother Betty Oyugi and Doreen Oyugi. The 3rd defendant entered into agreement to transfer the property to the 4th defendant at a consideration of Kshs11,165,000. According to the 3rd defendant the transfer was legal and property.

30. The gravamen of the 4th defendant submissions is that the 4th defendant was a bonafide purchaser without notice because he holds a certificate of title he purchased the property in good faith and that he had no knowledge of fraud and that he purchased the property for value. The vendor had a valid title and that he was not party to fraud.
31. I have considered the pleadings evidence on record and the rival submissions and do find that the following issues are ripe for consideration .
 1. Whether the court has jurisdiction to entertain the dispute.
 2. Whether the property was lawfully transferred to the 3rd defendant
 3. Whether the 4th defendant was an innocent purchaser for value without notice.

1. Whether The Court Has Jurisdiction

32. The plaintiffs came to court on a claim that the defendants knew or ought to have known that the suit property belonged to and was in actual possession of the 4th plaintiff and yet the 3rd defendant caused, and the 4th defendant obtained the title without the knowledge of consent of the 1st- 3rd plaintiffs and the beneficiaries of the estate.
33. The plaintiffs pray for a declaration that the registration by the 1st defendant to the 2nd, 3rd and 4th defendant over the suit property was null and void ab initio and ineffectual to confer any right, interest or title upon the 2nd defendant and 3rd defendant and finally to the 4th defendant.
34. Moreover, the plaintiffs seek a declaration that the registration of the 3rd defendant names as proprietor of L.R No.6016/1 West of Muhoroni was null and void to confer a good title upon the 4th defendant .
35. Furthermore, the plaintiffs seek an order for rectification of the land register by cancellation of transfer to the 4th defendant over L.R No.6016/1 West of Muhoroni so as to restore the suit property to the personal representative as the proprietors. In the alternative and without prejudice to (a) and (b) above, a declaration that the 4th Defendant holds registration of in trust for the personal representatives and that the land register be rectified by deleting the name of the 4th defendant and substituting the name of the personal representative as the proprietors.
36. Lastly, an order for rectification of the land register by cancellation of made in favour of the 4th defendant and an order for permanent injunction against the 4th and 5th defendant by himself, his agent, servants or assigns restraining them from leasing, transferring, charging, entering upon, developing harvesting the cane developed thereon or wasting or in any other manner howsoever from dealing with L.R No.6016/1 West of Muhoroni.
37. The property was registered in the name of the 3rd defendant and transferred to the 4th defendant. What is before me is not a succession dispute but an ownership dispute. Section 13 of the Environment and Land Court provides: -



13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
restitution;
 - (g) declaration; or
 - (h) costs.

38. The dispute revolves on title to land, and, land use, and fraud hence this court has jurisdiction.



Whether the property was lawfully transferred to 3rd defendant

39. This court finds that the 1st- 3rd plaintiffs were granted letters of administration intestate in the estate of the late Hezekiah Oyugi on 1st February 1994. It is on record that the administrators made assent on 10th May 2002 and vested the property to Betty Oyugi and Doreen Oyugi, wives of the deceased. The property was vested onto the 3rd defendant who transferred their interest to the 4th defendant at a consideration of Kshs11, 165,000. The 3rd defendant testified that she was given enough money whereas the 4th defendant claims to have paid Kshs11, 165,000. The plaintiffs do not know how much was paid. I'm satisfied that consideration was paid as admitted by the 3rd defendant. The certificate of title shows that the transfer was registered on 2nd October 2002 to the benefit of the 3rd defendant. The 3rd defendant has already transferred the suit property to the 4th defendant. This court finds that the assent was duly executed by the plaintiffs and therefore vested the property to the 3rd defendant and therefore the 3rd defendant had the power and privilege to transfer the property to the 4th defendant. The 1st plaintiff in his evidence was very evasive on his signature in the by stating that he signs so many documents and therefore was not sure. Mr Job Oyugi did not report to the police of the alleged forged signature. He did not call any expert witness to demonstrate that the signature was not his. The signature in the assent appears to belong to Job Oyugi but his denial that he signed the assent appears to be a change of mind because his step mothers decided to sell the land to the 4th defendant.
40. DW1 testified that there were entries of the transaction and he produced the certificate of title. He produced the assent registered on 2nd October 2002 but made on 10th May 2002. He produced the letter of consent dated 5th March 2002 and the rent clearing certificate dated 5th June 2009. There is a transfer from Nyando Togo Investment Limited to Cibiya Farms Holding Limited and a letter of consent dated 24th November 2001. There were letters of administration intestate in the estate of Hezekiah Nelson Oyugi Ogeyo. I do find that the 1st and 2nd defendants considered the instrument of transfer objectively and the consent to transfer and therefore cannot be faulted for registering the assent and transfer to the 3rd defendant and the transfer from the 3rd defendant to 4th defendant

