



**Cheruiyot & 51 others v Morogo & 7 others (Environment & Land Case  
488 of 2013) [2023] KEELC 20092 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20092 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 488 OF 2013  
A OMBWAYO, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**KIPRONO CHERUIYOT & 51 OTHERS ..... PLAINTIFF**

**AND**

**GEORGE K MOROGO & 7 OTHERS ..... DEFENDANT**

**JUDGMENT**

1. There is no dispute that the plaintiffs and defendants are members or children or relatives of members of Kipsyenani Farm Limited and beneficiaries of LR Kampi Ya Moto/kampi Ya Moto Block 6/288 hereafter referred to as the suit property. The only dispute is how to share the property and each camp has its form of subdivision. The plaintiffs lament that the defendants are purporting to act as officials for the Kipsyenani Farm Ltd (hereinafter referred to as the company) which was defunct and have trespassed into the suit property and into individual parcels of land and started demarcating them with a view to re-allocate them afresh. The plaintiffs alleged that the defendants were neither officials nor shareholders of the company.
2. The plaintiffs pray for a declaration that the suit property is not available for re-demarcation and re-allocation as the plaintiffs and defendants have been issued with individual titles as the mother title was surrendered to the Commissioner of Lands. The plaintiffs pray for a permanent injunction restraining the defendants their servants and or agents from trespassing into and re-demarcating all those individual plots in the suit property. The defendant filed amended defence denying the allegations made by the plaintiffs and stated that they are amongst the duly elected members of the company that purchased the suit property and deny that the mother title to the property was ever surrendered to the Commissioner of Lands and that the same was subdivided and plots created and individual titles created. They allege that they conducted a search which revealed that the original title was still intact and had not been subdivided. The defendant state that the allotment letters were given in 2003 at a time when the company was not functional and had not been revived.



3. The defendants lament that the allotment letters were issued irregularly and unlawfully as the title deed for the entire Kampi ya Moto/Kampi ya Moto/Block 6/288 was yet to issue.
4. The defendant deny trespassing on the plots and that the subdivision of the suit property was not done at the time the company was wound up. The defendant allege to be the duly elected members of the company and therefore authorized to manage the affairs of the company.
5. When the matter came up for hearing, PW1, Joel Kiptui K Biwott a retired teacher relied on his written statement and testified that the 8 defendants had interfered with his plot number Kampi ya Moto/ Kipsyenon Trading Center B35 and B /133. He testified that the plaintiffs acquired their plots through the company. The land was subdivided in year 1995 and the shareholders were allocated plots but the defendants were interfering with their plots. The original title for the suit property was surrendered to the Commissioner of Lands. The defendant claimed that the original title for the suit property was lost and that they were issued with a provisional title. He asserted that the process of subdivision and issuance of titles was finalized in 2003. He states that the alleged directors are intending to give persons who are not members of the defunct company land and are in the process of denying the genuine land owners. He produced maps and approvals for subdivisions. He states that the defendants created a new company known as Kipsyeana whereas the original company was called Kipsyenon. The new title deed issued to Kipsyeana Company was done when the suit was in court and yet the initial subdivision was done in 1983. On cross examination he states that the defendants have illegally developed other people's plots. He reiterated that there was interference with beacons of Kampi ya Moto/Kampi ya Moto/Block 6/288 which had been subdivided into plots and titles issued. The witness did not have the surrender and he did not have the minutes of surrender. He reiterates that the company was wound up sometimes in 2003.
6. Pw2 Kiprono Cheiruyot lives at Kipsyenon and is 85 years old. He relied on his statement dated 22<sup>nd</sup> September 2021 and filed on 13<sup>th</sup> February 2013. He states that the land was subdivided and shared amongst all members but the defendant interfered and requested for a 2<sup>nd</sup> subdivision. He states that everybody has his own land but the dispute is in respect of the plots that were created in title number B288. On cross examination he was inconsistent and not coherent and appeared to have forgotten the facts of the case due to age.
7. Pw3, George Simba Arap Langat, a land owner in the suit property states that his parcels of land were the newly created Kipsyenon Trading Center No.23 and the other parcels are 30, 191 and 197. He took his allotment letters in 2003 like all other members including the defendants. They surrendered the original title for Kampi ya Moto/Kampi ya Moto/Block 6/288 to the commissioner of lands in 2003 and in return they were issued with allotment letters. The defendant complained that the plots were not properly allocated. On cross examination he states that the register for Kampi ya Moto/Kampi ya Moto/Block 6/288 was illegally opened on 20<sup>th</sup> May 2003 and title issued to Kipsyeana Co, Ltd. He states that allocation of plots was closed in 2002 before the title was issued. On re-examination he states that the title issued in 2003 was issued in the names of Kipsyeana Co. Ltd. Which is not the original Company.
8. PW4, Joseph Korir relied on his statement which was adopted as evidence in chief. He was the District Commissioner in Government and later a member of parliament of Mogotio between 2002 and 2007. He owns a plot at Kipsyenon trading centre being plot number B-184. His plot was as a result of surrender of Kampi ya Moto/Kampi ya Moto/Block 6/288 after subdivision and allocation to the plaintiffs.



