



**Ndini v District Land Registrar Machakos & 3 others (Environment & Land Case 279 of 2010) [2023] KEELC 17609 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17609 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 279 OF 2010**

**CA OCHIENG, J**

**MAY 31, 2023**

**BETWEEN**

**MOSES KYALO NDINI ..... PLAINTIFF**

**AND**

**DISTRICT LAND REGISTRAR MACHAKOS ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**LOIS JOHN KILONZO ..... 3<sup>RD</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Through a Plaintiff dated the 15<sup>th</sup> December, 2010 and amended on 7<sup>th</sup> day of March, 2019, the Plaintiff sought the following orders against the Defendants:-
  - a. An order of this Honourable Court to remove the restriction on land parcels number Muputi/Kiima-Kimwe/1861.
  - b. A declaration that the Plaintiff is the bona fide owner of land parcels number Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861
  - c. A declaration that the title held by the 3<sup>rd</sup> Defendant in respect of parcel numbers Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861 are invalid, null and the 4<sup>th</sup> Defendant ought to cancel the same forthwith.
  - d. A permanent injunction restraining the 3<sup>rd</sup> Defendant, her servant and or agents from alienating, dealing and or disposing off or interfering in any way with land parcel numbers Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861.
  - e. Costs of the suit and interest.



2. The initial Plaintiff, Rhoda Ndini, passed on in 2013 during the pendency of the suit and the administrator of her Estate, Moses Kyalo, obtained leave to substitute her and reinstate the suit which had been marked as abated vide a court order issued on 21<sup>st</sup> May, 2018.
3. The 3<sup>rd</sup> Defendant filed her Statement of Defence on 8<sup>th</sup> February, 2011 where she denied the averments in the Plaint especially on the allegations of fraud and stated that the Plaintiff transferred the parcels of land known as Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861 hereinafter referred to as the 'suit lands', to her as a gift. She explained that around March, 2002, the Plaintiff had invited her to the offices of her advocates Messrs L.M. Wambua & Co. Advocates where she paid for transfer fees, stamp duty and legal fees and signed all the relevant documents. She stated that the Plaintiff only changed her mind recently and feigned ignorance of the transfer to mislead the court. She averred that the Plaintiff had in 2005, in full knowledge of the previous transfer, made another Will bequeathing the rest of her property to the 3<sup>rd</sup> Defendant.
4. The 3<sup>rd</sup> Defendant in the suit, Lois Kilonzo, later filed a suit against the said Moses Kyalo (administrator of the Plaintiff's estate) on 11<sup>th</sup> June 2013, being Machakos ELC No. 24 of 2013 where she sought for injunctive orders against him, seeking to stop him from collecting rents from the suit property and to vacate from the unit on which he resides. She further sought for a determination of the boundary between Muputi/ Muputi/Kiima-Kimwe/1861 and Kiima-Kimwe/3388, claiming that Moses had changed that boundary and had already sold parcel number Muputi/Kiima-Kimwe/1861.
5. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a joint Statement of Defence dated the 28<sup>th</sup> February, 2011 through the Attorney General but they did not participate any further in the matter nor tendered any evidence in support of their case.
6. This suit had abated but was reinstated on 28<sup>th</sup> February, 2019. Further, on 25<sup>th</sup> November, 2020, the Judge directed that the instant case which is related to ELC No. 24 of 2013 was to be scheduled for hearing first. The matter proceeded for hearing where the Plaintiff called two witnesses while the Defendant had three witnesses.

