



**Muigai & another (Suing as the Trustees of Gatimu Dispensary Self Help Group)
v Registered Trustees of St Edwards Catholic Church (Environment & Land
Case 47 of 2014) [2023] KEELC 19932 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19932 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 47 OF 2014
FM NJOROGE, J
SEPTEMBER 22, 2023**

BETWEEN

JAMES MAINA MUIGAI 1ST PLAINTIFF

MBURU MUHUNYO 2ND PLAINTIFF

SUING AS THE TRUSTEES OF GATIMU DISPENSARY SELF HELP GROUP

AND

**THE REGISTERED TRUSTEES OF ST EDWARDS CATHOLIC
CHURCH DEFENDANT**

JUDGMENT

1. In their plaint dated 10/02/2014 and filed on 18/02/2014, the plaintiffs averred that they were the registered owners of land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu) measuring 0.8319 Ha. The plaintiffs also averred that the defendant without any justification trespassed onto the suit property and refused to vacate it. The plaintiffs sought the following prayers against the defendant:
 1. An order of eviction do issue against the defendant through an auctioneer or a court bailiff to remove the defendant, its agents, its servants and any other persons working under it and to demolish all the structures and buildings of the defendant on the plaintiffs parcel of land known as Mau Narok/Siapei Block 7/445 (Gatimu).
 2. Costs of this suit should be paid to the plaintiffs by the defendant.
2. The defendant filed its statement of defence and counterclaim dated 26/03/2014 which was amended on 17/10/2016. The defendant denied that the plaintiffs were the registered owners of the suit property and stated that the title held by the plaintiffs was fraudulently obtained. The defendant also denied



trespassing onto the suit property and claimed to be its rightful owner and therefore had a right to construct a structure on the property.

3. In its counterclaim, the defendant averred that it is the owner of land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu) having been allocated the said land in the year 1986. The defendant also averred that it has been in peaceful possession of the suit property until the year 2013 when the plaintiffs begun to claim ownership. The defendant reiterated that the plaintiffs obtained the registration of the suit property fraudulently and sought for the nullification of their title.
4. The defendant sought for the following prayers in its counterclaim:
 - a. A declaration that the suit land is the property of the Registered Trustees of St Edwards Catholic Church and the title deed issued to the Plaintiff/Defendant herein is illegal, null and void and the District Land Registrar, Nakuru is ordered to cancel the said title deed forthwith.
 - b. Costs of this suit.

Plaintiff's Evidence

5. James Maina Muigai testified as PW1. He adopted his witness statement dated 8/12/2020 and filed on 09/12/2020 as part of his evidence. It was his evidence that he was a shareholder of Gatimu Farmers Company Limited; that the said company had 290 shareholders; that he had brought the case on behalf of Gatimu Self Help Group and produced a copy of the certificate of registration dated 20/12/2004 as PExh.1. He had the original certificate of registration in court. He testified that Gatimu Farmers Company Limited was a land buying company that had land in Mau Narok; that the defendant was not a member of the said company; that the land owned by the company measured 1000 acres; that the company subdivided its land in the year 1986; that one share entitled a shareholder 3.1 acres of the property; that he was an ordinary member of the company; that he attended the meeting that proposed the said subdivision; that the secretary of the meeting was Geoffrey Kagiri; that at the said meeting, land was set aside for a school, a dispensary, nursery school, churches such as Full Gospel, A.I.P.C.A (African Independent Pentecostal Church), PCEA and Catholic Church; that each church was given half an acre; that the churches were located in different areas; that the schools were given titles but he did not know if churches or public utility areas were given title deeds; that the title in respect of land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu) was issued on 11/07/2004; that the plot is 0.8319 hectares according to the area list; that the registered owners were James Maina Muigai, Samuel Mwangi Kamau and Mburu Muhunyo as trustees of Gatimu Dispensary Self Help Group; he then produced a copy of the title deed as P.Exh. 2; that the defendant invaded their property and begun to construct a church; that before the invasion, the defendant had another parcel of land within Gatimu Farm; that the defendant was on the suit property two years before they got the title; that they entered the land before the year 2005; that they had not constructed anything pending the issuance of the title; that since the defendant had always been in possession of the land, they have not been able to construct but they have put building materials on it; that there was a farmhouse on the suit property constructed by the white settlers which they were planning to renovate into a dispensary; that the structure is still there even though it has no roof; that the defendant has put up a temporary structure which they are using for worship while it farms on the remaining portion of the land; that the plaintiffs have repeatedly asked the defendant to vacate the property but it had refused; that when they tried to renovate the house the defendant brought criminal charges against him, Peter Njoroge Mbugua, James Nyaga Muturi and Mburu Muhunyo in Nakuru CM Criminal Case No. 859 of 2005 where they were charged with malicious damage to property; that they were acquitted on 14/02/2008; he produced the ruling and the proceedings as P.Exh. 3; that there was another case in Nakuru HCCC 302/2004 where the company had sued Geoffrey Kagiri Kimari; that a dispute had arisen after the



