



REPUBLIC OF KENYA



**Lwangu v Ndoté & 23 others (Environment & Land Case 79 of 2010)
[2025] KEELC 2918 (KLR) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2918 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 79 OF 2010**

**FO NYAGAKA, J
MARCH 24, 2025**

BETWEEN

SOPHIE FEIS CAROLINE LWANGU PLAINTIFF

AND

BENSON WAFULA NDOTE 1ST DEFENDANT
KENNEDY AMADI NDOTE 2ND DEFENDANT
SIMON KABOCHI KABUI 3RD DEFENDANT
PATRICK NYUKURI 4TH DEFENDANT
JOHN ACHOKI AKENGA 5TH DEFENDANT
RESELINE ASENWA 6TH DEFENDANT
ALICE KULUNDU NASIO 7TH DEFENDANT
PAUL SINGOMBE MACHWARA 8TH DEFENDANT
JOSEPHAT OBUNIA NYANGWESO 9TH DEFENDANT
JUSTUS BUNDI MAKORI 10TH DEFENDANT
BEATRICE MUSIMBI 11TH DEFENDANT
EDWARD MBALIZWA MUHALIA 12TH DEFENDANT
SIMON NJENGA MBUGUA 13TH DEFENDANT
ROBERT ONZOMU 14TH DEFENDANT
EVERLYNE K. SIRIBA 15TH DEFENDANT
PERMINUS MIGIRO SIRIBA 16TH DEFENDANT
HENRY NYANGWESO 17TH DEFENDANT



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| EDWARD MBARIRA | 18TH DEFENDANT |
| TIRIAS CHAKAYA MUDAKI | 19TH DEFENDANT |
| JOHN NJENGA | 20TH DEFENDANT |
| FRANCIS MUDACHI | 21ST DEFENDANT |
| JOHN NYAKUNDI | 22ND DEFENDANT |
| ELIUD NJOMO | 23RD DEFENDANT |
| PROTAS KAMREI | 24TH DEFENDANT |

JUDGMENT

1. The dispute at the heart of this case concerns the ownership and possession of a piece of land known as L.R No. Trans Nzoia/Sinyerere/715, which was originally part of L.R No. Trans Nzoia/Sinyerere/284. The legal battle began on 29th September, 2010, when the suit was first filed at the High Court in Kitale before being transferred to the Environment and Land Court.
2. Initially, the case involved five Defendants, namely, Jerida Kilisia Ndote, John Lwangu, Jane Wanjiru Mwangi, Benson Mwaura Mwangi, and Violet Kiriza Kibwana Lwangu. However, over time, while the Plaintiff withdrew the case against some Defendants, the number of others grew significantly, reaching a total of twenty-four.
3. Tragedy struck in January 2018 when Jerida Kilisia Ndote, who was the Plaintiff's mother, passed away. She was subsequently substituted in the case by Benson Wafula Ndote. Interestingly, many of the original Defendants had close familial ties to the Plaintiff. John Lwangu was her brother, Jane Wanjiru Mwangi her sister-in-law, Benson Mwaura Mwangi her brother-in-law, and Violet Kiriza her daughter-in-law.
4. The rest of the Defendants joined the suit by virtue of being purchasers of value of part of the suit property hence having an interest in the outcome of the matter.

Pleadings

5. In the Further Amended Plaint dated 25th January 2023 and filed in court on 26th January 2023, the Plaintiff sought the following reliefs:
 1. A declaration that the Plaintiff is the lawful and beneficial owner of L.R No. Trans-Nzoia/Sinyerere/715.
 2. General damages for the humiliation suffered by the Plaintiff due to trespass and conversion of L.R No. Trans-Nzoia/Sinyerere/715.
 3. An order of eviction of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd and 24th Defendants from her property L.R No. Trans-Nzoia/Sinyerere/715, together with their families, servants and agents.
 4. An order for permanent injunction against the Defendants from remaining in possession, gaining access and or setting foot in L.R No. Trans-Nzoia/Sinyerere/715.



5. An order for police assistance in restoring the Plaintiffs possession of L.R No Trans-Nzoia/Sinyerere/715 to be executed by the OCPD Kitale.
 6. An order of rendering of accounts by the 2nd, 3rd and 4th Defendants.
 7. Costs of the suit at court rates.
6. In response, the 1st, 2nd, and 3rd Defendants filed defenses and counterclaims, while the 5th-24th Defendants filed a defense. The 4th Defendant did not file any defence but filed an appearance and participated in the proceedings.
 7. Upon the close of pleadings, the hearing proceeded through viva voce evidence.

Plaintiff's Case

8. The Plaintiff, testifying as PW1, narrated the circumstances under which she came into ownership and 'possession' of the disputed land. She stated that in 1978, after 24 years of separation, she visited her mother at the Sinyerere Scheme in Trans Nzoia. Upon arrival, she was devastated to find her mother struggling, as her land had been overrun by squatters. Determined to help, she spent Kshs 50,000 to pay off the squatters. As a result, her mother allowed her to cultivate 50 acres of the land.
9. Over time, she testified that her mother frequently requested financial assistance. In response, her husband, who apparently was of Netherlands citizenship, suggested about purchasing half of the land to secure their investment. This led to a formal agreement on 14th February, 1982, in which they acquired half of the property after part payment by settling the outstanding loan of Kshs 14,000/= to the Agricultural Finance Corporation. She produced the letter documenting this agreement as PExh 1.
10. Later that year, on 4th June, 1982, she entered another agreement with her mother and stepfather after payment of Kshs 40,000/=. According to this agreement, half of the farm's proceeds were to be reserved for her and her husband. However, to her dismay, she never received any of the promised proceeds. Upon visiting the land, she discovered that her mother and stepfather had sold a significant portion, allegedly to settle her late stepfather's medical bills. Even worse, they had now settled on her portion of the land. She produced this letter as PExh 2.
11. Further complicating matters, PW1 stated that, her deceased stepfather had sold 15 acres of the original suit land which was since sub-divided giving rise to two parcels. One of these subdivisions, parcel No. Trans-Nzoia/Sinyerere/716, was the one sold and given to a man named Mr. Ondieki who was now in possession thereof, leaving her with parcel Trans-Nzoia/Sinyerere/715. Following this PW 1 testified that she reached an agreement with John Musoga Lwangu, Benson Wafula Ndote, and Kennedy Amadi to purchase the 15 acres from Mr. Ondieki. A formal consent dated 6th May, 2000, was signed to facilitate this transaction, which she presented as PExh 3.
12. At this stage, it was her testimony that her brothers had no objections to the land being transferred to her. Additionally, she stated that at the time, the land was still under her mother's name, following Succession proceedings under Succession Cause No. 100 of 1994. She produced the Green Card as PExh4 the Certificate of Confirmation of Grant as PExh 5 and the transfer as PExh 6.
13. She stated further that, having seen that her brothers had signed the consent, her mother transferred the land to her. She obtained the title deed to the parcel on 1/2/2001. She produced the Title Deed as PExh7, the transfer as PExh 8 application to the Land Control Board as PExh 9 and the consent of the Land Control Board as PExh10.



