



REPUBLIC OF KENYA



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**Oyugi & another (Suing as the administrators of the Estate of Hezekiah Nelson Oyugi) v Raikundalia & another; Sanghani (Third party); I&M Bank Limited (Interested Party) (Environment & Land Case E270 of 2021) [2023] KEELC 18273 (KLR) (12 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18273 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND CASE E270 OF 2021**

**EK WABWOTO, J**

**JUNE 12, 2023**

**BETWEEN**

**JOB OKUNA OYUGI ..... 1<sup>ST</sup> PLAINTIFF**

**DOUGLAS ODHIAMBO OYUGI ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF HEZEKIAH NELSON OYUGI**

**AND**

**VINODCHANDRA JIVAN DEVJI RAIKUNDALIA ..... 1<sup>ST</sup> DEFENDANT**

**MRADULABEN VINODCHANDRA D RAIKUNDALI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**RAJENDRA RATILAL SANGHANI ..... THIRD PARTY**

**AND**

**I&M BANK LIMITED ..... INTERESTED PARTY**



## JUDGMENT

### Introduction

1. The Plaintiff instituted this suit vide a plaint dated 21<sup>st</sup> July 2021 seeking for the following reliefs from the Defendants and the Interested Party:-
  - a. An order to the Registrar of Lands to rectify the registry in reference to Land Reference Number 209/10494, transferring the property from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the Plaintiffs.
  - b. An order to the Registrar of Lands to discharge the charge in favour of the Interested Party in reference to Land Reference Number 209/10494.
  - c. A permanent injunction, injunctioning the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from dealing in Land Reference Number 209/10494.
  - d. General damages.
  - e. Interested on (d) from date of judgment until payment in full.
2. Upon service of the suit papers, the Defendants sought to enjoin the Third Party, Rajendra Ratilal Sanghani to the proceedings which request was allowed by the court on 8<sup>th</sup> November 2021. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant filed a statement of defence dated 28<sup>th</sup> January 2022 wherein they denied the averments made by the Plaintiff and prayed to have the suit dismissed with costs. The Third Party filed his defence dated 27<sup>th</sup> April 2022 and equally prayed for dismissal of the Plaintiff's suit.

### Plaintiffs case.

3. The Plaintiffs averred that sometimes in the year 1992 around the time of the late Hezekiah Nelson Oyugi's death the title in respect L.R. No. 209/10494 was deposited as an informal security for money advanced to the late Hezekiah Nelson Oyugi as he was receiving treatment in the United Kingdom. It was also stated that pursuant to Succession Cause No. 1581 of 1992, the Plaintiffs were appointed administrators to the Estate and received Grants of Letters of Administration dated 1<sup>st</sup> February 1994.
4. It was also averred that on 8<sup>th</sup> March 1994, the Property was simultaneously transferred to the Plaintiff as administrators and on the same day transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly, a transfer which was not produced, endorsed nor approved by the Plaintiffs.
5. It was also the Plaintiffs averment that in the year 2020 in an attempt to prepare and confirm the Estate's grant, the Plaintiffs obtained a search of the property, which indicated that the property had been transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and charged by the Interested Party. The Plaintiffs also pleaded fraud on the part of the defendant which was particularized as follows: -
  - i. The transfer from the Estate to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was transferred without a confirmation of grant of the Estate.
  - ii. In the alternative, the transfer from the Estate to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant was transferred via a fraudulent court order, as the orders in Miscellaneous



Application No 119 of 1993 did not specify the property as one of the properties delineated for sale for the benefit of the beneficiaries.