elections; that an order was issued on 19/10/2005; that Geoffrey Kagiri Kimari was the company secretary; that the court ordered him to surrender some documents; that he came to know of the said order as an interested shareholder of Gatimu Farmers; he produced a copy of the order as PExh.4; that the company records were later reconstructed pursuant to the said court order; that the titles had not been issued by the date of the said order; that the court order was to help reconstruct the register for purposes of issuance of titles; that before filing the present suit, they issued a demand letter dated 7/10/2013 (produced as PExh.5); that counsel for the respondent responded to the said letter through the letter dated 10/10/2013 (produced as PExh.6); that in the said letter the defendant claimed that the suit property was allocated to it; that the defendant had been summoned by the District Officer Mau Narok location through the letter dated 5/09/2008; (produced as PExh.7); that on 20/06/2005, the Assistant Chief Mau Narok Location wrote to the defendant a letter (produced as PExh.8) asking them not to interfere with the plaintiff's project or their materials pending resolution of the dispute; that on 10/04/2001 the Chief Mau Narok Location wrote a letter (produced as PExh.9) referenced "to whom it may concern" stating that each project had been allocated plot for future development; that on 21/03/2005 Peter Mbugua who was elected to succeed Geoffrey Kagiri as company secretary wrote to the District Officer Mau-Narok a letter (produced as PExh.10) complaining that Geoffrey Kagiri had unlawfully allocated the land to the defendant; that on the same date the company wrote a letter to the priest in charge of the church (produced as PExh.11) indicating that Geoffrey Kagiri went against the company's resolution which had a 1/2 acre plot to the defendant; that the allocations were done at an annual general meeting; the official search of the suit property (produced as PExh.12) was done on 4/10/2013; that the company had an extra-ordinary general meeting on 4/02/2005 where the members who attended signed and the minutes and the list of attendees were produced as PExh.13; that an annual general meeting was held on 7/06/2005; the list of attendees and minutes were produced as PExh.14; that on 11/02/2009 the District Officer Narok wrote to the defendant a letter (produced as PExh.15) and asked it to vacate but the defendant declined to move out of the suit property; that he had not seen any resolution that showed that the defendant was allocated the suit property; that the land was properly allocated for the dispensary and a title deed issued to them and so he sought that their claim in the plaint be allowed as prayed.

6. In his witness statement he stated that the suit property was preserved for public utility purposes for a dispensary namely Gatimu Dispensary Self Help Group; that in obtaining the title deed, they followed the due process; that they paid stamp duty on 30/05/2007 through the Customer Transaction Voucher Serial No. 168288 issued by the National Bank of Kenya; they paid subsequent registration fees on 11/07/2007 and were issued with a receipt serial No. 0641868 by the Department of Lands-Nakuru which evidence was not controverted by the defence.
7. Upon cross-examination, PW1 confirmed that he was present in court on behalf of Gatimu Dispensary Self Help Group; that it had fifteen (15) members upon registration on behalf of the entire community; that he did not have the register of the group with him in court; that the members of Gatimu Farm were members of the group; that Gatimu Farmers' Cooperative Ltd was registered in 1960's; that his father was the original shareholder; that Gatimu Dispensary Self Help Group was registered in the year 2004; that he was authorized to file the present suit; that as per PExh.3, he was one of the accused persons; that the company house had been destroyed; that at the end of the case, a ruling was delivered; that the said house was used as a church house by the Catholic Church members; that the house was to be renovated to become a dispensary; that he did not get into the house or destroy it and the court held that it was a land dispute; that the criminal case was not about land but was about damaged property; that Gatimu Company Limited gave its members land; that the public utilities were reserved by Gatimu; that the suit property was set aside as a public utility and reserved for the construction of a dispensary; that the suit property was now registered under the name of trustees of Gatimu Dispensary Self Help