### **Evidence by the Plaintiff**

7. PW1 was the late Rhoda Ndini Nzioka, the Plaintiff, who testified on 31<sup>st</sup> October, 2012. She testified that she did not know how the suit lands were transferred from her name to the name of Louis John Kilonzo, her sister. She confirmed that she had taken the titles to her advocate L.M. Wambua for safe keeping in 2001 because she was very sick and did not have a child. It was her testimony that after she left the hospital, she had gone to the Advocate to seek for the titles but the Advocate only gave her two titles instead of four. Further, she was informed that her sister had taken the other two titles. She further testified that the Advocate later gave her another title in the name of Lois Kilonzo, which was of no use to her and necessitated her to file this suit. She denied transferring the parcels of land to her sister as a gift nor signing any consent to transfer them. She explained that she conducted a search which confirmed that LR. No. Muputi/Kiima-Kimwe/1861 was registered in the name of Lois Kilonzo. It was her testimony that while at the hospital, she was given some documents to sign but she did not know they were transfer documents. She further confirmed she had written a Will with her advocate but that the property was not to be transferred while she was still alive. She reiterated that she did not know how her sister came to be in possession of her Will and that the two parcels in dispute had buildings from which she collected rent. It was her further testimony that her sister had her own plots which borders hers. She further denied making a written document before the Chief bequeathing her sister the parcels of land but admits mentioning to the Chief that in case of her demise, her sister would succeed her. She did not know who reduced the same into writing. She confirmed that Benson Mulei



was the son of Lois Kilonzo and Geoffrey Wambua was her nephew and that the two were not present when she spoke to the Chief.

8. Upon cross-examination, she confirmed that she did not put anything in writing at the Chief's office and that she was only with Lois. She further confirmed that she did not have any biological children. She confirmed writing a Will and bequeathing her assets to Lois. She denied paying the advocate Kshs. 12,000 for preparing the Will and stated that she did not execute any document for transfer or pay stamp duty. She clarified that the plots were in Eastleigh Machakos and she is the one who developed them. She emotionally reacted when the advocate put it to her that she did not own any plots in Eastleigh and stated that she did not know how the Registrar changed the title.
9. Upon re-examination, she stated that her titles were not lost, she took them to the lawyer and she does not know how her sister's lawyer came to be in possession of the original Will.
10. PW2 Moses Kyalo Ndini testified that the late Plaintiff died on 19<sup>th</sup> April 2013 and he had applied for Letters of Administration Intestate in respect to her Estate. He confirmed that it was the Plaintiff's position that the suit properties were fraudulently transferred and that she had written a letter to the 1<sup>st</sup> Defendant to remove the restriction on the two suit lands but the restriction had not been removed. Further, a search indicated that the parcels were registered in the 3<sup>rd</sup> Defendant's name. He testified that the 4<sup>th</sup> Defendant had refused to cancel the title held by the 3<sup>rd</sup> Defendant, leading to filing of this suit.
11. Upon cross-examination, he confirmed that the Plaintiff was hospitalized severally between 2000-2004 and that it is not true that the 3<sup>rd</sup> Defendant took care of her. He stated that the deceased adopted him in the year 2005 but did not have the adoption proceedings with him. He confirmed that the suit lands were registered in the name of Lois Kilonzo in 2002 and that he did not know whether the 3<sup>rd</sup> Defendant had been charged with fraud. The Plaintiff produced the following documents as exhibits: Copy of the title in the name of Lois Kilonzo; Copies of Certificates of Official Search; Death Certificate in respect of Rhodah Ndini Nzioka; Grant of Letters of Administration Intestate in Succession Case No. 420 of 2013; Judgment in Succession Cause No. 420 of 2018; Proceedings in Machakos High Court ELC No. 279 of 2010; last Will of Rhoda Ndini Nzioka dated 28<sup>th</sup> May, 2010.

### **Evidence by the Defence**

12. DW1 Lois John Kilonzo adopted her Witness Statement dated the 17<sup>th</sup> September, 2012 as her evidence in chief. She testified that the deceased Plaintiff was her sister and that she had been taking care of her for over 30 years. She stated that the Plaintiff had in 2001 gifted her several properties including: Plot No. Muputi/Kiima-Kimwe/59; Plot No. Muputi/Kiima-Kimwe/1861; Plot No. Muputi/Kiima-Kimwe/1814; A Peugeot 204 Registration No. KUS 083; Membership No. 1408 of Konza Ranching and forming Cooperative Society of P.O. Box 204 Machakos and Everything (Riches and property).
13. It was her testimony that on 19<sup>th</sup> March 2002, the Plaintiff had engaged professional services of L.M. Wambua Advocates with a view of concretizing the gifts vide a Will and that she had paid for the amounts tabulated to facilitate the transfer. She further testified that the Plaintiff had voluntarily surrendered the original titles and a copy of her KRA PIN. She was not aware that the Plaintiff had allegedly made another Will nullifying the one she had done in 2005, in favour of her adopted son Moses Kyalo.
14. Upon cross-examination, she stated that she had seen the Plaintiff sign the transfer documents at the Advocates' office. She confirmed that the Advocates did everything and the Plaintiff paid for the transactions. She further stated that she did not know if her sister had revoked the original Will. She also confirmed that she had returned the titles to the advocates.