9. Dw1, George Kiplagat Morogo lives in Kipsyenan Nakuru . He relied on his statement which was adopted by this court as evidence in chief. He stated that the leases issued to the plaintiffs were river road leases as the mother title is still alive. In a nutshell, he testified that all leases issued were river road leased thus fake or illegally and corruptly obtained as the mother title has never been surrendered. He states that the green card shows that the land is still owned by Kipsyeana Co Ltd and that the deference in the names was caused by a typing error.
10. On cross examination, he states that Kipsyeana and Kipsyenan is the same company. That the certificate of search shows Kipsyeana but the company is known as Kipsyenan. The title was issued on 23<sup>rd</sup> April 2015. He states that he became a director of Kipsyeana on 12<sup>th</sup> July 2008 after an election. The returns were filed between July and December 2008. Upon election he embarked on a fresh subdivision of Kampi ya Moto/Kampi ya Moto/Block 6/288. He admitted that he owns title number Kipsyenan Trading Center B-455 and 457. They have mutation forms and that they have allotment letters. He was given an allotment letter on 29<sup>th</sup> April 2003. He has not been shown the ground. He has constructed a big hotel on the plot. He does not remember his neighbours. He admitted that according to the letter by National Land Commission the tile for Kampi ya Moto/Kampi ya Moto/Block 6/288 was surrendered. However, he reiterates that they were re-issued with a title in 2015. They discovered that the title deed was lost after elections in 2008 but they reported to the police on 31<sup>st</sup> October 2014 which is 6 years after elections. He admits that subdivision was done earlier albeit illegally. He started building in the year 2008 whereas the case was filed in 2013. The polytechnic has been built on the suit parcel of land. He admits that they paid for land in 1978 and in 1983 the company was wound up. The defendant revived the company in 2008 because the plots had not been shown to the members.
11. The gravamen of the plaintiff's submissions through their learned and able counsel, Mr Biko is that they have established that the original title for Kampi ya Moto/Kampi ya Moto/Block 6/288 was surrendered on 29<sup>th</sup> September 2003 and that the suit parcel of land was subdivided allocated and titles issued and therefore the title issued in May 2015 was a fraud, illegal and as a result of a corrupt scheme. The plaintiff relies on the case of Munyu Maina Vrs Hiram Gathiha Maina in Civil Appeal No. 239 of 2003 (2013) eKLR .
12. The plaintiff further submits that the title is registered in the name of an illegal entity called Kipsyeana which is not bonafide original owner. The plaintiff also relies on the case of Republic Vrs Minister of Transport & Communication & 5 others Ex Parte Waa Ship Garbage Collector & 15 others Mombasa HCMA No.617 of 2003 (2006) 1KLR ( E&L) 563.
13. The plaintiff relies on Articles 40 (6) of *the constitution* of Kenya 2010 to and argues t that the titles issued on 23/ 4/2015 was illegal hence cannot be protected by this court and prays that the court should allow the suit and order that defendant pay costs.
14. The defendants on their part, through learned and eloquent counsel Mr Kipkoech, argue that they were duly elected as directors of Kipsyenan Co. Ltd. The members of the Company resolved to elect new officials and there was a notification of change of directors. Moreover, the defendant submitted that the title for Kampi ya Moto/Kampi ya Moto/Block 6/288 is still intact. The defendants argue that the title was issued in the year 2003 and that the green card was certified on 19<sup>th</sup> September 2013. That the same was re-issued on 23<sup>rd</sup> April 2015 by the Land Registrar. The defendant rely on section 26 of the *Land Registration Act* no 3 of 2012. The defendants further rely on the case of Margaret Njeri Wachira Vrs Eliud Wareru Njenga (2018) eKLR .
15. The defendant argue that the plaintiff have failed to produce to court the consent of the Land Control Board. The defendants rely on the provisions of section 6 (1) of the *Land Control Act* Cap 302.