Group; that the group is a member of the Gatimu Co. Limited as No. 445; when he was referred to his statement he confirmed that he did not read the minutes of the year 1986 as the leaders had them; that as per PExh.14 minute No. 10 it spoke of Gatimu Dispensary; that the suit case was brought by Gatimu Dispensary Self Help Group and not by the company; that the members of Gatimu Farmers Co. Limited resolved that the Catholic Church would vacate; that the defendant refused to vacate the suit property; that the company worked through minutes and once a minute was passed, those who were named would get a title deed; that the transfers from Gatimu were normally surrendered to the lands office; that the plaintiffs paid government registration fees which was Kshs.1000 and thereafter paid Kshs.500 and processed the title; that he did not know if they needed the consent of the Attorney General to file the present suit; that J. Kagiri was a secretary until he was removed; he discredited the letter dated 5/01/1998 (DMFI 2) written by Geoffrey Kagiri who was a director of Gatimu Farmers Co. Limited after the year 2007 as personal; that he was a member of the company and that there was another parcel of land that had been reserved for the Catholic Church of which he did not know the size and of which only the defendant can tell who is in use of; that the Catholic Church at one time used to use the suit property as a clinic; that the Catholic Church entered the land between the years 1998 and 1999; that from the plaint, it is not indicated when the Catholic Church entered the suit property; that parcel 445 was reserved or a dispensary; that it was not true that Geoffrey Kagiri gave them land as it was a public utility; that there were areas that were set aside for churches, trading centers and public utilities and that they obtained the title to the suit land legally.

8. Upon re-examination, PW1 stated that the suit property was not personal property and that they were suing as trustees; that he was the chairman and Mburu was the secretary and they were officials of the Gatimu Self-Help Group; that they hold the land on behalf of the public; that the company has more than 500 members; that there were minutes signed in an AGM reserving the land for a dispensary; that they needed a resolution of the members and not the consent of the Attorney General to sue; that according to DMFI-1, the church declined the conditional offer and it does not indicate the plot number; that DMFI-2 was written eight years later and was not addressed to anyone and neither did it have a plot number or any reference number; that he is still a member of Gatimu Farmers Co. Limited; that official communication must be authorized by the chairman and Board of Directors and on a Company letterhead; that DMFI-2 was a personal letter, did not mention the plot number and that there was no evidence that it was delivered to the company; that a transfer is taken to the lands office before a title deed is issued; that there was an area list at the lands office which indicated the land number and size; that there was no entry of the Catholic Church in the said list; that they had already planned for the dispensary; that they came to court as the defendant had invaded the land without clarifying on whose authority it had relied on in doing so; that with regard to the criminal case, he was renovating the dispensary and that he was acquitted and the court directed the dispute to civil resolution; that no document had been produced to show that the defendant was allocated the suit property; that the Catholic Church should have sued the company if it had any dispute with them because the company gave them land.

Defendant's Evidence

9. Wilson Thiongo Nduati testified as DW1. It was his evidence that he had been a chairman and secretary of the defendant and was its member. He adopted his witness statement dated 5/05/2014 as part of his evidence. It was also his evidence that the plaintiffs were his village mates; that the suit property belongs to the defendant; that they were at a meeting where it was agreed that the Catholic Church would be allocated land; that the resolution was made by members of Gatimu Farm in 1986; that they wrote to the church and the church wrote back through a letter dated 23/11/1991 (produced as DExh.1); that there was another letter dated 5/01/1998 (produced as DExh.2) from Gatimu Farmers Limited that stated that the land had been given to the defendant with no conditions; that a third letter (produced