6. At the trial, Douglas Odhiambo Oyugi testified as PW1. He told court that he was one of the administrators of the Estate of the late Hezekiah Oyugi and the suit property was never sold to the Third Party and Defendants. He also stated that he did not sign any agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and that after the title was deposited with the 3<sup>rd</sup> Defendant the title remained with him.
7. On cross-examination by Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Defendants he stated that there were three administrators and one of the administrators pulled out. He stated that they were appointed as administrators in 1994 after the deceased passed away in 1992. He stated that the 3<sup>rd</sup> Party did not have a right to sell the property even if the title had been deposited by him for advancement of a loan. He also stated that the said title was not in his name and a sum of Kshs 2 million was advanced. He also stated that the transfer was never signed by him and neither was it signed by Stephen Owino Advocate. He also stated that he only saw the purported transfer in 2020 even though he knew that the title was in possession of the Third party. On further cross-examination by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants he also stated that he has never reported any fraud to the Police but he remembers recording a statement with the Directorate of Criminal Investigations.
8. On cross-examination by Counsel for the Interested Party, he maintained that he knew about the fraud in the year 2020. He also stated that the Land Registrar was not included as a party to the suit.
9. When cross-examined by Counsel for the Third Party, he stated that he was the one who borrowed the money and not his late father and he was advanced Kshs 2,000,000/-. He also maintained that the suit property was never transferred to any party.
10. On re-examination, PW1 stated that he deposited the title because he had borrowed money from the Third Party. He also stated that he was not familiar with the statement of accounts filed by the Third Party. He also stated that his name appearing on the statement appears to have been super imposed. He further stated that Guiders Bank International was not a party to the suit.

#### **The Defendants case.**

11. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Statement of Defence dated 28<sup>th</sup> January 2022.
12. The Defendants averred that the Plaintiffs had registered their Authority as Administrators of the Estate of the deceased against the title vide entry I.R. No. 41382/2 on 8<sup>th</sup> March 1994 and pursuant to the same, they executed the transfer which was registered against the subject title vide entry I.R. 41382/3 on 8<sup>th</sup> March 1994.
13. The Defendants also pleaded that the Plaintiffs claim over the subject property is statute barred by the Law of Limitations of Actions given the lapse of 26 years since the said transaction.
14. During trial V.G. Devj Raikundalia testified as DW1 on behalf of the defence. He stated that he bought the property from the Third Party herein and he paid the purchase price, stamp duty and other payments that were required.
15. On cross-examination, he stated that he did not contact any of the administrators prior to the purchase of the property. He also stated that he did not know whether there was a confirmed grant.
16. On cross-examination by Counsel for the Third Party, he stated that he knew the Third Party as a real estate agent and he was the one who informed him that the property was on sale. He also stated that he paid Kshs 5,000,000/- towards purchase of the same though he did not do due diligence. He



- further stated that he paid stamp duty and he did not experience any challenges while registering the suit property. He also confirmed being in possession of the property to date.
17. Upon re-examination, he stated that his lawyers did due diligence on his behalf and that the transfer was presented for registration by Stephen Owino Advocate.
  18. Anthony Koech a relationship manager at I & M Bank testified as DW2 and he relied on his witness statement and bundle of documents that had been filed by the Interested Party which were already on record.
  19. On cross-examination by Counsel for the Defendant he stated that the property was charged in favour of I& M Bank for USD 1,000,000/- and Kshs 5,000,000/-. He also stated that all the procedures were duly followed and the said property is still registered in the names of the Defendants.
  20. When re-examined, he reiterated that the bank did due diligence before charging the property.

### **The case for the Third Party**

21. The Third Party herein Rajendra Ratilal Sanghani filed his defence dated 27<sup>th</sup> April 2022. He denied all the averments made by the Plaintiffs in their Plaint. He averred that he is a former director and chairman of Guilders International Bank Ltd, Guilders International Finance Ltd and Kenya Network Finance Ltd and during the course of banking business, the companies advanced various sums of money to the Plaintiffs and the deceased. He averred that pursuant to the memorandum of understanding dated 7<sup>th</sup> May 1993, the Plaintiffs agreed that the suit property title shall be transferred to the Third Party as settlement of all the loans owed to the Third Party and his companies by the deceased.
22. It was pleaded by the Third Party that the Plaintiffs should be estopped from denying the transfer and further that the Plaintiffs cause of action is time barred and an afterthought having been brought before this Court after 27 years hence statutory barred under the *Limitation of Actions Act* both on account of fraud and or as an action to recover land.
23. During the hearing of the main suit, the Third Party adopted his witness statement dated 27<sup>th</sup> April 2022 and also adopted his bundle of documents filed in court and dated 27<sup>th</sup> April 2022. He also stated that the suit property herein was transferred directly to the Defendants by the Plaintiffs and Mr. Stephen Owino Advocate acted for the Plaintiffs during the said transaction. He also denied any fraudulent acts in respect to the said transfer and further that the stamp duty was duly paid for to effect the said transfer.