14. Following her legal acquisition of the land, PW1 testified that she undertook the construction of a house, particularly to provide shelter for the eight children left behind by her deceased elder sister. However, this marked the beginning of her troubles. Her stepbrothers became hostile, resorting to violence and even placing a caution on the land. They sold portions of the property and vandalized the house she had built. In desperation, she reported the matter to the chief, who assured the Land Registrar that the land would not be sold unlawfully. She produced the search dated 21/8/2018 as PExh 11 and the Chief's letter dated 10/7/2015 as PExh 12. She further testified that she had warned the 3rd and 4th Defendants against purchasing the land and that her mother had written an undertaking concerning the 15-acre purchase from Mr. Ondieki, marked as PMF1 13.
15. Regarding the 3rd and 4th Defendant's involvement with the land, PW1 testified that her mother had sold to them portions of her land. She stated that she asked them to leave, but they refused, prompting her to escalate the dispute to the elders. Dissatisfied with the elders' ruling, she appealed to the High Court, which found the elders' decision ultra vires and affirmed that the parcel Trans-Nzoia/Sinyerere/715 rightfully belonged to her. She presented the court ruling as PExh 14.
16. After this ruling, PW1 testified that the 3rd Defendant moved out but the 4th Defendant refused. In respect of the other Defendants, PW1 testified that she did not know them personally and believed they had acquired the land unlawfully while the legal proceedings herein were still pending. In conclusion, she pleaded with the court to allow her, at nearly 70 years old, to finally enjoy her land in peace.

Defendants' Case

17. On the Defendants' part, DW1, Benson Wafula Ndote, the 1st Defendant, testified. He identified the Plaintiff as his stepsister and adopted his statement dated December 15, 2021, as his evidence-in-chief. He explained that the suit land originally belonged to his father, Zebedayo Ndote Musiro, before being transferred to his mother through succession. According to him, the Plaintiff was the daughter of Eliakim Lwangu and had siblings named Peter, John, and Joyce
18. DW1 asserted that the Plaintiff never purchased the land but only assisted their mother in repaying a loan. He emphasized that there was no agreement proving a sale of land to the Plaintiff, nor any receipt confirming that Kshs 14,000/= had been paid towards the loan settlement. While acknowledging that the loan had been cleared (as indicated in PExh 1), DW1 stated that Dr. Wijnand Feis, the Plaintiff's husband, still owed him Kshs 40,000/=. He maintained that there was no evidence that Wijnand Feis had bought the land. To support his claims, DW1 presented the original title deed in the name of Jeridah Kilesia Ndote as DExh 1, the transfer document from Zebedayo Ndote to Jeridah dated 9th January, 1997, as DExh 2, and the transfer from Jeridah K. Ndote to Sofie Feis Lwangu as DExh 3.
19. Further, DW1 detailed the Succession process of the property known as Trans-Nzoia/Sinyerere/284. According to him, the land was to be divided between their late mother and Fredrick Ondieki, with their mother receiving 26 acres and Ondieki 15.5 acres. He produced the title deed for Trans-Nzoia/Sinyerere/284 as DExh 5.
20. DW1 recalled that Patrick Nyukuri, the 4th Defendant, had placed a caution on the land on November 28, 2000. It was later withdrawn on the date when a title deed was issued. The land was subsequently transferred to the Plaintiff on February 1, 2001. Following this transfer, DW1 lodged a caution on March 21, 2001, asserting his rights as a beneficiary. He produced the caution in evidence as DExh 6.
21. Additionally, DW1 testified that the Power of Attorney dated 21/3/2000 with respect to Trans-Nzoia/Sinyerere/715 neither not paid for nor registered in any government office. He emphasized that the



- document did not authorize the transfer of land to the Plaintiff but was only meant to facilitate the management of the land on behalf of their mother. He presented the Power of Attorney as DExh 7.
22. DW1 further testified that the Plaintiff had previously sued their mother in the High Court, seeking to be declared the rightful owner of the land immediately after transferring it to herself. He produced the Plaintiff in Kitale High Court Civil Case No. 35 of 2004 as DExh 8 and a Defence and Counterclaim filed on 6/4/2004 alleging that the Plaintiff's title was obtained through fraud as DExh 9.
 23. Highlighting the numerous legal disputes involving the Plaintiff, DW1 referenced Kitale High Court Civil Suit No. 132 of 2009, where she sought the eviction of Jane Mwangi Musikhu. He produced the Plaintiff as DExh 10 and the Defense dated 29th November, 2009, as DExh 11. He also referred to a letter dated 4th June, 1982, on Ombio Hospital letterhead, which, according to him, showed that their father had only requested the Plaintiff's assistance in repaying the loan for Trans-Nzoia/Sinyere/284. The letter was signed by his father, the Plaintiff, and their mother. It indicated that the title should be written in the name of DW1's stepson, Jugo Kimutai Feis. He presented this letter as DExh 12.
 24. DW1 testified further that following their mother's passing, he obtained letters of administration, granting him the authority to represent the five initial Defendants in the suit. He produced the Limited Grant dated 3rd October, 2018, as DExh 14, the Authority to Act as DExh 15, and the Verifying Affidavit by John Lwangu dated 7th May, 2012. DW1 stated that two titles existed for the land—one in the Plaintiff's name and another in their mother's name, Jeridah Kilisia. He insisted that it was inconceivable for the Plaintiff to hold the original title while their mother's title was still subsisting. He urged the court to cancel Plaintiff's title to allow the rightful beneficiaries of their mother's Estate to inherit the land. In conclusion, DW1 urged the court to dismiss the Plaintiff's case with costs and allow his counterclaim, asserting that the Plaintiff had fraudulently procured the land transfer.
 25. During cross-examination, DW1 confirmed that he was aware that the 3rd Defendant had purchased 2 acres of land from their mother on 3rd November, 1996, for Kshs 120,000/= and an additional ¼ acre on 30th May, 1998, for Kshs 20,000/=. He also acknowledged that Kabochi had occupied the land for 28 years. When questioned by the 4th Defendant, DW1 stated that the 4th Defendant had purchased a total of 1¾ acres from their mother.
 26. Regarding the 5th to 24th Defendants, DW1 testified that they had lawfully purchased their respective portions of land from him and his mother and were not trespassers.
 27. When cross-examined by the Plaintiff's Advocate, DW1 recounted that in 2001, they discovered that the Plaintiff had been registered as the landowner, yet they continued selling portions of the land, firmly believing their mother still held the title. He stated that their father could not have sold the land and left them destitute. He admitted that he, along with John Lwangu Musoga, Benson Ndote, and Kennedy Amadi Ndote, had consented to the transfer of Trans-Nzoia/Sinyere/715 to the Plaintiff. He also acknowledged that their mother had signed the transfer application and there was no objection from their side. Furthermore, he testified that neither he nor his siblings were listed as beneficiaries in the grant.
 28. Upon further cross-examination, DW1 admitted that when they sold a plot to the 3rd Defendant, there was an ongoing court case regarding the Land Control Board's consent.
 29. Concerning allegations of fraud, DW1 testified that the Plaintiff had misled their mother into signing the transfer before a lawyer, thereby obtaining the land fraudulently.
 30. DW2 was Kennedy Ndote the 2nd Defendant. He stated that the Plaintiff was his stepsister. He reiterated that the suit land belonged to his father and they were born and brought up there. It was