as DExh.3) was from the church, accepting the house and one acre of land; the agreement between the church and Pyrethrum Growers was produced as DExh.4; the church had two plots, one of which was from the initial allocation; that the letter dated 6/10/2009 (produced as DExh.6) was written by Huruma Mobile Clinic who used to rent the house on the suit property; that Gatimu Farmers Company had written a letter dated 1/09/2004 (produced as DExh.7) with regard to the suit property; that there was a letter dated 12/1/2005 (produced as DExh.8) which was addressed to the chairman of the church saying they would come to renovate the house but when they went, they destroyed and stole property; he produced a letter dated 27/8/07 as DExh.9 and a receipt from Gatimu Farmers Co. Ltd dated 27/7/99 KShs.1,770/= as DExh.10; that Mburu Muhunjo, James Nyaga, Peter Njoroge Mbugua broke into the church were arrested; the ruling in Nakuru Criminal case No. 859/05 was produced as DExh.10; that there was a letter from Kagucia & Co. Advocates (produced as DExh.11) concerning Gatimu land that indicated that the titles were not valid; that there were letters from Wachira Mbuthia Co. Advocates (produced as DExh.12 and DExh.13) on title deed issue; a map of Gatimu Farmers was produced as DExh.14. DW 1 stated that they do not have any member known as Gatimu Dispensary Self Help Group; that he had attended many Gatimu meetings and there were no resolutions passed to allocate plot 445 to Gatimu Self Help Group; that Gatimu Farmers had 360 members; that he was an original member and balloting had been conducted; that PExh.10, a letter on Gatimu Dispensary, does not mention Gatimu Dispensary Self Help Group; he admitted that Geoffrey Kagiri was the Secretary of Gatimu Farmers; that Peter Mbugua and James Nyaga signed PExh.11 dated 21/3/2005; that P.Exh 11 related to the dispensary but does not on its face refer to any Self Help Group; that Min.10.9/2005 in the minutes of 7/6/2005 (PExh.14) concerned Gatimu Dispensary and did not refer to Gatimu Dispensary Self Help Group; that agenda 5 of PExh.13 is on Gatimu Dispensary; that he had never seen the purported 1986 resolution; that there was no committee in place for managing Gatimu Dispensary; that James Maina the plaintiff in the present case was listed at No. 155; that he was a proxy of one Mungai Watoro; that he had not seen any allocation letter to the Gatimu Self Help Group; that the plaintiff had no membership certificates; that there was no receipt for the title and there was also no transfer from anyone to the plaintiffs and so the title was not genuine; that the accused persons in the criminal case were acquitted because there was no evidence brought before court; that the court noted that there was a dispute over the property which was to be resolved in a civil case; that the damage to the church was noted but it was established on who had caused the damage; that in the year 2005, the self-help group did not have a title.

10. DW1 was stood down on 21/06/2022 and was not recalled for cross-examination or re-examination. When the matter came up for hearing on 9/3/2023, DW2 testified and the defendant's case closed.
11. William Njiru Kiarie testified as DW2. He testified that he was a shareholder of Gatimu Farmers Ltd and he adopted his witness statement dated 28/11/2014 as part of his evidence. His evidence was that they had a group known as Gatimu Dispensary Self Help Group; that the shareholders are individuals with share certificates; that they balloted for the property; that they reserved public utilities to include roads, schools and churches and that parcel No. 445 was reserved for the church.
12. Upon cross-examination he stated that he is a shareholder; that he did not know the number of the church plot; that he did not have anything to show that the church was allocated the suit property; that the church begun occupying the land on 4/2/2005; that from the year 2014, the plaintiffs had been disturbing them.
13. On re-examination he stated that he was from an independent church and that the land in dispute belonged to the Catholic Church.
14. The defendant's case was then closed.



Submissions

15. Upon the close of the defendant's case, the plaintiffs were given fourteen days to file their submissions while the defendant was equally given fourteen days to file its submissions. The plaintiffs filed their submissions on 24/04/2023.
16. It was the plaintiffs' submission that they are the registered owners of the suit property having been issued with a title deed on 11/07/2007. The plaintiffs relied on Section 26 of the [Land Registration Act](#) and submitted that the defendants alleged that they acquired the suit property fraudulently but did not adduce evidence in support of their allegations. The plaintiffs relied on the cases of Kuria Kiarie & 2 Others vs Sammy Magera [2018] eKLR, Kinyanjui Kamau vs George Kamau [2015] eKLR, Eviline Karigu (Suing as Administratrix of Estate of Late Muriungi M'Chuka alias Miriungu M'Gichuga) vs M'Chabari Kinoro[2022] eKLR, Order 2 Rule 4 of the Civil Procedure Rules, Section 24(a) and 25 of the [Land Registration Act](#) and submitted that they have demonstrated that the suit property belonged to them and that the defendant was illegally occupying it. It was their further submission that the defendants have not proved that they acquired the suit property fraudulently and so their claim in the plaint should be allowed as prayed.
17. The defendant filed its submissions on 12/04/2023. The defendant set out the evidence that was given during the hearing and submitted that the plaintiffs failed to produce the minutes of how they were allocated the suit property by Gatimu Farmers Co. Ltd. The defendant also submitted that there was no evidence that Gatimu Dispensary and Gatimu Dispensary Self Help Group refer to one and the same entity and that the plaintiffs did not produce a transfer form and a land control consent issued to them on account of the said title. The defendant relied on Sections 25 and 26 of the [Land Registration Act](#) and submitted that the title held by the plaintiffs was subject to impeachment on the grounds that it was obtained by fraud, illegally and unprocedurally. The defendant relied on the case of Joseph Kiprotich Bor vs Tabutany Chepkoech Chebusit [2021] eKLR and submitted that the plaintiff did not demonstrate that he was a member of Gatimu Farmers Co. Ltd. The defendant further submitted that it had demonstrated through various letters that it produced that Geoffrey Kagiri Kamau had offered the defendant the suit property without any conditions and that it paid Kshs.1770 to Gatimu Farmers Co. Limited for the title. The defendant concluded its submissions by seeking that the plaint be dismissed and its counterclaim allowed as prayed.