Whether the 4th defendnt was an innocent purchaser for value without notice

41. To determine this issue this court ought to discern the documents and find out whether the 4th defendant has a valid title and whether it was obtained fraudulently. The genesis of this dispute is the assent signed by Job Okuna Oyugi, Joshua Onyango and Douglass Odhiambo Oyugi being sons and legal representatives of the late Hezekiah Oyugi. The legal representatives assented and vested the suit property to Betty Oyugi and Doreen Oyugi was consent was issued to transfer the property to the 3rd defendant who transferred the property to the 4th defendant. The 4th defendant is currently registered as the proprietor and holds title to the suit property. Section 26(1) of the [Land Registration Act](#) provides:-

26. Certificate of title to be held as conclusive evidence of proprietorship.

- (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—

42. The 4th defendant holds a valid title.



43. I do find that he 4th defendant purchased the property from the 3rd defendant in good faith knowing that they were the title holders. I do not find any evidence of fraud. It is trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in case of Kuria Kiarie & 2 Others –vs- Sammy Magera [2018] eKLR where it was held:

The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA (as he then was) states 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. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

44. The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules. As regards the standard of proof, this court in the case of Kinyanjui Kamau – vs George Kamau [2015] eKLR expressed itself as follows:-

...it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo –vs- Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

45. In the matter before me, the 3rd defendant who was the registered owner of the property admitted to having transferred the property to the 4th defendant for a consideration of Ksh 11,500,000 which was used by the 3rd defendant to pay school fees for the proprietor’s children. The conclusion on the issue of fraud is that the plaintiffs have not proved their case as required by law. I turn to the issue as to whether the 4th defendant is an innocent purchaser for value without notice, the Court of Appeal in the case of Weston Gitonga & 10 others vs Peter Rugu Gikanga & another held as follows as regards a bona fide purchaser:

“ Black’s law Dictionary 8th Edition defines “bona fide purchaser” as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

46. In the Ugandan case of Katende v. Haridar & Company Limited [2008] 2 E.A.173 it was held:-“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:a.he holds a certificate of title;b.he purchased the property in good faith;c.he had no knowledge of the fraud;d.he purchased for valuable consideration;e.the vendors had apparent valid title;f.he purchased without notice of any



fraud;g.he was not party to any fraud. A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.

47. Article 40 guarantees every person the right to acquire and own property in any part of Kenya and Parliament is enjoined not to enact any law that permits the State or any person to arbitrarily deprive a person of his or her property unless the deprivation is as a result of compulsory acquisition by the Government for a public purpose or in the public interest and only upon prompt payment in full, of just compensation to the land owner.
48. Section 143 of the Registered *Land Act* (repealed) underscores the sanctity of title to land by stating in subsection (2) that;
 - (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default”.
49. Such, is the protection granted to a registered proprietor whose registration, as a bona fide purchaser, may only be cancelled where it is proved that it was obtained by fraud or mistake, in which the proprietor had knowledge of or was a party or substantially contributed to.
50. The Environment and Land Court has enforced this edict in countless cases and has consistently declined to recognise and protect titles to land, which have been obtained illegally or tainted with fraud.
51. The Court of Appeal in *Chemey Investment Limited v Attorney General & 2 others* Civil Appeal No. 349 of 2012 rejected the invitation to uphold the sanctity of title of the allottees upon finding that allottees applied and were allocated the suit property, which was Government land on which was erected buildings used for public purposes. The allottees had deliberately represented that the suit property was vacant. This, no doubt was a clear case of fraud in which the allottees fully participated.
52. The courts have indeed been consistent that a bona fide purchaser will not be bound by any interests of which he or she does not have actual, constructive or imputed notice, as long as he or she did reasonable due diligence before purchasing. Bona fide purchaser, the courts have maintained, is assured of protection, notwithstanding that previous dealings might be shown to have been mired in fraud. The plaintiffs have failed to satisfy this court that indeed there was fraud and that even if there was fraud, the 4th defendant was party to the fraud. The 4th defendant has proved that he did due diligence in purchasing the property and that valuable consideration was paid.
53. The upshot of the above is that the plaintiffs’ suit is dismissed with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT KISUMU VIA EMAIL THIS 29TH DAY OF MARCH 2023.

A .O OMBWAYO

JUDGE