his testimony that when his father died the land was transferred to his mother through Succession proceedings. DW2 further stated that part of the land was eventually sold to the 3rd to 24th Defendants, with the 3rd and 4th Defendants residing on their portions for many years.

31. During cross-examination by the Plaintiff's advocate, DW2 stated that he was not privy to any dealings between his father and the Plaintiff concerning the land. He also acknowledged that he had been arrested in connection with disputes related to the property.
32. DW3, Simon Kabochi Kabui, testified that he had purchased 2 ¼ acres of land from the Plaintiff's mother after verifying that she was the Administrator of the Estate of the late Zebedayo Ndote. He recounted that his first transaction took place on 3rd November, 1996, when he acquired 2 acres for Kshs 120,000/= . Later, on 30th May, 1998, he bought an additional ¼ acre for Kshs 20,000/= . He produced the sale agreements as exhibits 3rd DExh 1(a) and 1(b) respectively.
33. Following the purchase, DW3 he took possession of the land and began cultivating various crops. He asserted that during his entire period of occupation, the Plaintiff's mother never attempted to evict him. Moreover, he stated that the Plaintiff's mother obtained the title to Trans-Nzoia/Sinyerere/715 in which his 2¼ acres was domiciled. However, when he later attempted to formalize the transfer, he discovered that the land had been transferred to the Plaintiff instead. He produced a copy of the initial title deed in the Plaintiff's mother's name as 3rd DExh 2, along with photographs of the developments he had undertaken on the land as Exhibit 3rd DExh 3.
34. DW3 further testified that his ownership had been contested in both the tribunal and the High Court, yet no orders had been issued requiring him to vacate the land. He therefore urged the court to uphold his right to the 2 ¼ acres he had purchased.
35. During cross-examination, DW3 admitted that he had never sought approval from the land control board since acquiring the land.
36. On behalf of the 5th -24th Defendants DW4 was John Achoki Atenga the 5th Defendant. With the authority to testify on his behalf and that of the other 5th–24th Defendants whose cases were similar, he testified that each of the 5th to 24th Defendants was a bona fide purchaser for value of their respective pieces of land. He stated that they bought their land from the portion known as Transnzoia/Sinyerere/715. He maintained that they were not trespassers and bought the land from Jerida Ndote and Benson Ndote, the 1st Defendant.
37. At this point the defence case was closed and parties filed written submissions.

Plaintiff's Submissions

38. The Plaintiff submits that the 4th Defendant did not file a Defence to the suit, rendering her case against him undefended. She further asserts that the applicable law governing this matter is the Registered [Land Act](#), which was in force at the time of the suit land's registration.
39. Having bought the suit land at Kshs 54,000, the Plaintiff submits that her stepfather was wrong in breaking the covenant not to sell the land to third parties without her knowledge.
40. She further submits that her mother and brother lacked the legal capacity to sell the land, as she had already acquired it through a gift from her mother in the year 2000, with the 1st and 2nd Defendants' consent.
41. Regarding the 1st and 2nd Defendants' claim of inheritance rights, the Plaintiff submits that none exist. She asserts that the sale agreements for Kshs 54,000/=, coupled with her mother's subsequent



transfer, perfected the gift. In support, she relies on *Twalib Hatayan & Abdul Wahid Haji Yerrow v Said Sagggar Ahmed Al-Heidy, Munira Said Sagggar, Hania Said Sagggar Al-Heidy, Fahmy Said Sagggar Al-Heidy, About Rogo Mohamed & Fatma Said Sagggar* [2015] KECA 713 (KLR) (pg 7) where the court held:

“However, where a gift can be shown either to have been intended by the donor, or where the donor was under an equitable obligation to pay, then a presumption of advancement is readily made.”