15. Upon re-examination, she confirmed that she was gifted by Rhoda and that she did not engage in any fraud.
16. DW2 Geoffrey Mulumba, a retired Chief stated that the late Rhoda Ndini had come to his office on 28<sup>th</sup> March, 2001 accompanied by her sister Lois Kilonzo and told him that upon her death, her property should be given to her sister Lois Kilonzo. He confirmed to have written the letter dated the 28<sup>th</sup> March, 2001 and the same was stamped by Rhoda Ndini, of which he gave the original to Rhoda and a copy to Lois Kilonzo.
17. Upon cross-examination, he stated that he is the one who wrote the letter dated the 28<sup>th</sup> March, 2001. He also stated that he did not know that the suit lands had already been transferred to the 3<sup>rd</sup> Defendant in 2002.
18. DW3 L.M. Wambua Advocate confirmed that the Plaintiff was their Client and produced receipts they issued to her from their office as exhibits. It was his testimony that Rhoda paid for facilitating the transfer of the two suit lands from her name to the 3<sup>rd</sup> Defendant. He could not recall the person who collected the Certificates of Title from his office. It was his testimony that by the time the late Rhoda came to his office, she had just separated from her husband Andrew Ndeti and was afraid he would force her to transfer the titles to him and so she had requested that they be transferred to her sister's name to hold the same in trust for her.
19. Upon cross-examination, he stated that the amount paid by Rhoda to his office was for payment of stamp duty, registration and processing of the Title Deeds but the titles were not mentioned. He also confirmed that he did not know how Lois Kilonzo came into possession of the receipts. He clarified that the Will dated the 1<sup>st</sup> February, 2005 was transcribed by Geoffrey James and that the last Will dated the 25<sup>th</sup> May, 2010 was signed by the late Rhoda. DW3 further confirmed that in the last Will, the two suit lands did feature and that the same were bequeathed to Moses Kyalo. He could not recall Rhoda signing the transfer documents and was not aware if she appeared before the Land Control Board. It was his further testimony that the late Rhoda and Lois were his friends, and that the late Rhoda had later told him that Lois had refused to give her back the title documents but he declined to handle the case for her. He claimed to have held discussions with both Rhoda and Lois where they had agreed that Lois would retain land parcel number Muputi/Kiima-Kimwe/59 but transfer back to Rhoda, Muputi/Kiima-Kimwe/1861. He stated that it was following this discussion that he wrote the letter dated 7<sup>th</sup> June, 2010.
20. Upon re-examination, he confirmed that the said Lois Kilonzo was to hold the titles in trust for Rhoda, but he did not know if the trust appeared on the title. He clarified that he had drawn the Will dated the 25<sup>th</sup> May, 2010 and that the same included the two disputed parcels of land.
21. The Defendant produced the following documents as exhibits: Original Title Deeds over the suit properties, a letter from Nairobi Heart Clinic dated 11<sup>th</sup> August 1997, receipts, and a pre-wedding card for one Moses Kyalo.

## **Submissions**

### **Submissions by the Plaintiff**

22. The Plaintiff in his submissions insists that transfer of Plot No. Muputi/Kiima-Kimwe/59 and Plot No. Muputi/Kiima-Kimwe/1861 was fraudulently done in favour of the 3<sup>rd</sup> Defendant. He argued that the alleged transfer was effected on 11<sup>th</sup> April, 2002 whereas the Will produced by the 3<sup>rd</sup> Defendant was dated 3<sup>rd</sup> February, 2005, hence the claim that the transfer was done in furtherance of Rhoda's Will



