



Maingi v Makato & 2 others (All sued as Administrators of the Estate of the Late Maingi Mukeka Tuto & 4 others (Environment & Land Case 414 of 2017) [2023] KEELC 16572 (KLR) (28 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 414 OF 2017
CA OCHIENG, J
MARCH 28, 2023**

BETWEEN

SUSAN NDUNGE MAINGI PLAINTIFF

AND

**JOSEPH MUSYIMI MAKATO NZOMO MAKATO HELLEN NDINDA MAKATO
(ALL SUED AS ADMINISTRATORS OF THE ESTATE OF THE LATE MAINGI
MUKEKA TUTO 1ST DEFENDANT**

GEORGE KARIUKI 2ND DEFENDANT

JOHN GITHIRWA MAINA 3RD DEFENDANT

PADDY KAMAU NG'ANG'A 4TH DEFENDANT

DEPUTY LAND REGISTRAR, MACHAKOS 5TH DEFENDANT

JUDGMENT

1. Through a Plaint filed on 4th October, 2017 and amended on 3rd February, 2022, the Plaintiff filed this suit against the Defendants wherein she seeks the following orders:
 - a. A declaration that the Plaintiff has a legal and equitable interest on L.R No. MAVOKO TOWN BLOCK 3/2117 and any subdivision therefrom.
 - b. A declaration that the Deceased and any other transferee of the whole or subdivisions of L.R No. MAVOKO TOWN BLOCK 3/2117 holds the same in trust for the Plaintiff.
 - c. A declaration that the Plaintiff is the bona fide owner and/or beneficial owner of the land known as L.R No. MAVOKO 3/2117 and any subdivision



therefrom and the subsequent titles in favour of any third party including the 2nd, 3rd or 4th Defendants is null.

- d. A declaration that the subdivision of LR No. MAVOKO TOWN BLOCK 3/2117 and subsequent closure of the main register and opening of Mavoko Town Block 3/5785 and Mavoko Block 3/5786 was acquired illegally, unprocedurally and is rooted in fraud and therefore the same is null and void.
 - e. A permanent injunction restraining the 2nd, 3rd and 4th Defendants by themselves and/or their agents or servants from dealing, subdividing, constructing, disposing, trespassing, interfering, charging and/or whatsoever dealing with LR No. Mavoko Town Block 3/2117.
 - f. An order directing the 5th Respondent to unconditionally conceal all the entries in LR No. Mavoko Town Block 3/2117 including the subdivision, transfer if any, and any titles created and/or issued as a result of any cancelled entries and restore the register of L.R No. Mavoko Town Block 3/2117.
 - g. Costs of the suit.
 - h. Any other further order that this Court may deem fit and just to grant.
2. The 1st Defendant filed his Statement of Defence on 2nd November, 2017. He challenged the suit for being res judicata and/or sub judice in that similar suits involving the suit properties had already been determined, being HCCC No. 169 of 2009 and Matrimonial Cause No. 10 of 2017. He claimed that the Plaintiff is estopped from raising a claim over the suit property since the same was heard and determined on 16th March, 2017 in the aforementioned HCCC No. 169 of 2009.
 3. The 1st Defendant contended that he had solely bought the suit property from one Francis Muindi Wambua. He insisted that the Plaintiff had not made any financial contribution, hence the parcel was personal and not family property. He denied fraudulently selling the suit property without the Plaintiff's consent and averred that he only sold his personal parcel to meet educational needs of their children. As to the lifting of the caution, he stated that the same was procedurally lifted after the Land Registrar was satisfied that the Plaintiff had no beneficial interest on the parcel of land. The 1st Defendant argued that he was not required by law or otherwise to seek the consent of the Plaintiff before disposing his personal property. He denied service of any demand notice upon him and jurisdiction of the court.
 4. The 2nd, 3rd and 4th Defendants consequently filed their Statement of Defence on 31st October 2017. They denied the averments in the Plaint and stated that they entered into a Land Sale Agreement with the 1st Defendant on 11th December, 2008 to purchase a portion of LR No. Mavoko Town Block 3/2117 hereinafter referred to as the 'suit property' at a consideration of Kshs. 4,700,000 which was duly paid to the 1st Defendant. They further stated that they had conducted due diligence prior to purchasing the land and confirmed that the seller, the 1st Defendant herein, was the registered owner of the suit property and that the caution registered on the land had been lifted. They averred that they had appeared before the Mavoko Land Control Board and obtained consent for subdivision of the land, after which mutations were issued resulting to LR No. Mavoko Town Block 3/5786 in the name of the three Defendants that they further subdivided into L.R Nos. Mavoko Town Block 3/60243-60252 which were later sold to other innocent third parties.
 5. The 2nd, 3rd and 4th Defendants argued that they were innocent purchasers for value of the 30 acres hived from the suit property. They stated that the Plaintiff lacks any claim against them and that her dispute