Analysis and Determination

18. After considering the pleadings, the evidence and the submissions, the following issues arise for determination:
 - a. Who is the legal owner of land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu)?
 - b. Who should bear the costs of the suit?

a. Who is the legal owner of land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu)

19. The plaintiffs' case is that they are the registered owners of land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu) having been allocated the same by Gatimu Farmers Company Limited in the year 1986. It was also the plaintiffs' case that they were issued with a title deed to the suit property on 11/07/07 two years after the defendant had entered the suit property. The plaintiffs argued that when they tried to enter the suit property and renovate the farm house that was on the land as a dispensary, they were arrested and charged in Nakuru CMCR Case No. 859 of 2005 where they were acquitted.



The plaintiffs' case is that they tried to resolve the matter through the provincial administration where the defendant was directed to vacate the suit property but it declined.

20. In support of their case, the plaintiffs produced their certificate of registration no. REV/NKU/DSS/SHG/5414 dated 20/12/2004 issued to Gatimu Dispensary Self Help Group by the Ministry of Gender, Sports, Culture and Social Services. The plaintiffs also produced a title deed for the suit property issued on 11/07/2007 to the plaintiffs as trustees to Gatimu Dispensary Self Help Group. A certificate of search dated 4/10/2013 was also produced which indicated that the suit property was registered in the names of the plaintiffs as trustees of Gatimu Dispensary Self Help Group.
21. A letter dated 21/03/2005 written by Gatimu Farmers Company Limited to the defendant was produced which indicated that the suit property had been allocated for the Gatimu dispensary. The letter also indicated that the defendant had been illegally allocated the property by a former secretary of the company one Geoffrey Kagiri and it requested the defendant to vacate the property. It was signed by James Nyaga Muturi its chairman and Peter Mbugua its secretary. A letter dated the same date was produced addressed to the District Officer, Mau – Narok Division by representatives of Gatimu Farmers Company Limited indicating there was a dispute between the plaintiffs and the defendant herein over the suit property.
22. Minutes of Gatimu Farmers Co. Limited's Annual General Meeting were produced dated 7/06/2005 where Minute 10.0 of 2005 Gatimu Dispensary indicated as follows:

“The members confirmed the 1986 AGM minute and other meetings and more so the meeting of 4/02/2005 of which the members agreed unanimously that the farm house should be set aside to be converted to a dispensary on a permanent basis.

NB; The members agreed unanimously that all those churches that were issued with plots to write a letter of acknowledgement of that plot;

 - The members by show of hand agreed unanimously that the catholic church should vacate immediately from the dispensary plot that they are occupying.
 - The secretary was asked to write a letter to the Catholic Church as pertains to the above issue.
 - The members agreed that all people should pay 100/= towards putting up a dispensary.”
23. A letter dated 20/06/2005 addressed to the defendant by S. N. Kamau the Chief, Mau Narok Location was produced which informed the defendant not to interfere with the materials placed on the suit property as they were meant for the construction of the dispensary. Another letter dated 5/09/2006 was produced written by the District Officer, Mau – Narok Division and addressed to the defendant. It required the defendant to inform its members to cease trespassing on the suit property. Other similar letters dated 07/10/2013 and 10/10/2013 were also produced. A court order issued on 19/10/2005 in HCCC No. 302 of 2004 between Gatimu Farmers Company Limited versus Geoffrey Kagiri Kimani and Kungu Karanja, Sammy Mbugua, Kariuki Ngure & Paul Gatua was produced. The court ordered that the documents that were in possession of the defendants and the contemnors in that case be cancelled and new documents be issued. The documents included the head title of LR 8662/2, the company seal, company registers, the company's cash books, minute books and the register of members of Gatimu Farmers Company Limited. With regard to the register of members of Gatimu Farmers Company Limited that was in possession of the defendant and the contemnors, the court ordered that