42. She also cited the Court of Appeal in *Ogwara v Mangera & 4 others* [2021] KECA 117 (KLR) (pg 15), which affirmed that a gift is complete once the donee is registered as the proprietor.
43. The Plaintiff further submits that the 2nd and 3rd Defendants cannot claim inheritance rights, as they were neither listed as beneficiaries in the Succession case nor did they seek to revoke the grant. To reinforce this point, she relies on Court of Appeal case of *Josephine Wambui Wanyoike v Margaret Wanjira Kamau & Mercy Njeri Wanyoike* [2013] KECA 443 (KLR), where the court held that a party dissatisfied with the distribution of an Estate can only move the High Court for revocation once the grant is confirmed by a magistrate.
44. Moreover, the Plaintiff submits that, given her initial purchase agreement and the subsequent perfection of the gift by her mother, there was nothing left for the 1st and 2nd Defendants to inherit. She emphasizes that they had even consented to the transfer of the land and are now legally estopped from altering their position. To support this argument, she cites Section 120 of the *Evidence Act* and the case of *John Mburu v Consolidated Bank of Kenya* [2018] KECA 796 (KLR) (PG 31).
45. On the issue of fraud, the Plaintiff submits that the 1st and 2nd Defendants failed to prove any fraudulent conduct on her part. She asserts that they did not present evidence of fraud in the acquisition of the property, contrary to the principle established in *Ogwara v Mangera & 4 others* [2021] KECA 117(KLR), which underscores that particulars of fraud must be specifically pleaded and proven.
46. Regarding the existence of two title certificates, the Plaintiff asserts that the green card identifies her as the registered proprietor. She avows that it was absurd for the 1st and 2nd Defendants to continue selling the land despite knowing they had no valid title. She maintains that their actions amount to fraud, relying on the cases *Arthi Highway Developers Limited v West End Butchery Limited & Others* [2015] KECA 816 (KLR).
47. As for the 3rd and 4th Defendants, the Plaintiff submits that their acquisition of land was illegal. She affirms that their sale agreements were executed at a time when her mother had not yet obtained a certificate of grant. This, she submits, contravenes Sections 55(1) and 82(b)(ii) of the *Law of Succession Act*. She further relies on *Jecinta Wanja Kamau v Rosemary Wanjiru Wanyoike & Another* [2009] KECA 255 (KLR), where the court held that any disposition made before confirmation of grant is unlawful.
48. Additionally, the Plaintiff asserts that the 3rd and 4th Defendants lacked the necessary Land Control Board consent for their transactions. She references *Kitale HC. Misc. Civil Appeal No. 39 of 2000*, which made an adverse finding on this issue. Consequently, she submits that the 3rd and 4th Defendants cannot claim a constructive trust based on a void transaction, citing *David Sironga Ole Tukai v Francis Arap Muge, Kiprotich Arap Kirui & Johannah Kiprono Arap Mosonik (Sued as Chairman, Secretary & Treasurer of Kapkween Farmers Co-operative Society* [2014] KECA 155 (KLR).



49. Regarding the 5th to 24th Defendants, the Plaintiff submits that their claims cannot stand, as they negligently purchased the land without conducting due diligence, despite the existence of a pending suit. She asserts that a simple land search would have revealed that the sellers were not the registered owners. Therefore, she avows that they do not qualify as innocent purchasers for value.

50. In conclusion, the Plaintiff urges the court to allow her claim.

1st and 2nd Defendant's Submissions

51. The 1st and 2nd Defendants submit that the Plaintiff merely assisted their father in repaying the loan and did not actually purchase the land. They contend that it is inconceivable for the Plaintiff to claim ownership, given that it was her husband, Dr. Wijnad Feis, who had dealings with their father, Zebedayo Ndote Musiru. Additionally, they emphasize that the Plaintiff failed to provide any document authorizing her to sue on behalf of Dr. Wijnand Feis.

52. Regarding the transfer of land to the Plaintiff, the 1st and 2nd Defendants submit that the process was illegal. They highlight several irregularities in the transfer documents, including the absence of the transferor's Identity Card Number, the Plaintiff's name appearing where the transferor's should be, the transferor never appearing before an advocate, and the documents being registered a year after attestation.

53. Additionally, they assert that there was no plausible explanation why Jerida Kilisia Ndote's title was not surrendered before a new one was issued to the Plaintiff. They affirm that no Minutes from the Land Control Board or a consent were produced to confirm that the transaction was legitimate. Taken together, they submit that these issues, point to fraud and manipulation.

54. In further challenging the Plaintiff's ownership claim, the 1st and 2nd Defendants submit that it was suspicious she did not object to the Succession proceedings in which the land was allocated to Fredrick Ondieki and their mother-if, indeed, she had an existing interest. They stress that they have lived on the land since birth, whereas the Plaintiff has never resided there.

55. On the issue of damages for trespass, the Defendants submit that there is no evidence proving that the Plaintiff was humiliated by them. As for eviction, they maintain that the land is their ancestral home, and therefore, they cannot be removed from their rightful inheritance. Additionally, they reaffirm that the Plaintiff acquired the land through unlawful means. Consequently, they assert that restoring the Plaintiff to the suit land is untenable, as the land did not originally belong to her.

56. Turning to their counterclaim, the 1st and 2nd Defendants reinforce their position that the land transaction was fraudulent. They point to an unsigned letter dated 9/2/2001, which requested the Plaintiff to return the title deed issued to her. They further argue that it is suspicious that the same registrar signed both their mother's and the Plaintiff's title deed, as well as the transfer documents. Moreover, they contend that the consent was signed by individuals who were not rightful owners of the land and affirm that the ruling in Kitale High Court Misc Application No. 39 of 2002 did not confer ownership rights to any party. To support their position, they cite Lilian Jelimo v Enock Kipkoech Kemboi & Anor Eldoret Civil Appeal No. 61 of 2019.

57. On the matter of the two existing titles, the 1st and 2nd Defendants rely on Estate of Sonrisa Ltd & Another v Samuel Kamau Macharia & 2 others [2020]eKLR in which the court held that the 2nd Appellant's title was irregularly acquired through fraud and the 1st Respondent's title was valid and original.



58. In response to the Plaintiff's assertion that the land was a gift, the 1st and 2nd Defendants submit that this claim was not included in the Plaintiff's pleadings. They assert that parties are bound by their pleadings, and having initially claimed to have purchased the land, the Plaintiff cannot later allege, at the submission stage, that it was a gift. To support this argument, they cite *Wareham t/a Wareham & 2 Others v Kenya Post Office Savings Bank* Civil Appeal No. 5 and 48 of 2002, where the court emphasized that cases are determined based on pleadings and the issues framed by the parties.
59. In conclusion, the 1st and 2nd Defendants urge the court to dismiss the Plaintiff's suit and allow the counterclaim as prayed.