16. Moreover, the defendants argue that the subdivision made earlier was a nullity for lack mutation form and lack of a resolution to subdivide. In conclusion the defendant argue that the plaintiffs are entitled to a share of the suit land thus Kampi ya Moto/6/288 but after a fresh subdivision.
17. I have considered the whole matter and do find that the following issues ripe for determination.
  1. Whether Kipsyenan Co. Ltd exists.
  2. Whether Kampi ya Moto/6/288 still exists
  3. Whether there was surrender of the title 288
  4. Whether the plaintiffs hold valid titles.
  5. Whether the procedure of surrender, submission, allocation and issuance of titles was legal.
18. On the issue as to whether the company still exists, I have considered the evidence on record and rival submission and do find that on the 20<sup>th</sup> January 1969, the Assistant Registrar of Companies issued a certificate of incorporation of Kipsyenan Farm Ltd as a private company limited by shares under Companies Act Cap 486 Laws of Kenya. In the year 1970, the company purchased Kampi ya Moto/Kampi ya Moto/Block 6 which was later subdivided and shareholders allocated parcels of land comprised therein. However, Kampi ya moto/Kampi ya Moto/Block6/288 was a result of the subdivision of Block 6. It is evident that Kampi ya Moto/Kampi ya Moto/Block 6/288 Kipsyenan Farm was subdivided and portions allocated to the members and some title issued to members. The company was allegedly wound up in the year 2003 after the property had been subdivided and shared. Both parties agree that the company was wound up but no evidence of winding up of the company was produced but the parties are bound by their pleadings and assertions. The defendants purport to have revived the company and carried out an election in 2008. Though there is no evidence of winding up of the company both parties agree that the company was wound up and use the term the defunct company implying that both agree that the company ceased to exist at one time though without providing evidence that it ceased to exist.
19. The applicable law is the repealed Companies Act Cap 486 laws of Kenya. Section 338(1) provides for the revival of a dead company thus:-
  338. Power of court to declare dissolution of company void (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. (2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order or such further time as the court may allow, to deliver to the registrar for registration a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.
20. The defendants having admitted that the company was wound up and that it is defunct, have not demonstrated that the same was revived in accordance with the law. The defendants purported to conduct an election of the company directors without reviving the company which was an act in futility and illegal as it was contrary to the law as the defendants could not revive the company and change the directors on the same date thus on the 26<sup>th</sup> July 2008. Moreover, it was illegal to conduct an election in respect of a nonexistent company as on the date of election the company did not exist on the register



of companies having been wound up or deregistered as alleged by the parties. The upshot of the above is that the company ceased to exist in the year 2003.