could not hold water. He contended that even if the parcels were given to Lois as a gift, the transfer forms were not signed by Rhoda to show the gift or lack of consideration thereof. Further, as per the Chief's letter dated the 28<sup>th</sup> March, 2001, the property would belong to Lois upon the demise of Rhoda. He stated that the last will of Rhoda as confirmed by L.M. Wambua Advocates was dated 28<sup>th</sup> May, 2010 and that in the Will, Rhoda bequeathed her Estate to Moses Kyalo. He insisted that the transfer of the suit lands to the 3<sup>rd</sup> Defendant was not proper as there was no evidence to demonstrate that Rhoda actually signed the transfer forms in favour of Lois. To support his averments, he relied on Section 107 of the *Evidence Act* as well as the following decisions: *Arthi Highway Developers Limited V West End Butchery Limited & 6 others* (2015) eKLR; *Ndolo v Ndolo* (2008) 1KLR 742; *Karuri v Gituru* [1981] KLR 247; *Kariuki v Kariuki* (1983) 225; *Dishon Muchene Mwangi V Hafuswa Bakari* (2012) eKLR; *Moses Kamande Nyambura V Francis Munyua Ngugi* (2018) eKLR; *Joseph Kiprotich Bor v Tabutany Chepkoech Chebusit* (2021) eKLR; *Munyu Maina v Hiram Gathaha Maina* [2013] eKLR; *David Wabome Gitonga (Suing as the legal Representative of the Estate of the late Lucy Nyokabi Kiarie) v Mary Nyakio Kanini & 3 Others* (2020) eKLR; *Francis Raphael Ambeko v Anjeline Moraa Amukoye* (2021) eKLR; *Alphonse Mwambo Sanga v Tebid Holding & 2 Others* (2021) eKLR and *Nelly Chelimo Matelong v Grace Cherono Matelong* [2019] eKLR.

### Submissions by the Defendant

23. The 3<sup>rd</sup> Defendant in her submissions insisted that she had been called to the Chief's office and issued with a copy of the letter wherein Rhoda had gifted her the suit lands and that she had attended a meeting at the firm of L.M. Wambua Advocates together with Rhoda on 20<sup>th</sup> March 2002 wherein they did sign the transfer forms. She argued that even though the Plaintiff had denied the same, she had actually signed the transfer forms. Further, that the properties had to be registered in her name to safeguard her interests as the new owner of the parcels. She contended that the suit lands were gifted to her as gifts *intervivos* which were awarded during the lifetime of a person and they were completed by issuance of some sort of deed or instrument in writing. She reiterated that the Plaintiff ceased to be the owner of the suit lands after the transfer. To support her arguments, she relied on Section 24 of the *Land Registration Act* as well as the case of Godana Guyo Milimani HCC No. 15 of 2018.

### Analysis and Determination

24. I have considered the Plaintiff's Defence, Testimonies of the Witnesses and Exhibits and the following are the issues for determination:- Whether the 3<sup>rd</sup> Defendant legally acquired land parcel numbers Muputi/Kiima-Kimwe/59 and Muputi/Kiima-Kimwe/1861. Whether the Plaintiff is entitled to the orders as sought in the Plaintiff's application.
25. It is not in dispute that the Plaintiff obtained Letters of Administration Intestate in respect to the Estate of the late Rhoda Ndini who was the original owner of the suit lands. It is also not disputed that by the time of her demise, the suit lands were already registered in the name of the 3<sup>rd</sup> Defendant. The late Plaintiff had sought for cancellation of the titles in the names of the 3<sup>rd</sup> Defendant claiming she obtained them fraudulently. The 3<sup>rd</sup> Defendant insisted that the deceased had bequeathed her the properties during her lifetime and she even obtained titles to that effect. I note from the Certificates of Title presented in Court, the 3<sup>rd</sup> Defendant was registered as the proprietor of the two parcels of land in 2002. PW1 in her testimony confirmed that she had taken the titles to her advocate L.M. Wambua, for safe keeping in 2001 because she was very sick but after she left the hospital, the Advocate only gave her two titles instead of four. Further, she was informed that her sister had taken the other two titles. It was her further testimony that the Advocate later gave her another title in the name of Lois Kilonzo, which was of no use to her. She denied transferring the parcels of land to her sister as a gift nor signing any consent to transfer to that effect. She testified that she did not bequeath the parcels of land to her