### **The Plaintiffs submissions**

24. The Plaintiffs filed written submissions dated 6<sup>th</sup> May 2023 through CNK Advocates LLP. The Plaintiffs outlined four issues for consideration;
  - i. Whether immovable property forming part of the deceased's estate can be transferred without a confirmation of grant.
  - ii. Whether the subsequent entries on the title are valid if the immovable property had been transferred without a confirmation of grant.
  - iii. What remedies are available to the parties.
  - iv. Whether the Plaintiffs are entitled to the costs of the suit.



25. It was submitted that the property in contention forms part of the estate of the deceased as the grant is yet to be confirmed to date and that pursuant to Section 55 of the Law of Succession Act, any transaction emanating from its sale is null and void ab initio. Reference was made to the following cases in support of the said contention; Estate of Paul M’Maria (Deceased) Succession Cause No. 547 of 2009 eKLR, Simon Mwangi Ngotho & Another vs Susannah Wanjiku Muchina [2022] eKLR and re Estate of Barasa Kanenje Many (Deceased) (Succession Cause No. 263 of 2002) [2020] KEHC 1 (KLR) 30 July 2020) Ruling, Santuzza Billoti Alias Mei Santuzza (Deceased) vs Giacario Balasconi [2014] eKLR and Re Estate of Isaac Kaburu Marete (Deceased) [2017] eKLR .
26. The Plaintiff also argued that the Defendants cannot have been innocent purchaser for value since they never tendered any evidence of payment made to the administrators.
27. On whether the subsequent entries on the title are valid if the property was transferred without a confirmation of grant, it was submitted that the Defendants did not have a good title and hence they could not have created a valid charge in favour of the interestd party. Reliance was made to the following cases in support of the said contention; Warson Limited vs Richard Mwangi Wachira & 5 Others [2019] eKLR and Godfrey N. Nyaga vs Margaret W. Theuri and 3 Others [2015] eKLR.
28. the Plaintiffs concluded their written submissions by urging the court to cancel the said entries and grant them the relief sought together with costs of the suit.

#### **The Defendants submissions.**

29. They were dated 2<sup>nd</sup> June 2023 and filed by PJ Kakad & Company Advocates. The Defendants submitted on the following thematic areas; law of succession in respect to the confirmation of grant, law of contract, limitation of actions and the defendants title.
30. The Defendants submitted that there was no information passed to them that the transfer was ever declined in respect to the availability or otherwise of the confirmed grant. The Defendants contended that the applicable provision in the law of succession provides for instances where confirmation of grant can be allowed immediately by the court and that whether or not the same was sought by the Plaintiffs is information that is only within the knowledge of the Plaintiffs and further that the Plaintiffs in the event of denial of their authority to transact in the subject property leaves them open for criminal prosecution for intermeddling with the property of the Estate. It was also submitted that during trial the 2<sup>nd</sup> Plaintiff alleged to have sought for a personal loan from the Third Party’s company and hence it would be imprudent for him to use the property of the Estate to settle the said loan as the same was admitted in evidence.
31. On the aspect of the memorandum which was produced by the parties herein, it was submitted that the memorandum is binding between the parties as it acknowledges the debt and the agreement between them and it was agreed that the same would be settled via sale of some of the properties including the subject property. Reference was placed on the holding of the case of National Bank of Kenya Ltd vs Pipeplastic Samkolit (k) Limited [2011] eKLR.
32. On the aspect of limitation of actions, the Defendants argued that the transaction herein happened in the year 1994 and that the instant suit was filed in 2021 being over 26 years later. No explanation was given for the said delay and pursuant to Section 7 and 9 of the Limitation of Actions Act.
33. In respect to the Defendants title, it was submitted that the allegations of fraud seeking to challenge the Defendants title had not been proven and the Defendants remain bonafide purchasers for value whose title cannot be revoked. On this aspect, reliance was placed on the decision made in the case of



Katende v Haridar & Company Limited. [2008] 2 E.A 173 and Section 26 of the [Land Registration Act](#). The Court was urged to dismiss the suit with costs.