was matrimonial in nature. Further, that they would raise a Preliminary Objection on the jurisdiction of the court.

Evidence by the Parties

The Plaintiff's case

6. Pw1 Susan Ndunge Maingi testified in court she had contracted a monogamous marriage with the 1st Defendant in 1977 under the African Christian Marriage and Divorce Act. She stated that they had jointly acquired property during the subsistence of their marriage which includes the suit property. She claimed that between 2008 and 2009, she had noted that the 1st Defendant had fraudulently started disposing off matrimonial properties to the 2nd, 3rd and 4th Defendants upon which she had lodged a caution with the 5th Defendant. She confirmed that she had instituted a case being Machakos HCCC No. 169 of 2009 wherein she had obtained injunctive orders prohibiting any dealings on the suit property until the hearing and determination of the suit, which orders subsisted until 16th March, 2017 when the suit was dismissed. She insisted that the 1st Defendant fraudulently proceeded to sell the suit property to the 2nd, 3rd and 4th Defendants. It was her testimony that the 1st Defendant had breached constructive trust that was created on him once the suit property that was owned jointly was registered in his name. She further testified that the 1st Defendant had unsuccessfully sought through the aforementioned Case No. 169 of 2009 for the sale of the suit property and sharing of the proceeds thereto equally with the Plaintiff.
7. Upon cross-examination by counsel for the Defendants, PW1 stated that she did not know when the suit property was sold as the 1st Defendant did so, in her absence. She insisted that the Court in the aforementioned matrimonial cause granted her the suit property wherein her son Mutuku resides. She denied knowledge of the purchasers nor of the Sale Agreements. The Plaintiff produced the following documents as exhibits: Marriage Certificate dated 17th December, 1977, Title Deed for Mavoko Town Block 3/2117, Certificate for Search dated 11th February, 2009, 29th June, 2009, 26th April, 2012, 13th September, 2013, 21st June, 2017, 22nd August, 2017, 28th August, 2017, copy of Machakos Civil Misc. Application 30 of 2009, court order dated 21st April, 2009, 3rd June, 2009, Ruling dated 29th July, 2015 in Machakos HCCC 169 of 2009, letters dated 19th July, 2017 to the Land Registrar, Machakos, Copy of Misc. Application No. 15 of 2015, Photographs, Treatment notes of the 1st Defendant, Statement of Teresia Muindi, Court order dated 11th May, 2017, letter to Director of Criminal Investigations dated 22nd June, 2017, Copy of Originating Summons and Supplementary Affidavit in Matrimonial Cause 10 of 2017; A copy of Green Card L.R. Number Mavoko Town Block 3/5786, A copy of Green Card L.R. Number Mavoko Town Block 3/5785, A copy of Green Card L.R. Number Mavoko Town Block 3/2117, A copy of a letter from Machakos Land Registrar dated 21st January, 2009, A copy of a letter from the District Officer Athi-River Division, Machakos dated 3rd April, 2006, addressed to Simon Maingi Mukeka, A copy of a letter from Machakos Land Registrar dated 18th February, 2009, A court order in ELC Miscellaneous Application Number 255 of 2016 issued on 31st January, 2019 and A copy of Judgment in Matrimonial Cause Number 10 of 2017 delivered on 26th September, 2019.