sister but while at the hospital, she was given some documents to sign but she did not know they were transfer documents. She admitted that she told the local Chief that in case of her demise, she wanted her properties to be inherited by her sister but the same was not reduced in writing. PW2 who was the administrator to the deceased Estate confirmed he was adopted by Rhodah in 2005 but did not provide any proceedings to that effect. Further, that the 3<sup>rd</sup> Defendant fraudulently got registered as owner of the suit lands. DW1 in her testimony contended that she was gifted the suit lands and obtained titles to the same before the sister wrote a Will on 1<sup>st</sup> February 2005. Further, that the sister bequeathed her the two parcels of land between 2001 to 2002. She insisted that it is the deceased who paid the legal fees at the lawyer L.M. Wambua Advocates. Further, that she saw her signing transfer forms at the Advocates Offices. She confirmed they never went to the Land Control Board but it is Wambua Advocate who undertook the transaction on their behalf but Rhoda paid for the same. She explained that she returned the title for Muputi/Kiima-Kimwe/1861 to Rhoda in the presence of her lawyer. She still had title for Muputi/Kiima-Kimwe/59. She explained that the titles are dated 11<sup>th</sup> April, 2002. Further, that she got her titles when Rhoda was alive and was present when Rhodah paid for stamp duty. She insisted that Moses Kyalo got the said properties after she has already been given the parcels of land. She reiterated that it is Rhodah who effected the transfer of the suit lands in her name. DW2 in his testimony confirmed that on 28<sup>th</sup> March, 2001, Rhoda and Lois came to his office when he was Chief where Rhoda told him that in case of her demise she wanted all her properties given to the 3<sup>rd</sup> Defendant. He then wrote a letter dated the 28<sup>th</sup> March, 2001 to that effect.

26. DW3 confirmed Rhoda Ndini Nzioka was his client. He confirmed she paid Kshs. 64,750 on 26<sup>th</sup> March, 2002 in respect to facilitating a transfer for Muputi/Kiima-Kimwe/59 and 1861 in the name of the 3<sup>rd</sup> Defendant. Further, Rhoda paid him Kshs. 12,000 as professional fees. He confirmed completing the transaction and transferring the two parcels of land to the 3<sup>rd</sup> Defendant. He explained that in the first Will, Rhoda thumb printed because she was unwell while she signed the second Will. He confirmed that in the second Will the suit lands were bequeathed to Moses Kyalo. He contended that Lois was to hold the land in trust for Rhoda. Further, Rhoda told him the 3<sup>rd</sup> Defendant had refused to transfer the suit lands back to her but he declined to handle the case. It was his further testimony that Lois agreed to transfer Muputi/Kiima-Kimwe/1861 to Rhoda but retain Muputi/Kiima-Kimwe/59 and that is why he wrote letter dated the 7<sup>th</sup> June, 2010.
27. I note in the first Will dated the 1<sup>st</sup> February 2005, for Rhoda Ndini Nzioka, land parcel numbers Muputi/Kiima-Kimwe/1861 and 59 did not feature therein. This in essence means, she was aware the two parcels of land were no longer in her name and she hence could not bequeath them to anybody. Further, in the second Will she bequeathed all her properties including Muputi/Kiima-Kimwe/1861 and 59 to Moses Kyalo yet the two parcels of land were still registered in the 3<sup>rd</sup> Defendant's name. I note the issue of trust was not indicated in the Certificates of Title. I opine that since by 2002 Rhoda had transferred the suit lands to Lois who held the titles, she did not have the legal capacity to bequeath the land to Moses Kyalo in the second Will unless the said titles were cancelled. It is my view that since the suit lands were not in the initial Will, it indeed confirmed the intention of Rhoda that she had gifted her sister the properties and simply had a change of mind later on. It is interesting to note that since 2002, Rhoda only filed this suit in 2010 claiming Lois obtained the titles to the suit lands through fraud but never demonstrated what actions she had taken for the past eight (8) years. Allegations of fraud are serious and the burden of proof was upon the Plaintiff to prove this against the 3<sup>rd</sup> Defendant but from the evidence of PW1, PW2 and DW3 who was her advocate including the receipts presented as exhibits and noting that it is the same lawyer who drafted her last Will in 2010, I find that she failed to discharge it. Further, the DW3 who was the lawyer that undertook the transaction on behalf Rhoda admitted he did so and that they obtained titles in the name of the 3<sup>rd</sup> Defendant. Gifts *intervivos* as contemplated in the Law of Succession are such that the owner of the property or asset donates it to