### **The submissions by the Interested Party**

34. The Interested party filed submissions dated 18<sup>th</sup> April 2023 through G & A Advocates LLP. The following three issues were outlined for determination;
  - i. Whether the Plaintiffs have sufficiently proved the elements of fraud.
  - ii. Whether the charge dated 19<sup>th</sup> October 2016 over the suit property was created and registered as required by the law.
  - iii. Whether the Plaintiffs are entitled to the prayers sought.
35. On their first issue, it was submitted that the transfer dated 1<sup>st</sup> March 1994 was procured regularly and in accordance with the law and the that the Plaintiffs claim that it was obtained fraudulently were mere allegations which cannot stand before this court.
36. It was also submitted that the Advocate representing the Plaintiffs at the time the transfer was being effected was Stephen Owino of Owino Okeyo Advocates who declined to testify on the allegations made in respect to the particulars of fraud that was pleaded despite being summoned by the Court. It was submitted that a party who fails to call evidence in support of its case then their pleadings remain mere allegations which are not substantiated.
37. On whether the charge dated 19<sup>th</sup> October 2016 was created and registered as required by law, counsel submitted that the bank did due diligence to ascertain that the chargor is the owner of the property. It was submitted that an official search dated 24<sup>th</sup> November 2016 was obtained and the same revealed that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were the registered owners of the suit property pursuant to an instrument of transfer dated 1<sup>st</sup> March 1994 and hence therefore the bank in creating and registering the charge instrument dated 19<sup>th</sup> October 2016 was guided by the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were the bonafide and consequential owners of the suit property and further Section 26 of the [Land Registration Act](#), 2012 corroborates the indefeasibly of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' title.
38. The Interested equally urged the court to grant to dismiss the Plaintiffs suit with costs.

### **The Third Party's submissions**

39. The Third Party filed submissions dated 22<sup>nd</sup> May 2023 through the H. Kago & Co. Advocates. In his submissions he called upon the court to address it on the following four issues;
  - i. Whether the suit was statute barred.
  - ii. Whether failure to enjoin the Lands Registrar is fatal.
  - iii. Whether the Plaintiff has proved elements of fraud.
  - iv. Whether the transfer of the property was legal.
40. It was submitted that the cause of action arose in 1994 yet the suit was filed in 2021 which was 27 years later. Counsel submitted that the same was time barred and reference was made to Section 7 of the [Limitation of Actions Act](#) and the case of Gathoni vs Kenya Cooperative Creameries Ltd [1982] KLR 104 and Iga vs Makere University [1972] EA.



41. On the failure to join the Lands Registrar it was submitted that, the Lands Registrar was an inexcusable party who must be joined in these proceedings failure of which the Plaintiffs cannot be granted any reliefs. The Third Party made reference to the holding of the case of Jeremiah Creek Limited vs Tabitha Ndungu; Andrew Thianie Imwati (Interested Party) [2022] eKLR
42. Relying on the cases of Vijay Morjaria vs Nansigh Madhusingh Darbar & Another [2000] eKLR, Kinyanjui Kamau vs George Kamau [2015] eKLR and Evans Nyakwana vs Cleophas Bwana Ongaro [2015] eKLR, it was submitted that the allegations of fraud ought to be specifically pleaded and proved and in this case, the same had not been proved. No documents were presented by the Plaintiffs to prove any fraudulent entries and further that the Defendants and Third Party had produced various documents which included a signed Memorandum of understanding dated 7<sup>th</sup> May 1993 permitting the said transfer, minutes of meeting held by Rajendra Sanghani, Job Oyugi and witnessed by Owino Advocate dated 6<sup>th</sup> May 1997, various letters by the Plaintiff's advocates confirming transfer, evidence of cheques and payments made to the Plaintiff's Advocates, Copy of letters of administration, Copy of title deed indicating various entries by the registrar among other entities. The said documents did not speak of anything related to fraud.
43. On whether or not the particulars of illegality had been proved, it was submitted that the Plaintiffs had not proved any fraud and they have not managed to run away from any glaring evidence that they sanctioned all transactions for which they now complain about.
44. Taking the same position as the Defendants and Interested Party, the court was equally urged to dismiss the said suit with costs.