The Defendants' Case

8. DW1 Joseph Musyimi Makato who is one of the Administrators of the 1st Defendant's Estate urged the Court to determine the matter and stated that he did not intend to call any witnesses.
9. DW2 Joseph Githirwa Maina in his testimony confirmed that he entered into a Sale Agreement with the 1st Defendant as the vendor while the 3rd and 4th Defendant were co-purchasers. He explained



that the agreement was for the sale of 30 acres from Mavoko Town Block 3/2117 and they paid the full price as agreed. It was his testimony that the Defendants had sought for and obtained consent from the Mavoko Land Control Board to subdivide the land from which a survey was conducted resulting in a mutation of the parcel to new parcel numbers, being Mavoko Town Block 3/5785 and 5786 respectively. He stated that the titles were all registered in the name of the 1st Defendant and consequently title number Mavoko Town Block 3/5786 was transferred and registered in the names of the 2nd, 3rd and 4th Defendants. He testified that the caution on the suit property was successfully lifted upon obtaining orders in ELC Misc. Application No. 15 of 2017. It was his contention that the suit property was legally and properly transferred to the 2nd, 3rd and 4th Defendants respectively and that the orders issued on 3rd June 2009 barred dealings on Mavoko Town Block 3/2117 which title had already been closed on subdivision. Further, that the issue in respect to sharing of the proceeds from the sale of the suit property had already been decided in the aforementioned matrimonial cause.

10. Upon cross-examination, he stated that during the transaction, he did not know that that the Plaintiff and the 1st Defendant were married. He denied hurrying the subdivision process or colluding to lift the caution on the suit property.
11. DW3 George Kariuki confirmed that they entered into a Sale Agreement on 11th December, 2008 with the 1st Defendant (now deceased) in respect to purchase of 30 acres to be curved from Mavoko Town Block 3/2117. He testified that the 2nd, 3rd and 4th Defendants paid the full purchase price and obtained Consent of the Athi River Land Control Board on 16th December, 2008 wherein the said land was subdivided into 10 and 30 acres respectively. He explained that a survey was conducted on 14th January, 2009 and the new registration numbers being Mavoko Town Block 3/5785 and 5786 issued. Further, a consent to transfer was applied for and issued on the 10th February, 2009 by the Athi River Land Control Board. They paid stamp duty on 22nd April, 2009. It was his testimony that the High Court in Civil Suit No. 169 of 2009 issued orders barring transfer of Mavoko Town Block 3/2117 on 3rd June, 2009 but the parcel file had already been closed on subdivision on 9th February, 2009. He insisted that as at 12th May, 2017, there was no Court Order barring dealings in Mavoko Town Block 3/5785 and 5786 but the same was issued on 24th October, 2017 when titles in Mavoko Town Block 3/5785 and 5786 had been issued on 27th January, 2017. Upon cross-examination, he stated that he did not know of any dispute on the suit property and that the 1st Defendant was the duly registered owner of the parcel. He clarified that he only became aware of the dispute in 2009 after learning of the caveat after they had obtained consent to subdivide the parcel in 2008. He admitted that they were issued with the first court order on 3rd June, 2009.
12. The Defendants produced the following documents as exhibits: Copy of Title for property known as L.R. No. Mavoko Town Block 3/2117, Membership Card No. 695 for Maingi Mukeka in Lukenya Ranching Farming Co-operative Society, copy of court order issued in Machakos ELC. No. 15 of 2017 directing Machakos County Registrar to lift the Caution lodged on property known as L.R. No. Mavoko Town Block 3/2117, 1st Defendant also to rely on some documents in Plaintiff's list of documents, Agreement for Sale dated 11th December, 2008, Certificate of Official Search, Land Control Board consents, Mutation Form for Mavoko Town Block 3/2117, Mutation Form for Mavoko Town Block 3/5786, Stamp duty receipt, Pleadings in ELC Civil Misc. Appln. No. 255 of 2016, Judgment in Matrimonial Cause No. 10 of 2017 and any other document deemed relevant in the circumstances.



Submissions

Submissions by the Plaintiff

13. The Plaintiff in her submissions reiterated the contents of her Plaintiff and relied on Article 40 of [the Constitution](#) on the right to protection of property. She further cited Section 28 of the [Land Registration Act](#) (2012) which provides for spousal consent for matrimonial property, basing on the fact that the suit property was declared matrimonial property by Justice Odunga in Machakos Matrimonial Cause No. 10 of 2017. She further relied on the case of Mugo Muiro Investments Limited vs EWB & 2 Others (2017) eKLR where the court was of the view that the sellers were subject to the overriding interest of the wife and that they could not get a good title on the property since it was encumbered with the trust in favour of the wife. She argued that the Defendants cannot claim to be innocent purchasers for value since they knew of the dispute and proceeded to purchase the suit property. To challenge this further, they cited the case of MWK vs SKK & 5 Others [2018] eKLR where the court was of the view that where there is a tainted and irregular procedure leading to registration of a title, one cannot be a bona fide purchaser for value without notice. She argued that the sale of the suit property ought to have been paused “pending the litigation” to the knowledge of the buyers and was subject to the outcome of the matrimonial cause hence the title should be cancelled as the 1st Defendant could only sell 50% of the property. To support her arguments, she further relied on the case of Zachary Omondi Odongo v Bernard Stephen Omollo & 2 Others (2022) eKLR.