it was of no legal effect and the directors of Gatimu Farmers Company Limited were authorized to reconstruct a new members register.

24. The defendant's case on the other hand was that they had been allocated two parcels of land in the year 1986. It was also their case that they took possession of the suit property in the year 2005 and have been in occupation since. In support of its assertions, the defendant produced a letter dated 23/11/1991 written by Father Martin Barry on the defendant's behalf addressed to Gatimu Farmers Company Limited with regard to the farm house and made reference to the letter dated 4/08/1991 which had offered the house and 1.8 acres to the Catholic Mission on condition that the farm house would be converted to a health center on a permanent basis. The letter further indicated that they were unable to accept the condition that had been laid down and would be glad to accept their offer and develop the land at their own pace.
25. A letter dated 5/01/1998 written by Geoffrey Kagiri was produced which made reference to the letter of seven years earlier dated 23/11/91 and it indicated that the writer was making the same offer without any conditions as he had the full authority of the shareholders and that the delay in response was caused by the fact that he had to get authority from the members to make the said offer. Another letter dated 6/07/1999 was produced written by the Catholic Diocese of Nakuru and addressed to the Gatimu farmers Company Limited accepting the offer of the farm house and one acre of land. The letter dated 6/07/1999 was written by James K. Wainaina. A copy of a handwritten transfer agreement dated 23/09/1998 between the Catholic Church and Gatimu Farmers Pyrethrum Growers was produced and it transferred 0.08 acres of the plot known as "Center" that comprised of 1.8 acres. An agreement of exchange of assets dated 6/05/2000 between the defendant and Gatimu Pyrethrum Growers was also produced. A letter dated 6/10/19 was produced that was written by Huruma Mobile Clinic and addressed to the defendant indicating that they were halting issuing their services from the farm house upon receipt of a letter written by the company through the Chief. Another letter dated 1/09/2004 was produced written by Gatimu Farmers Company Limited addressed to the defendant informing it that the members of the said company had not agreed to offer the farm house and the plot equivalent to 1.8 acres to the defendant as it had been set aside for a permanent health center. The said letter also made reference to the defendant's letter dated 23/11/1991 where the defendant had indicated that it was unable to meet the said condition and so the defendant's members were restrained from interfering with the farm house and its plot.
26. The Gatimu Dispensary Self Help Group wrote to the defendant the letter dated 12/01/2005 informing it that they were going to renovate the farm house. It was the defendant's case that the plaintiffs went to the suit property, demolished the house and stole property. The plaintiffs were later charged in Nakuru Criminal Case No. 859 of 2005 and acquitted. It was further the defendant's case that it was rightfully allocated the suit property, it has been in occupation and that the plaintiffs were fraudulently issued with the title deed of the suit property.
27. It is not disputed that the suit property initially belonged to Gatimu Farmers Company Limited. It is also not disputed that the suit property comprised of a farm house that was set aside for the purposes of a health center. This was the assertion by the plaintiffs which was confirmed by the defendant through the letter dated 23/11/1991 where the defendant indicated that it had been offered the farm house on condition that it would be converted to a health center. It is further not disputed that it is the defendant who has been in occupation of the suit property and that the title deed to the suit property was issued in the name of the plaintiffs. It is clear from the evidence that the allocation of the suit property was done in the year 1986. This is the year both the plaintiff and the defendant allege they were allocated the suit property. What is disputed is whether after the farm house was set aside as a health center, whether the said allocation was done away with and the farm house validly given to the defendant.