3rd Defendant's Submissions

60. The 3rd Defendant identifies the following issues for determination.
- a. Whether he is a trespasser in the land comprised in title No. Trans Nzoia /Sinyerere/715
 - b. Whether a trust was created in his favour in respect of the 2 ¼ acre piece of land, and the same being part of title No. Trans-Nzoia/Sinyerere/715
 - c. Whether the trust, if created could be defeated by;
 - i. The transfer of the suit land to the Plaintiff
 - ii. By want of the Land Control Board Consent.
 - iii. The decision of the court in Kitale HC Misc Application No. 39 of 2002?
 - d. What would be the appropriate orders
 - e. Who would be condemned to pay costs.
61. Regarding the first issue, the 3rd Defendant submits that his entry onto the portion of the suit land was sanctioned by Jerida Kirisia Ndoté, the administrator of the estate of Zebedayo Ndoté, and the beneficiaries. He maintains that he legally purchased the 2¼ acres, as evidenced by the agreements produced in court. He also references the 1st and 2nd Defendants' testimony during cross-examination, the grant issued in Kitale SPMCC No. 100 of 1994, which transferred 26.5 acres to Jerida, and the issuance of the title to Jerida on 28th November, 2000. Furthermore, he asserts that none of the Estate beneficiaries challenged the sale of the land.
62. He further submits that the Plaintiff's acquisition of Trans Nzoia/ Sinyerere/284 is unsubstantiated. He asserts that the Plaintiff was not a party to the agreement presented as PExh 1. Moreover, he points out that the document bore the name of Wijnand Feis and specified that a lawyer would formalize the transaction, which had not occurred by the time of Zebedayo's death, 10½ years later. Consequently, he asserts that the Plaintiff's claim regarding the purported land purchase was time-barred as of 14th February, 1994.
63. Regarding the second issue, the 3rd Defendant submits that a trust was indeed created in his favour for the 2 ¼ acres. He asserts that once the Plaintiff's mother sold the land to him, received consideration, and granted him possession, a trust was established. He relies on Section 28 of the repealed Registered *Land Act*, the Court of Appeal decision in *George Mbiti Kiebia & Another v Isaya Theuri M'Lintari & Another* [2014] eKLR, which held that equitable, implied, constructive, and resulting trusts apply to registered land under Section 163 of the RLA, and which provides for the application of the common Law of England as modified by Equity. Additionally, he maintains that his purchaser's interest remained intact under the sale agreements, citing *Willy Kimtai Kitilit v Micheal Kibet* [2018]



eKLR, where the receipt of the full purchase price and the purchaser's possession created a constructive trust.

64. The 3rd Defendant further submits that despite the land's transfer to the Plaintiff, the trust in his favor remained intact. He highlights the suspicious nature of the transfer and references David Kamunya Kingori & Another v. Wambui Nderitu & 4 Others [2020] eKLR, where the court, considering Sections 25(2), 27, and 28 of the *Land Registration Act*, canceled five titles and restored the land to the deceased mother for fresh succession, as the plaintiffs had been disinherited.
65. Regarding the absence of Land Control Board consent, the 3rd Defendant cites the Court of Appeal's position that the lack of such consent does not preclude the enforcement of a constructive trust.
66. As for the impact of the decision in Kitale Misc Civil Application No. 39 of 2002 on his interest in the land, the 3rd Defendant submits that it did not affect his rights. He explains that the suit merely restored the parties to their positions before the filing of the case before the Kipsaina Land Dispute Tribunal. He further emphasizes that the court did not determine the parties' substantive rights or issue any adverse orders against him.
67. As for the impact of the decision in Kitale Misc Civil Application No. 39 of 2002 on his interest in the land, the 3rd Defendant asserts that it did not affect his rights. He explains that the suit merely restored the parties to their positions before the filing of the case before the Kipsaina Land Dispute Tribunal. He further emphasizes that the court did not determine the parties' substantive rights or issue any adverse orders against him.
68. Consequently, the 3rd Defendant urges the court to dismiss the claim against him and allow his counterclaim. He, however, asserts that in the unlikely event of the Plaintiff's title being found valid, the court should uphold the trust in his favour and order her to ensure execution of all such documents that would facilitate subdivision and transfer of his land; failure to which the registrar should be empowered to do so.

4th Defendant's Submissions

69. The 4th Defendant submits that in as much as it was not produced in court, a Land Control Board Consent existed approving his transaction with the 2nd Defendant. Additionally, he asserts that the Plaintiff's allegation that he was a negligent purchaser was erroneous, as he purchased the land before this suit was filed.
70. Consequently, he urges the court to dismiss the Plaintiff's claim.

5th to 24th Defendant's Submissions

71. In support of their cases, the 5th to 24th Defendants reaffirm their status as bona fide purchasers for value. They draw attention to the agreements produced, delineating the acreages and the amounts paid. They also assert that they are in possession and utilization of the land and did not collude with the 1st and 2nd Defendant to dispose of portions of the land. In support of their Bonafide purchaser status they rely on the Court of Appeal case of Said v Shume & 2 others (Civil Appeal E050 of 2023) [2024] KECA 866 (KLR) (26 July 2024) (Judgment), where the court in addressing the issue of a bona fide purchaser stated as follows:

“Black's law Dictionary (8th Edition) defines a "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."

In the case of *Dina Management Limited vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), the Supreme Court stated that, for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The Court upheld the dicta in *Samuel Kamere vs Lands Registrar, Kajiado*, (*supra*) and stated that: "... in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property"

This position has recently been reaffirmed by the Supreme Court of Uganda in *Lwanga vs Mubiru and Others* (Civil Appeal 18 of 2022) [2024] UGSC 7, where the court held: "The principle of bona fide purchaser for value without notice is a general defence in any transaction of sale or purchase of any property particularly land. The definition of bona fide purchaser for value without notice is "that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest". Bona fide is a Latin word meaning good faith, without fraud, sincere, genuine. See (Black's Law Dictionary 9th Edn Page 199) A bona fide purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller's title. See (page 1355 Black's Law Dictionary 9th Edn. It is trite law that a person who relies on the defence of bona fide purchaser for value without notice has the burden to prove that he or she acted in good faith. The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice cover both actual and constructive notice of fraud. In the case of *Jones v. Smith* [1841] I Hare 43, the Chancery Court held: "a purchaser has constructive notice of fraud if he had actual notice, that there was some encumbrance and a proper inquiry would have revealed what it was (but if) it abstained either deliberately, carelessly from making those inquiries which a prudent purchaser would have made...then the defence cannot be available to him or her" See *Yakobo M. N Senkungu & Others v. Cresencio Mukasa* Civil Appeal No 17 of 2014."