Submissions by the 2nd, 3rd and 4th Defendants

14. The 2nd, 3rd and 4th Defendants in their submissions argued that the issue of overriding interest and spousal consent which is provided for under the [Land Registration Act](#) 2012 came into operation in 2012 and the same cannot be applied retrospectively. They challenged the aforementioned Mugo Muiro case as cited by the Plaintiff as contrary to the instant case, as the Plaintiff does not reside on the suit property nor has she demonstrated any contribution towards the acquisition of the said suit property. They cited with approval the case of Francis Kiarie Kamau & Another v Sammy Kimemia Njuguna & Another (2021) eKLR wherein the court held that the Defendant did not have overriding interest in the suit property and that the same was not a matrimonial property since the Defendant lived in the USA and had never resided on it.
15. On the issue of fraudulent transfer/dealings on the suit property, they outlined the entire process they adhered to while purchasing it, including obtaining consent to subdivide as well as lifting the caution and insisted that due process was observed at all stages. They contended that the Plaintiff had not proved fraud yet the burden of proof was upon her to do so. They concluded that as per the Matrimonial Cause between the Plaintiff and the 1st Defendant which was earlier, the Plaintiff was awarded half of the proceeds from the sale of the suit property and any other further award would amount to unjust enrichment on her part. To buttress their averments, they relied on the other following decisions: ENW v PWM & 3 Others (2013) eKLR and Machakos High Court Matrimonial Cause No. 10 of 2017.

Analysis and Determination

16. Upon consideration of the Amended Plaintiff, Statements of Defence, Testimonies of the Witnesses, Exhibits and rivaling submissions, the following are the issues for determination: Whether the Plaintiff had an overriding interest over the suit property in 2008 at the point of sale of thirty (30) acres to the 2nd, 3rd and 4th Defendants. Whether the 2nd, 3rd and 4th Defendants are innocent purchasers for value



without notice. Whether the Plaintiff is entitled to the orders as sought. Who should bear the cost of the suit?

I will deal with all the issues jointly.

17. Before this court can make a determination of the issues herein, I note a thorough study of the record shows a long thread of litigation between the 1st Defendant and the Plaintiff over the suit property. What is also apparent is that in the Machakos High Court Matrimonial Cause No. 10 of 2017 Justice G V Odunga on 26th September, 2019 delivered a Judgment between the Plaintiff and the 1st Defendant sufficiently pronouncing itself on the issues before this court today. I will proceed to reproduce an excerpt from the said Judgment which has a bearing on this case:

“There is evidence that the Defendant entered into an agreement for sale of 30 acres excised from Mavoko Town Block 3/2117 to PKN, JGM and GK for the sum of Kshs 4,700,000/=. This property was registered in the Defendant’s name on 27th October, 2005. However, the title was closed on 27th January, 2017 following its subdivision that gave rise to parcels 5785 and 5786. While land parcel 5785 was still as at 27th January, 2017 registered in the names of the Defendant, there is no indication as to what happened in respect of parcel no. 5786. These properties are Mavoko Town Block 3/1160, Mavoko Town Block 1/5785, Mavoko Town Block 3/5785 which was registered in the name of the Defendant on 27th January, 2017, Kshs 4,700,000.00 being the proceeds of the sale of part of Mavoko Town Block 3/2117 to PKN, JGM and GK for the sum of Kshs 4,700,000/=: Kshs 23,500,000/= being the proceeds of the sale of Mavoko Town Block 3/1160 by the Defendant to Dee Properties Limited and Plot 81 situated in Athi River Trading Centre.....Regarding the properties sold by the Defendant to third parties, while this court cannot nullify the said dispositions as the said third parties are not before me hence have not been afforded an opportunity of being heard.....