#### **Issues for Determination.**

45. Having considered the pleadings in this matter and the reliefs sought by the parties, the evidence adduced during hearing and the submissions filed together with the issues outlined by each party, this court is of the opinion that the following are the salient issues for determination in respect to this suit;
  - i. Whether the Plaintiffs suit is time barred.
  - ii. Whether the Plaintiffs have proved the particulars of fraud.
  - iii. Whether the Plaintiffs are entitled to the remedies sought.
  - iv. Who should bear the costs of the suit.

#### **Analysis and Determination.**

##### **Issue No I Whether the Plaintiffs suit is time barred.**

46. On the 1<sup>st</sup> Issue, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their defence dated 28<sup>th</sup> January 2022 pleaded that the Plaintiffs claim over the subject property is statute barred by the Law of Limitation of Actions given the lapse of the 26 years since the said transaction. It was also submitted by the Defendants in their written submissions dated 2<sup>nd</sup> June 2023 that no explanation was given or tabled by the Plaintiffs as to why there was delay in filing the suit since the transaction herein transpired in 1994 while the instant suit was filed in 2021 outside the 12 year period. The Third Party also submitted on this issue in his submissions dated 22<sup>nd</sup> May 2023. It was submitted that the suit was in fact filed 27 years later after the occurrence of the alleged cause of action. Reliance was made to the following cases in support of this position, Gatheri –Vs- Kenya Co-operative Creameries Ltd (1982) KLR 105, Iga –Vs- makerere University (1972) EA and Mehta –Vs- Shah (1965) EA 321.



47. During trial PW1 Douglas Oyugi stated that he knew in 2020 that the suit property had been transferred and he equally maintained the same position in cross-examination.
48. Section 7 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya 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 if it first accrued to some person through whom he claims against that person. However, where fraud is pleaded, time does not start to run until when such fraud was discovered as is stated under Section 26 of the *Limitation of Actions Act*.
49. Section 26 of the *Limitation of Actions Act* provides as follows:-
- “Where, in the case of an action for which a period of limitation is prescribed, either—
- a. the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
  - b. the right of action is concealed by the fraud of any such person as aforesaid; or
  - c. the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”
50. As earlier stated, where fraud is pleaded, time starts to run when such fraud was discovered as it is stated under section 26 of the Limitations of Actions Act. Going by the above provision, it is trite law that in circumstances where fraud is pleaded, time does not start to run until when such fraud was discovered. In the case of *Justus Tureti Obara Vs Peter Kopeitai* (2014) eKLR the Court held:-
- “I am in agreement with the Plaintiff’s submission that the Plaintiff’s claim is for the recovery of the suit property from the defendant and as such the limitation period for such a claim is 12 years as provided for in Section 7 of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya. I would wish to point out further that the Plaintiff’s case although for recovery of land is based on fraud. The proviso to section 26 (a) of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya provides that where an action is based on the fraud of the defendant or his agent, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered it”.
51. In the instant case, the Plaintiff pleaded and testified that they became aware of the alleged transfer of the suit property in 2020 and brought it to the attention of the Defendants before filing suit in the year 2021. In view of the foregoing, the court is of the position that time had not run out when the Plaintiffs filed suit in 2021. The contention by the Defendants that the suit was filed out of time fall flat on its face.

**Issue No II Whether the Plaintiffs have proved the particulars of fraud.**

52. The Plaintiff pleaded and particularized fraud against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants which were outlined in their plaint. A party alleging fraud must specifically plead the particulars of fraud and lead evidence to prove the allegations of fraud. Going by the above provision, it is trite law that in circumstances where fraud is pleaded, time does not start to run until when such fraud was discovered. See the case of *Justus Tureti Obara Vs Peter Kopeitai* (2014) eKLR (Supra)
53. During trial PW1 denied ever executing the transfer that was presented to this court in respect to the transaction. The transfer in question was signed by Stephen Owino Advocate who despite being



summoned by the court failed to honour the said summons nor testify in the matter. Section 107(1) of the *Evidence Act* required of the Plaintiffs to lead evidence to support their claim