28. As indicated before, the plaintiffs' case was that the suit property was set aside as a health dispensary by the shareholders of Gatimu Farmers Company Limited. The minutes dated 7/06/2005 were produced which indicated that the Annual General Meeting held in the year 1986 held that the farm house which is on the suit property was set aside as a dispensary and it required the defendant to vacate from it. Various letters whose contents have already been set out earlier in this judgement were addressed to the defendant requiring it to vacate the suit property.
29. The defendant on the other hand argues that it was allocated the suit property vide the letter dated 4/08/1991 which letter was not produced but was referred to in the letter dated 23/11/1991. It is evident from the letter dated 23/11/1991 that the suit property was set aside as a health center. As aforementioned, the defendant in its letter dated 23/11/1991 declined the offer of the farm house on the ground that it was not able to fulfill the condition of converting the farm house to a health center. Geoffrey Kagiri Kamau vide the letter dated 5/1/1998 which was written seven years after the defendant had declined to accept the offer of the farm house which is on the suit property, wrote to indicate that he was making the same offer without any conditions on the authority of the shareholders. The authenticity of that letter is in doubt, and perchance it was written, there is no indication that the author had the authority of the company to write it. The plaintiffs have demonstrated that the said Geoffrey Kagiri Kamau was sued in Nakuru HCC No. 302 of 2004 between Gatimu Farmers Company Limited versus Geoffrey Kagiri Kimari and Kungu Karanja, Sammy Mbugua, Kariuki Ngure & Paul Gatua. The pleadings in the said case were not produced except for the court order issued on 19/10/2005. The contents of the said court order indicate that there was some fall-out between Geoffrey Kagiri Kimari who had offered the suit property to the defendant and Gatimu Farmers Company Limited where documents in his possession were cancelled and others declared to be of no legal effect by the court. In that case, the said Geoffrey Kagiri Kimari was not authorized to offer the suit property to the defendant. This was demonstrated by the contents of the letter dated 21/03/2005 written by P.Mbugua and addressed to the District Officer Mau Narok Division where Gatimu Farmers Company Limited denied authorizing Geoffrey Kagiri Kimari to allocate the suit property to the defendant. The defendant has not demonstrated that the said Geoffrey Kagiri Kimari had the authority to offer the suit property to it. That renders the evidence of the defendant in reliance on the letter dated 5/1/1998 to be very weak and unreliable.
30. Further, from the evidence adduced, the setting aside of the suit property as a dispensary was done during the Annual General Meeting done in the year 1986 and even though the said minutes were not produced, the minutes dated 7/06/2005 confirm the said position. Since the allocations were done during the annual general meeting, it is my view that if the company was no longer setting aside the suit property as a dispensary but was instead allocating the suit property to the defendant, a meeting ought to have been held and the defendant should have been in a position to produce the relevant minutes of the said meeting. It is further my view that the letters produced by the defendant do not sufficiently demonstrate the procedure by which it was allocated the suit property. Consequently, it is my view that that the defendant has not demonstrated how it acquired the suit property.
31. As earlier mentioned, the plaintiffs produced a copy of the title deed to the suit property issued in their name. Section 24 of the [Land Registration Act](#) provides as follows:

“ 24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and



- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.”

32. Section 26 of the [Land Registration Act](#) provides as follows:

- “26. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

33. Section 26 of the [Land Registration Act](#) provides that the certificate of title should be taken as prima facie evidence that the person named therein is the proprietor of the land and can only be challenged on the grounds of fraud or misrepresentation. The defendant alleged that the plaintiffs acquired the title to the suit property fraudulently. The Court of Appeal in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR held as follows:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* (2008) 1 KLR (G&F) 742 wherein the Court stated that:

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

34. In the present case, it is my view that from the totality of the evidence adduced, the defendant has not demonstrated that the plaintiffs acquired the title to the suit property fraudulently. Consequently, the plaintiffs’ claim in the plaint succeeds and the defendant’s counter claim fails. The upshot of the foregoing is that I issue the following final orders:

- a. The defendant, its agents, servants and any other person claiming it shall remove themselves from land parcel No. Mau Narok/Siapei Block 7/445 (Gatimu) within 6 months of this order and grant vacant possession thereof to the plaintiffs;



- b. In default of compliance with order No. (a) herein above, the defendant, its agents, servants and any other person claiming under it shall be evicted from land parcel No. Mau Narok/ Siapei Block 7/445 (Gatimu) by or at the instance of the plaintiffs;
- c. The plaintiffs are hereby awarded costs of the suit.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 22ND DAY OF SEPTEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