another without expectation of death. In the instant suit, the alleged first Will was categorical that the assets of Rhoda would belong to Lois after the death of Rhoda, a fact confirmed by Lois when she testified that Rhoda had transferred the same to her so that ‘nobody disturbed her after Rhoda’s death’.

28. As outlined in Odunga’s Digest on [Civil Case Law and Procedure](#) Vol (III) Page 2417 at paragraph 5484 (d) e-1 where it stated thus:-

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See *in Re Fry Deceased* {1946} CH 312 *Rose*: and *Trustee Company Ltd v Rose* {1949} CL 78 *Re: Rose v Inland Revenue Commissioners* {1952} CH 499 *Pennington v Walve* {2002} 1WLR 2075 *Maledo v Beatrice Stround* {1922} AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee need no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor. (See *Shell’s Equity* 29ED Page 122 paragraph 3).”

29. While in [Micheni Aphaxard Nyaga & 2 others v Robert Njue & 2 others](#) [2021] eKLR the learned Judge held that:-

“The test on a gift *causa mortis* is defined as a gift made in expectation of death. The donor causes the property or goods in his possession to be delivered to another. The general distinction between a gift *causa mortis* and a gift *intervivos* is that its revocable by the donor and his capacity must meet the requirements under Section 11 of the *Law of Succession* in the making of a Will.

The same court on the same matter on gift *intervivos* stated:-

“The requirement of the law for such gifts are that they may be settled by a deed or an instrument in writing by delivery, by way of a declaration of trust by the donor or by a resulting trust or transfer and registration. In other words the gift must have passed from the deceased to the recipient for it to be valid. This means that the gift is no longer the property of the deceased but for the purpose of distribution of the estate to the dependants it will be traced and taken into account when distributing the estate with respect to the beneficiary who received the gift.” Emphasis mine

30. See also the case of [Re Estate of The Late Gedion Manthi Nzioka \(Deceased\)](#) [2015] eKLR.

31. Based on the evidence that I have analyzed above, I find that the 3<sup>rd</sup> Defendant legally acquired the suit lands from Rhoda and that is why Rhoda never even included them in her first Will. What is baffling is that Rhoda got a sudden change of mind after adopting Moses Kyalo in 2005 and in 2010 decided to bequeath the said properties to Moses Kyalo. She later filed this suit claiming Lois fraudulently got registered as owner of the suit lands but does not deny her intentions in giving her the said parcels of



land in 2002. Further, even the lawyer (DW3) was categorical that she signed the transfer forms and paid the requisite transfer fees. In relying on Justice Odunga's digest which excerpt I have quoted above as well as associating myself with the decisions cited, I find that upon signing the transfer and paying for the transaction at the lawyer's office where the lawyer was instructed to undertake the transaction, after which he obtained title in the 3<sup>rd</sup> Defendant's names, the gifting of the two parcels of land became effective and the deceased could not recall them at her whim even when she fell 'out of love' with her sister. Further, once the 3<sup>rd</sup> Defendant was issued with titles in her name, she became the absolute proprietor of the suit lands as envisaged in law. In the circumstances, I find that the 3<sup>rd</sup> Defendant did not fraudulently acquire the suit lands and is indeed the legal proprietor of the said two parcels of land. I further find that the Plaintiff is not entitled to the orders as sought in the Plaintiff.

32. On costs, since the matter relates to family members, I will not make any order to that effect.
33. In the circumstances, I find that the Plaintiff has failed to prove her case on a balance of probability and will dismiss it but make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31<sup>ST</sup> DAY OF MAY, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