21. On the issue as to whether the title for Kampi ya Moto/Kampi ya Moto/Block 6/288 still exists, I have seen a letter by J M Okungu the Chief Land Registrar dated 14<sup>th</sup> July 1998 addressed to the Land Registrar Nakuru referring to her letter reference No. 81230/28 dated 15<sup>th</sup> January 1998 allowing the land Registrar to go ahead and issue individual titles to members of Kipsyenan Farm Co. Ltd as the head title had been surrendered. By virtue of this letter, this court finds that the head title for Block 6/288 was surrendered to the Commissioner of Lands and any attempts to suggest that it was not surrendered is false and intended to defraud the plaintiffs.
22. On 6<sup>th</sup> September 2001, the Director of Surveys wrote to the Chief Land Registrar in respect to the suit property and enclosed sealed copies of the new Registry Index Maps ( RIM) together with relevant copies of area list for action and the new name for the suit land was Kipsyenan Trading Centre “B” 1-212. The Director of Survey had been paid fees by the company on 11<sup>th</sup> February 2003. The company was not properly revived and the resultant actions of attempting to cancel the earlier subdivision were an illegality as the members had already been issued with titles to the plots. The Commissioner of Lands had no power at all to cancel the subdivisions by letter.
23. It is absurd and strange that company’s name was changed from Kipsyenan Farm limited to Kipsyeana Co Ltd and the land registered in the names of the new company in August 2003 and title issued in April 2015. This court finds that the change of name was designed to perpetrate a fraud and the court does not agree with the defendants that the difference in names was typo -graphical error because the error became the error is reflected in to O.B at the police station purporting to report the loss of the original title knowing very well that it had been surrendered to the commissioner of Lands. The error was repeated in the Gazettee notice and certificate of official search, despite the fact that the company was non-existence at all this time. The parcel of land had been subdivided and new titles issued upon surrender of the mother title in the year 1998 as confirmed by the letter of Chief Registrar dated 14<sup>th</sup> July 1998 copied to Kipsyenan Farm Co. Ltd. I have read the defendants submissions and do find the Commissioner of Lands wrote to the plaintiffs and the members of the defunct company including the defendant that he was pleased to inform them that the issue of the lease for their plots which were resultant of Block 6/288 would be undertaken upon receipt of formal acceptance of the special conditions attached and payment of the charges prescribed in the subdivision scheme approval. The Commissioner of Lands issued allotment letters after subdivision and change of user from Agricultural to residential. Some of the members paid for the charges prescribed in the allotment letters being conveyance fees of Ksh.1250, Registration fees of 250, stamp duty 30/= all totaling to Ksh.1530, executed leases and were issued with certificates of lease which the defendant suggest that they were issued from river road but I disagree as the evidence produced by the plaintiffs establishes that the procedure was followed and genuine titles issued. The defendant did not call any document examiner to prove that the certificates of lease were issued fraudulently. There is no evidence that M. Oduma Otieno and J. M Okungu ( Mrs) at one time had offices off river road during their cause of official duties.
24. On the issue as to whether the title deed for entire Kampi ya moto/Kampi ya moto/6/288 is still intact or was surrendered, I do find that the same was extinguished upon surrender, subdivision of the land preparation of new Registry Index Manual and issuance of new lease and certificate of leases. The commissioner of land and the chief Lands Registrar wrote letters indicating the the title was



surrendered. The court of appeal was faced with a similar situation in the case of Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR and held as follows:-

“The letter dated 25<sup>th</sup> November 1981 reveals that there were purchasers of the sub-divisions in the suit property. In the letter, the Commissioner of Lands clearly informs and advises Mr. R.L. Aggarwal Advocate for the registered proprietors that there has been sub-divisions and re-subdivisions and change of user from agricultural to residential, industrial etc. The letter notes that it is rather impossible at that stage to issue titles direct to the purchasers of the sub-divisions. This letter reminds us of Section 100 of the *Evidence Act*, Cap 80 Laws of Kenya which provides: “When language used in a document is plain, and it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.” Guided by this provision, it is our considered view the 1<sup>st</sup> to 4<sup>th</sup> respondents cannot contradict the contents of the letter which plainly indicates that as on 25<sup>th</sup> November 1981, there were purchasers of the sub-divisions of the suit property and there was a proposal to issue titles directly to the purchasers.