72. On the strength of these submissions they urge the court to dismiss the Plaintiff's case.

Analysis and Determination

73. After careful analysis of the pleadings, witness testimony, the documents produced as well as the rival submissions the court identifies the following issues the determination of which will comprehensively address the issues raised in this suit:

- a. Whether the Plaintiff has proven beneficial ownership of Trans-Nzoia/Sinyerere/715.
- b. Whether the Plaintiff's ownership of Trans-Nzoia/Sinyerere/715 was obtained fraudulently.
- c. Whether the 1st, 2nd and 3rd Defendants have proven their counterclaims to the required.
- d. Who to bear the costs of the suit and/ or the counterclaims.

a. Whether the Plaintiff has proven beneficial ownership of Trans-Nzoia/Sinyerere/715

74. In staking a claim to the suit land, the Plaintiff pointed to the trust created by the agreement of 14/2/1982, in which Kshs 14,000/= was paid as partial consideration for 27 acres of Trans-Nzoia/



- Sinyerere/284. Additionally, she referenced the letter dated 4/6/1982 in which she made a further payment of Kshs 40,000/= in full settlement of the purchase price.
75. She also asserted that despite renegeing on these agreements and selling portions of the land, her mother, in an apparent attempt to atone for her mistake, gifted her Trans-Nzoia/Sinyerere/715 in honor of the agreements entered into in 1982. The Plaintiff affirmed that this gift and the subsequent transfer were done with the blessings of her brothers, who signed a consent. Thereafter, she obtained the title to the land.
76. In refuting the Plaintiff's ownership, the Defendants generally asserted that the Plaintiff was not a party to the initial agreement of 14/2/1982. They claimed that the money was merely an assistance to Zebedayo to clear the outstanding loan. The 1st and 2nd Defendants also contended that the Plaintiff's title was invalid and that any claim based on the agreements became time-barred on 14/2/1994.
77. From the foregoing, the question that arises is whether the agreements entered into in the year 1982 conferred any beneficial ownership on the Plaintiff. This Court has taken a keen look at the alleged agreement dated 14/2/1982. It is between Zebedayo Ndote and Dr. Wijnand Feis, the Plaintiff's husband. It states that Dr. Wijnand is buying 27 acres of land for his children, Hugo and Nicky Feis, at a rate of Kshs 2,000/= per acre after making an initial payment of Kshs 14,000/= to settle the loan to the government. The agreement further states that the agreement was reached through the Plaintiff. It provides further that it is not an agreement by itself, but that an agreement would "be finalized through a lawyer to be introduced to" Zebedayo Ndote, the signatory of the document.
78. Interpreted properly, the document means it was one in anticipation of both the payment of the loan of KShs 14,000/= to the Government. It provides at the opening paragraph that the said Mr. Zebedayo Musiru Ndote (would) "agree to the payment of the loan to the Government...". The payment of the loan was a future event. Was the payment made? The Plaintiff stated orally only that it was made. Payment of the loan could be evidenced by bank statements or statements of account from or receipts issued by the S.F.T. in favour of the buyer (Dr. Wijnand) to confirm it. The Plaintiff never produced any.
79. Lastly, the document itself acknowledged that it was not the real agreement. An agreement was to be reached at a later stage. Thus, in the absence of an agreement restating the terms of the document and reducing them into an agreement, it was not an agreement for the purchase of land.
80. I have also reviewed the follow-up 'agreement' dated 4/6/1982, ostensibly in settlement of the Kshs 40,000/= by the Plaintiff. In this letter, Zebedayo Ndote appears to be asking the Plaintiff for assistance in paying off the loan. Additionally, Zebedayo Ndote undertakes to write the title of the land in the name of the Plaintiff's son so as not to sell the land. It is clear to me that the document plainly interpreted renders that meaning that Mr. Zebedayo Ndote asked for a loan from Sofie Feis, the daughter, and undertook to repay the same by agreeing to "share the profits of the land with master Hugo Feis for the expenses incurred".
81. The consequence of failure to honour the undertaking as per the letter would "result in my immediate payment of 40,000/= as a refund of the expenses incurred." It was clear that the KShs 40,000/= was not a sum paid by Sofie Feis but a penalty to be incurred in default of honouring the "sharing of the profits of the land with" his grandson. It is clear from the document that the loan was not for the sale of land, but the land was to act as a security' until the sharing of the profits was fulfilled. The Plaintiff did not adduce evidence that she gave Mr. Zebedayo Ndote the loan that was sought.



82. Also, the Plaintiff did not adduce any evidence to the effect that the profits were not shared with her son, Mr. Hugo Feis, if at all, she disbursed the loan to the father. Lastly, it does not refer to the earlier KShs 40,000/= stated in the document dated 14/02/1982.
83. In any event properly interpreted, the KShs 40,000/= referred in the document dated 14/02/1982 was a sum Mr. Zebedayo Ndote indicated “he will owe me”, that is to say, Dr. Wijnand Feis would, after payment of the loan of KShs 14,000/= in relation to buying half of the land for the sons at KShs 2,000/ per acre, owe the father-in-law. That means the sum of KShs 2,000/= for 13.5 acres being half of the 27 acres of mzee Ndote would yield a total of KShs 27,000/= payable in total but over and above paying the KShs 14,000/= to offset the loan and be a set-off of the KShs 27,000/= to leave a balance of KShs 13,000/= payable to Mzee Ndote there still would be a balance of KShs 27,000/= to be added to the balance to make KShs 40,000/= payable to him.
84. In my view, these letters do not amount to valid agreements for the disposal of land, as alleged by the Plaintiff. First, the Plaintiff was not a party to the initial agreement of 14/2/1982. Her only role appears to have been that of a conduit and a witness. As rightly pointed out by the 1st and 2nd Defendants in their evidence and submissions, the Plaintiff has not provided evidence that she had the authority to act on behalf of her husband. The Plaintiff’s husband neither testified to support the Plaintiff’s assertion that she bought the land from her father nor signed any Power of Attorney in favour of Sofie to sue for and on his behalf for the land or enforce the transaction which in any event was unenforceable for want of formality and being time-barred, or did he any document to show that if he had indeed bought the land he gave it as a gift to his wife now the Plaintiff. Moreover, the tenure of the land was absolute and it was doubtful, under the repealed Constitution, under whose dispensation the land was purported to have been bought, how a non-citizen would own land of that nature in Kenya at the time. Whereas it may have been, according to the Plaintiff, the intention of acquiring the land for her children, that never took place or came to fruition.
85. As for the second letter dated 4/6/1982, the court finds it vague and not amounting to a sale agreement. It does not indicate whether it is a follow-up to the initial agreement of 14/2/1982. The letter only appears to elicit some assurances from Zebedayo Ndote Musiru, by which he undertakes not to sell the land, to put the title in the name of the Plaintiff’s son in order not to sell it, and to share the profits of the land. Additionally, the land in question is not described. It is doubtful whether or not it is related to the land in question. Even then, it is not an agreement for either a sale or payment.
86. In any event, even if the two documents ever passed out for agreements of sale, which they do not, the Plaintiff never concluded them. She also did not take possession of the land pursuant thereto as to create a constructive trust as the law requires where agreements of such nature come into play. What I mean is that the documents alone could not create proprietary estoppel. The Plaintiff, according to her own testimony, moved to take possession of the land after over 24 years of separation with the mother when she came and found her destitute but the attempt was resisted by the step brothers. By then, the agreements had long become stale.
87. Further, if indeed she (or even the husband) bought the land from their father, they could not recover the land from the Defendants who had been on the land, without their permission, for a period of over twelve (12) years. This is by virtue of Section 7 of the *Limitation of Actions Act*, which works against any such time-barred claims. It provides that,