54. The Defendants and Third Party had produced various documents which include a signed Memorandum of understanding dated 7<sup>th</sup> May 1993 permitting the said transfer, minutes of meeting held by Rajendra Sanghani, Job Oyugi and witnessed by Owino Advocate dated 6<sup>th</sup> May 1997, various letters by the Plaintiff's advocates confirming transfer, evidence of cheques and payments made to the Plaintiff's Advocates, copy of letters of administration and a copy of title deed indicating various entries by the registrar among other entities.
55. The Plaintiffs challenged the transfer on allegations of forgery by the Defendants and Third Party maintaining that the same was valid, ought to have gone further in proving the said fraud, the Advocate who witnessed the transfer did not testify and the certificate of title in the name of Defendants is to be taken by the court as prima facie evidence that the person named as proprietor is absolute and indefeasible owner as per section 26 of the *Land Registration Act*. Whether there was fraud or not needs production of evidence. Fraud is defined under the Black's Law Dictionary 10<sup>th</sup> Edition as "A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment". To decipher that there was fraud it is important that knowledge of the existence of fraud be established on the part of the Defendants. How then can fraud be proved? The Court of Appeal in Mombasa Civ Appeal No. 312 of 2012 Emfil Limited v Registrar of Titles Mombasa & 2 others [2014] eKLR held;

"Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities".

Similarly, the Court of Appeal decision in the case of John Kamunya & another v John Nginyi Muchiri & 3 others [2015] eKLR held that:

"we find that the law is clear as put by Mr. Karanja that matters of "fraud" must be strictly and specifically pleaded before these can be interrogated by a court of law. Alternatively, even though not pleaded, these may be raised in the cause of the trial, evidence tendered on them, submission made on them and then left for the court to determine."

56. It is worth noting that the documents are prepared and issued by the Land Registrar and in the absence of any contrary documents the court has no reason to find the same was obtained and or acquired fraudulently. Against any backdrop of evidence, the Plaintiffs did not place before this Court any material evidence to enable it to interrogate and conclude that there was fraud on the part of the Defendants. Even so the Advocate who witnesses the transaction Stephen Owino did not honor the summons to shade some light. It was the sole duty of the Plaintiffs to lead evidence that the transfer of the suit property to the Defendants was fraudulent. In the case of Gladys Wanjiru Ngacha V Teresa Chepsaat & 4 Others, [2013] eKLR, the Court held that:

"... Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. It is not enough for the appellant to have pleaded fraud; she ought to have tendered evidence that proved the particulars of fraud to the satisfaction of the trial court. In Mutsonga vs. Nyati (1984) KLR 425, at pg 439, this Court held: "Whether there is any evidence to support an allegation of fraud is a question of fact".



57. Taking the meaning of fraud as espoused above, and in the Plaintiff's submissions, this Court finds and holds that the Plaintiffs did not on the required standard of proof demonstrate any existence of fraud on the part of the Defendants. The Plaintiffs have failed to prove the allegations and particulars of fraud as against the Defendants.

**Issue No. 111 Whether the Plaintiffs are entitled to the remedies sought.**

58. The Plaintiff sought for various remedies which included the following; an order to the Registrar of Lands to rectify the registry in reference to Land Reference Number 209/10494, transferring the property from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the Plaintiffs, An order to the Registrar of Lands to discharge the charge in favour of the Interested Party in reference to Land Reference Number 209/10494, A permanent injunction, injunctioning the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from dealing in Land Reference Number 209/10494, general damages and interest.

59. However, having found that the particulars of fraud have not been proved herein, the court finds that the Plaintiffs have not been able to prove their case to the required standard and the orders sought by the Plaintiff are not for granting. The Plaintiffs did not lead any evidence to show that there was any irregularity that was within the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' knowledge.

60. I wish to add that a certificate of title confers ownership over land and the Defendants have such a certificate of title, there is no other way this Court can take away that right without evidence that it was unlawfully acquired. Therefore, it follows that the Plaintiffs have failed on a balance of probability to establish that they are deserving of the orders sought in their claim. This Court proceeds to dismiss their suit.

**Final orders.**

61. In conclusion, I have found as above that the Plaintiffs have not laid basis for the grant of the orders sought in the Plaint. Consequently, the Plaintiffs have failed to prove their case to the required standard and their suit is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE 2023**

**E.K. WABWOTO**

**JUDGE**

In the presence of:

Mr. Torotwa holding brief for Mr. Oyugi for Plaintiffs.

Ms. Koki Defendants.

Ms. Saina for Interested Party.

No appearance for 3<sup>rd</sup> party.