85. The evidence on record further reveals that on 21<sup>st</sup> September 1983, a Surrender of Lease to the Government of Kenya of Eldoret Municipality Block 15/1 measuring 666.41 was registered. (See page 67 of the record).
86. The suit property was governed by the Registration of Titles Act (RTA). Section 44 (1) of the Registration of Titles Act provides that:

“44 (1) Whenever any lease which is required to be registered by the provisions of this Act is intended to be surrendered, and the surrender thereof is effected otherwise than by operation of law, there shall be endorsed upon the lease the word “surrendered”, with the date of surrender, and the endorsement shall be signed by the lessee and the lessor as evidence of the acceptance thereof, and shall be attested by a witness; and the registrar thereupon shall enter in the register a memorial recording the date of surrender and shall likewise endorse upon the lease a memorandum recording the fact of the entry having been so made in the register, and thereupon the interest of the lessee in the land shall vest in the lessor or in the person in whom having regard to intervening circumstances, if any, the land would have been then vested if no such lease had ever been executed; and production of the lease or counterpart bearing the endorsed memorandum shall be sufficient evidence that the lease has been so surrendered.”

25. The provisions of Section 41(1) of the RTA has received judicial pronouncement by this Court in Mwinyi Hamisi Appeal vs. Attorney General, Civil Appeal No. 125 of 1997 (Tunoi, Shah & Bosire JJA). The relevant facts are as follows:

“Captain Townsend was the registered proprietor of Plot Nos. LR 324/III/MN and LR 334/III/MN. As regards Plot 334, he was a co-owner with three other persons. Captain



Townsend sought to sell the Plots to Mr. Hamisi Ali. Before he could sell, the then Colonial authorities wrote a letter dated 7<sup>th</sup> November 1955 to the four asking them to surrender the titles in exchange for allocation of residential beach plots. By letter dated 26<sup>th</sup> January 1956, Captain Townsend surrendered his title document in respect of Plot 324 to the Government. The letter shows that the Certificate of title in respect of Plot No. 324 was sent to the Commissioner.

The issue of formalization of surrender of the two plots dragged on for years.

The learned judges held that the return to the Government by Captain Townsend of his documents of title in respect of Plot No. 324 could only mean he could no longer sell the property. As regards Section 44 of the RTA, the Judges expressed:

The land in question was held under the Registration of Titles Act, Cap 281, Laws of Kenya. Section 44 of the Act requires that surrender of land leased by the Government to persons to be registered in order to terminate the interest of the lessees. Registration of such surrender is evidence of surrender. But Section 44 does not envisage a situation whereby lack of such registration would make null and void de facto surrenders. From the evidence before the superior court, there can be no doubt that Captain Townsend and his three co-owners had factually surrendered Plot No. 334 to the Government and that all of them had in exchange been promised allotment of residential beach plots. Moreover, such lack of registration of surrender does not give Mr. Hamisi any title to the suit land.....The Commissioner had de facto control of Plot No. 334 and if he proceeded, as he did, to allot the land to other persons....., their titles cannot be impugned except as provided for in Section 24 of the Act.....It is on these observations that, in our view, Mr. Hamisi Ali's claim to the title to the suit land fails.”