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”



88. This court, therefore, finds that there is nothing of content in the purported agreements of 1982 that confer a beneficial interest in the land on the Plaintiff. Even if the land was sold by the father to the Plaintiff (or her husband, Dr. Wijnand Feis for that matter), it was not transferred to her (or him or even the son referred to in the second letter); hence, it remained the property of the late Zebedayo Ndote. It remained the property of his Estate after he died. In any case, the Plaintiff has not provided any reasons for failing to assert her property rights in two Succession proceedings: being those of Zebedayo Ndote and Jerida Ndote. If she had indeed acquired the property before the deaths of both Zebedayo Ndote and Jerida Ndote, the proper way to assert her rights would have been through Succession proceedings as a beneficiary of their estates.
89. Having found that the Plaintiff did not acquire the land through the agreements of 1982, the remaining issue is whether the Plaintiff was gifted the land. In her Further Amended Complaint, the Plaintiff stated that she was gifted the land in honor of the agreements entered into in 1982. Additionally, she contended that the gifting was done with the knowledge and approval of the 1st and 2nd Defendants. To support this position, the Plaintiff produced a consent dated 6th May 2000.
90. The one million-dollar question the Plaintiff did not answer through evidence, since under Section 107 of the Evidence Act he/she who alleges proves is how it could be, if she had bought the land, that it (her own land) could again be gifted to her? The proper position is that it was either she bought the land and it was hers as of right, hence it needed to be transferred to her by way of purchase, or she did not buy it, hence it was owned by the party whom she claimed gifted it to her, that is the mother. But even then, the mother was only an Administrator of the Estate of the late Zebedayo Ndote. Could she legally gift the land to the Plaintiff to the exclusion of all the beneficiaries of the Estate of the said deceased person? The simple, straight answer is No. In terms of the Law of Succession, the Administrator ought to have distributed the estate in accordance with the terms of the Grant after Confirmation. If she could have attempted to gift the land contrary to the terms of the Grant, it was illegal and could not amount to a proper gift that this Court can recognize and give effect. Further, how could it be that the person giving the land as a gift to her could not surrender the title to the lands office for destruction and issuance of a new one as the law requires? Even with that alone, this Court is not prepared to agree with the Plaintiff's claims about a gift.
91. Again, who was giving the land to her as a gift? Was it the mother, the Administrator of the Estate of Zebedayo Ndote, or the Estate? If it was the Estate, were all the beneficiaries involved in the process? How is it that only three brothers signed the consent, as per P. Exhibit 3, to transfer the land? Where was the mother's or the Administrator's signature? And where are the signatures of all the other beneficiaries? The Plaintiff's own evidence was that the family of her mother (consisting of two sets of step-children) consisted of six siblings, of which two were from her biological father and four from the stepfather. Could a document not signed by all the beneficiaries of the Estate confer rights of transfer of the same to one person? This Court holds that it could not, hence if the PExh. 3 was the one that the Plaintiff based to transfer the suit land to herself, it was insufficient and fraudulent to the extent of excluding other beneficiaries of the Estate of the late Zebedayo Ndote.
92. Be that as it may, and in addition, land parcel No. Trans-Nzoia/Sinyerere/715 was registered in the name of Jerida Kilisia Ndote on 28th November 2000. Prior to the enactment of the Land Registration Act and the Land Act, the substantive statutory framework governing the title was the Transfer of Property Act of 1882. Sections 122 and 123 of the Transfer of Property Act 1882 had the provisions as follows on the gifting of land:
- “ 122. “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to



another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.”

93. From the foregoing provisions, it is evident that a gift must be accepted and the transfer effected by a registered instrument signed by the donor and attested by witnesses. In this case, no evidence of acceptance has been provided. However, the Plaintiff has presented evidence in the form of a consent in which the 1st and 2nd Defendants indicate that they have no objection to the property being transferred to the Plaintiff.
94. This court finds that the Plaintiff did not present any or sufficient evidence proving that she was gifted the suit land. In her testimony, the Plaintiff stated that her mother transferred the land to her because she had bought it. That could not be a gift. Furthermore, regarding the consent dated 6th May 2000, she testified that it pertained to reclaiming 15 acres from Mr. Ondieki. Based on the evidence presented to the court, it is clear that the mandatory formal requirements relating to the gifting of land were not met. In any event, the land sought to be reclaimed was not the one ultimately transferred to her.
95. Further, the Plaintiff claimed that the mother had the power to transfer the parcel No. trans Nzoia/Sinyerere/715 to her by virtue of being an Administrator of the Estate of the late Zebedayo Ndote, the father of the Plaintiff, and some of the defendants. This was profusely refuted by the 1st to 2nd defendants. The Defendants argued that the Grant was limited only to a certain purpose. It was not for the transfer of the land.
96. This Court has carefully examined the Grant held by the mother, Jerida Ndote, before she passed away. It was produced by PExh 5. It does not in any way authorize the transfer alleged by the Plaintiff in the manner she alleges or otherwise.
97. In any event, the Power of Attorney, D. Exhibit 7, which the Plaintiff claimed was given by her mother and empowered her to transfer the land parcel No. 715 to her, fell short of a Power of Attorney properly so called. First, it was not registered in accordance with the *Registration of Documents Act* in order to be legally proper or recognized. Secondly, from the face of it the signature of the donor, that is, the mother Jeridah, differed materially from the signatures of the said person as appearing on documents P.Exhibit 1 and P.Exhibit 2, which the Plaintiff produced in support of her case. This points to a forgery of the mother’s signature. Additionally, the Power did not authorize the transfer of the land to the Plaintiff. If it would pass to be a proper Power of Attorney, then it was a General Power of Attorney given to the donee “to transact all my affairs in “Sinyere 715” and execute such deeds or instruments as may be necessary, or most to my advantage...”.
98. The document does not refer to transactions of the transfer of the land of the donor. Also, it was to be used to the most advantage of the donor: transfer to the Plaintiff to the exclusion of the beneficiaries for whom she held the land in trust as an administrator is not to the donor’s advantage. Lastly, the “thing” or “item” referred to as Sinyere 715 is not the same as land parcel No. Trans Nzoia/Sinyerere/715. It can never be the same.
99. In my humble view, the Plaintiff used the highest form of misrepresentation and trickery to have the consent signed and applied to fraudulently transfer the suit land to herself.