In the premises I make the following orders;

- a. A declaration that the properties mentioned hereinabove are matrimonial property.
 - b. A declaration that the Plaintiff is entitled to an equal interest in the said properties.
 - c. An order that the properties herein be shared equally and if incapable of being shared that the same be sold and the net proceeds be shared equally between the Plaintiff and the Defendant. Pursuant thereto, the said properties will be valued in order to determine their worth. The cost of the valuation to be shared between the Plaintiff and the Defendant equally.
 - d. It also follows that the sums which the Defendant received from the aforesaid dispositions of the matrimonial properties, the law deems him to be a trustee of the funds which ought to have been received by the Plaintiff. Accordingly, the Defendant holds a sum of Kshs. 14,100,000.00 in trust for the Plaintiff.
 - e. Liberty to apply for an appeal granted to the parties.
 - f. Each party will bear its own costs.”
18. This Judgment was conclusive enough and was arrived at after a full hearing of both the Plaintiff in the instant suit and the 1st Defendant. The suit property was among the subject properties in the



matrimonial cause whose Judgment has not been challenged nor appealed against in any court, neither are the orders issued therein stayed by any court of competent jurisdiction. In this suit the Plaintiff sought to be declared owner of Mavoko Town Block 3/2117 which has since been subdivided severally. The Plaintiff claimed the 1st Defendant who was her husband colluded with other Defendants and proceeded to dispose of the said land. The Plaintiff as PW1 denied knowledge of the sale of land parcel number Mavoko Town Block 3/5786 which was a resultant subdivision of the suit property, to the 2nd, 3rd and 4th Defendants and insisted that she still owns the whole of the said suit property. The 1st Defendant though now deceased, in his Defence admitted selling Mavoko Town Block 3/5786 to the 2nd, 3rd and 4th Defendants respectively. DW2 and DW3 insisted that they legally acquired the suit property from the 1st Defendant who was its owner and at the point of purchase in 2008, they undertook due diligence and there was no encumbrance registered on it. Further, they explained that they acquired consent to transfer the land from Athi River Land Control Board and paid the requisite stamp duty. It was their testimony that the transfer delayed because of the caution that had been registered on the suit property by the Plaintiff, which was later lifted and they managed to get the land transferred in their name. Further, they confirmed that Mavoko Town Block 3/5786 has since been subdivided and transferred to third parties. However, I note during cross-examination they admitted that they participated in some of the court proceedings especially on an application for lifting of the caution. The Plaintiff in her submissions insisted that she is entitled to the whole suit property and relied on the aforementioned Mugo Muiru Investments Limited vs EWB & 2 Others (2017) eKLR case. However, from the impugned Judgment of Justice Odunga, which is related to this matter, I am of the view that the issue of the Plaintiff's share in the suit property was determined when the Court directed that the proceeds from the sale was to be divided equally between the Plaintiff and 1st Defendant. Further, as per the provisions of the repealed Registered *Land Act* which was the land regime in place when 2nd, 3rd and 4th Defendants purchased the suit property on 11th December, 2008 there was no requirement for spousal consent when a spouse sought to dispose of land. Further, it emerged in evidence that the Plaintiff registered a Caution as a licensee on the suit property and filed a case No. 169 of 2009 seeking to block the 1st Defendant from selling suit property which case was later dismissed for want of prosecution. In the circumstance, I find that the Plaintiff did not have overriding interest over the suit property at the point of sale of the thirty (30) acres of land from suit property, to the 2nd, 3rd and 4th Defendants in December 2008 but is entitled to half the proceeds of sale emanating therefrom as per the impugned Judgment from the Matrimonial Cause.