b. Whether the Plaintiff's ownership of Transzoia/ Sinyerere/715 was obtained fraudulently

100. In addition to the above finding, turning now specifically to the second issue, it is not in dispute that there exist two titles to Trans-Nzoia/Sinyerere/715. One is in the name of the Plaintiff and the other in the name of her mother, Jerida Kilisia Ndote. The Plaintiff asserted that she rightfully acquired the property by way of transfer from her mother. The 1st and 2nd Defendants asserted that she acquired it fraudulently.
101. In support of her acquisition, the Plaintiff produced a transfer dated 21/3/2000, the original title, the application for consent to the Land control board dated 18/4/2000, the Land Control Board Consent also dated 18/4/2000.
102. In impugning the transfer process the 1st and 2nd Defendants stated that the transfer document did not detail the Identity Card Number of the Transferor, and the Plaintiff's name appeared in the place designated for the transferor indicating that Jerida Kilisia Ndote did not appear before the advocates chamber for purposes of signing the transfer. Moreover, they asserted that it was inconceivable the Plaintiff could be issued with a title without surrender of the initial title.
103. As regards fraud it is trite law that it must be specifically pleaded and proven. This was the holding of the court in *Vijay Morjaria v Morjaria v Madhusingh Dhabar & Another* [2000]eKLR, where it was stated:
- “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.”
104. I have taken a keen look at the transfer dated 21/3/2000. It is evident that the transferor's Identity card number is not captured therein. Additionally, the Plaintiff's name is written on the spot designated for both the transferor and the transferee, raising questions as to whether Jerida really signed it.
105. Whether this was a typographical error or not is still a mystery. The testimony of the advocate who certified or the land registrar who registered the transfer would have been helpful in shedding light on this issue. In any event, the transferee (who finally became the owner) could not be a transferor. That was a totally defective instrument of transfer and could not confer a good title.
106. The issue of two titles existing over the same property is not contemplated in law. In such instances, the court is behooved to investigate the root of each of the titles to ascertain which one is valid. In support of this position, I share the sentiments of Munyao J in *Hubert L Martin & 2 others v Margaret J Kamar & 5 others* [2016] eKLR in the following terms:
- “A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. 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.”
107. Applying the above standard to this case it is not in dispute that Jerida Ndote acquired her title by transmission through Succession. What is contentious is how the Plaintiff acquired her title. Jerida Ndote's and the Plaintiff's title were issued 23/10/1997 and 1/2/2001 respectively. It is trite law that



a person named as a proprietor of land in a deed will not be protected by law if the certificate was obtained by fraud or misrepresentation.

108. As indicated earlier, the transfer document filed by the Plaintiff raises many fundamental questions. Land transfer forms require the identification numbers (e.g., National ID, KRA PIN) of both the transferor (seller) and the transferee (buyer) for legal and administrative purposes. In this case the identification number of Jerida Ndote the transferor is missing. A missing identification number raises question on the legitimacy of the transaction. . Someone else's name appears in her stead or place. Additionally, no reasons were advanced as to why it took over a year to register the land after attestation by both the transferor and the transferee. There must have been something fishy about the transaction or conveyance.
109. In light of the unexplained discrepancies in the transfer documents, especially the fact that the transferee's name appears on the place designated for the transferor, it is doubtful that the transferor attested to it. It is unlikely this could also be a typographical error that flew over the heads of both the certifying advocate and the land registrar. The Court of Appeal of Uganda held in *Katende -vs - Haridas and Company Limited* (2008) EA 173 that:

“For a party to plead fraud in registration of land a party must first prove fraud was attributed to the transferee. It must attribute either directly or by necessary implications that is, the transferee must be guilty of some fraudulent act or must have known such act by someone else and taken advantage of such act. Fraud can be participatory that is, the party participates in the fraudulent dealings. Fraud can also be imputed on a person, that is, when he or she was aware of the fraud and condoned it, or benefited from it or used it to deprive another person of his rights. All those people who actually participate in the fraudulent transactions and who had knowledge of it are privy and had notice of fraud.”

110. In view of the circumstances in this case the court returns the finding that the Plaintiff's title was obtained through either fraud or misrepresentation or both. She never bought the land. Neither did her husband who was said to have entered into the purported 1982 'agreements'. Consequently, her suit is dismissed in its entirety.

(c) Whether the 1st, 2nd and 3rd Defendants have proven their Counterclaims.

111. The 1st and 2nd Defendants sought for the cancellation of the Plaintiff's registration as the owner of Trans-Nzoia/Sinyerere/715 and for rectification of the register accordingly. They also sought for the land to be registered in the name of Jeridah Kilisa Ndote.
112. Having found that the Plaintiff's title was incorrectly acquired, I allow the 1st and 2nd Defendants' counterclaim as prayed. The Plaintiff's title held in her name as the owner of land parcel No. Trans-Nzoia/Sinyerere/715 is cancelled forthwith. It is of no avail. The Land Registrar is directed to cancel her registration as owner thereof and the land to revert to the Estate of Jeridah Kilisa Ndote.
113. With regard to the 3rd Defendant, he is at liberty to pursue his claim from the Estate of the late Jerida Kilisa Ndote or the original owner of the suit land, as the case may be.
114. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 24TH DAY OF MARCH 2025.

HON. DR. IUR F. NYAGAKA



JUDGE

In the presence of:

Mrs. Odhiambo Advocate for the Plaintiff

Mrs Munialo Advocate for the 1st and 2nd Defendants

Mr. P. Kiarie Advocate for the 4th Defendant

4th Defendant in person (absent)

Mrs. Arunga Advocate for the 5th- 24th Defendants