19. As to whether the 2nd, 3rd and 4th Defendants are innocent purchasers for value without notice.
20. The 1st Defendant confirmed in his Defence that he sold a portion of the suit property to the 2nd, 3rd and 4th Defendants. From the evidence tendered in court, the 1st Defendant entered into a Sale Agreement with the 2nd, 3rd and 4th Defendants on 11th December, 2008 for the purchase of thirty (30) acres of land to be carved off the suit property. DW3 in his testimony stated that the 2nd, 3rd and 4th Defendants paid the full purchase price of Kshs. 4,700,000. Further, the 1st Defendant obtained Consent from the Athi River Land Control Board on 16th December, 2008 wherein the said land was subdivided into 10 and 30 acres respectively. He explained that a survey was conducted on 14th January, 2009 and the new registration numbers being Mavoko Town Block 3/5785 and 5786 respectively issued. He was categorical that they applied for a consent to transfer which was issued on the 10th February, 2009 by the Athi River Land Control Board. Further, they paid stamp duty on 22nd April, 2009. He explained that the Court in Machakos HCCC No. 169 of 2009 issued orders barring the transfer of Mavoko Town Block 3/2117 on 3rd June, 2009 but by that time the parcel file had already been closed on subdivision on 9th February, 2009. He was emphatic that as at 12th May, 2017, there was no Court Order barring dealings in Mavoko Town Block 3/5785 and 5786 respectively but the same were only issued on 24th



October, 2017 when titles to the said parcels of land had been issued on 27th January, 2017. From the evidence of both the Plaintiff and the 2nd, 3rd and 4th Defendants, it emerges that the suit property was in the 1st Defendant's name at the point of Sale in December, 2008. DW2 and DW3 were emphatic that they paid the full purchase price to the deceased 1st Defendant and obtained requisite consents. Further, that transfer in their names was only effected after the caution was lifted and Machakos HCCC No. 169 of 2009, dismissed for want of prosecution.

21. On prima facie evidence of ownership, Sections 26(1) (b) of the [Land Registration Act](#) states that:

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

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

22. In the case of Case of Arthi Highway Developers Limited V West End Butchery Limited & 6 others (2015) eKLR the Court of Appeal dealt exhaustively with the issue of bona fide purchaser for value without notice and favourably cited the Uganda Court of Appeal Case of Katende V Haridar & Company Ltd, where the Court defined what amounts to a bona fide purchaser for value and stated thus:

“...a bona fide purchaser for value is 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 the following:

- a. He holds a certificate of Title
- b. He purchased the Property in good faith;
- c. He has no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

23. In applying the principles established in the aforementioned case to the circumstances at hand, it was clear the 1st Defendant held a Certificate of Title in his sole name in 2008 at the point, the 2nd, 3rd and 4th Defendants purchased thirty (30) acres from the suit property in December 2008. There has not been any demonstration that the 2nd, 3rd and 4th Defendants acted in bad faith to purchase a portion of the suit property. Further, the said Defendants in their evidence were emphatic that they had no knowledge of the dispute at the point of purchase but learnt about it later. From the evidence tendered by the Plaintiff, I find that she did not demonstrate that the 1st Defendant acquired the suit property fraudulently and passed the title to the 2nd, 3rd and 4th Defendants. During cross- examination, the



Plaintiff's Counsel attempted to establish that the Defendants had colluded to deny the Plaintiff the suit property by undertaking illegal transactions when the caution was still subsisting, but I reiterate that at the point of execution of the Sale Agreement as well as obtaining of consent to Transfer a portion of suit property in December, 2008, the said property was in the 1st Defendant's name and there was no encumbrance registered against it. Further, the 2nd, 3rd and 4th Defendants obtained orders of lifting caution vide Misc. No. 255 of 2016 on 16th March, 2017. However, I note the said orders were set aside on 25th January, 2019. From the evidence before me, I do not find any illegality performed by the 2nd, 3rd and 4th Defendants as even though the first mutation for the suit property was done on 26th January, 2009, they were only registered as owners of Mavoko Town Block 3/5786 on 30th January, 2017 when caution which had been entered in 2009 was lifted on 4th October, 2016 as stated by DW2 in his testimony. Based on the facts before me, I hold that the 2nd, 3rd and 4th Defendants are indeed bona fide purchasers for value without notice. I opine that since Judge Odunga had already found that the 1st Defendant was paid the purchase price for the suit property amounting to Kshs. 4,700,000 and ordered that the 1st Defendant shares half the proceeds with her, I find that she has a remedy to pursue the 1st Defendant's estate for the same.

24. In the foregoing, I find that the Plaintiff is not entitled to the orders as sought in the Plaint.
25. On the issue of costs, since this is a matter touching on a family dispute, I direct that each party do bear their own costs.
26. It is against the foregoing that I find the Plaintiff has not proved her case on a balance of probability and will proceed to dismiss it.

Each party do bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28TH DAY OF MARCH, 2023.

CHRISTINE OCHIENG

JUDGE