26. Guided by the dicta in *Mwinyi Hamisi Appeal vs. Attorney General*, Civil Appeal No. 125 of 1997, it is our considered view that the entry in the Register that Eldoret Municipality Block 15/1 measuring 666.41 was surrendered to the Government ipso jure extinguished all rights and interest of the then registered proprietors over the suit property. We note that the 1<sup>st</sup> to 4<sup>th</sup> respondents contend that the surrender was unlawful. There is a presumption that all acts done by a public official has lawfully been done and that all procedures have been duly followed. The onus is on the 1<sup>st</sup> and 4<sup>th</sup> respondents to prove otherwise. They have failed to do this. A bare allegation that a lawful procedure was not followed is not proof of the allegation. It was open to the 1<sup>st</sup> to 4<sup>th</sup> respondents to make an application before the trial court to compel the Commissioner of Lands to produce the original instrument of surrender, the memorial and the endorsement thereon. The 1<sup>st</sup> to 4<sup>th</sup> respondents failed to do so.
27. The relevance of the above is that the government officials in the ministry of lands acknowledged the fact that the title had been surrendered in the year 2003 and this evidence is not controverted. It is presumed that the acts done by a public officials namely the commissioner of lands and the chief land Registrar nad the director of surveys were lawfully done and that all procedures were duly followed and therefore the defendants cannot argue that there was no surrender when the public officials state in writing that there was surrender. Though the register was not produced to prove that the surrender was registered, there is sufficient evidence on record that the title was surrendered.
28. This court finds that in issuing a new title in 2003 in respect of the suit property and re-issuing another in 2015 was a fraud and an illegality meant to defraud the registered members of their property as the property had been subdivided and the title surrendered and new titles issued.



29. Black's Law Dictionary, 9<sup>th</sup> Edition defines fraud as;

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.

30. In the case of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR, the Court held that; -

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13<sup>th</sup> Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford v Mutual Society (1880) 5 App. Cas.685 at 697, 701, 709, Garden Neptune V Occident [1989] 1 Lloyd's Rep. 305, 308).

31. Where a person's title is under attack, he must of necessity give an account on how he acquired the same. In the case of Munyu Maina –Vs- Hiram Gathiha Maina, Civil Appeal No.239 of 2009, where the Appeal Court held that: -

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

32. In this case the defendants were at pains to explain how they revived the company that was wound up and how they resurrected a surrendered title in the year 2003.

33. Section 26 of the *Land Registration Act* provides: -

26. Certificate of title to be held as conclusive evidence of proprietorship

- (1) 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.

However, title obtained fraudulently is not worth protecting as the court will be protecting an illegality.

34. The import of the above is that the court has no business protecting an illegally obtained title. In the case of *Chemey Investments Ltd -Vs- Attorney General & 2 Others*, CA No. 349 of 2012, the Court of Appeal held that sanctity of title to land registered under the repealed Act was guaranteed and could not be defeated except on the specific grounds set out therein. Where, however, title to property was obtained fraudulently or illegally in violation of the provisions of the Act, (except a first registration) the same was not sacrosanct, did not enjoy any protection, and the Court had power to order rectification of the register. The Defendant cannot be allowed to benefit from their fraudulent acquisition of title.

35. When confronted by a similar case the Court in *Alice Chemutai Too -VS- Nickson Kipkurui Korir & 2 others* [2015] Eklr held that;

“I do not see how a person with a perfectly good title should be deprived of his title by activities of fraudsters. It is in fact time to put down our feet and affirm that no fraudster, nor any beneficiary of fraudulent activities, stands to gain for his fraud, and no title holder will ever be deprived of his good title by the tricks of con artists.”

36. Having held that the whole transaction reeked of fraud, the Court cannot close its eyes in the face of illegalities. In the case of *Mistry Amar Singh -Vs- Serwano Wofunira Kulobya* [1963] EA 408, it was held that whenever an act of illegality is brought to the attention of the Court, then the Court will not allow anybody to benefit from such an illegality, which proposition was also reiterated in the case of *Standard Chartered Bank of Kenya Ltd –Vs- Intercom Services Ltd & 4 Others* [2004] eKLR.

37. Lastly, on the issue as to whether the consent of the Land Control Board was necessary section 6 of the [Land Control Act](#) Cap 302 Laws of Kenya provides :-

6. Transactions affecting agricultural land

- (1) Each of the following transactions that is to say—
  - (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
  - (b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply;
  - (c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area,



is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.

- (2) For the avoidance of doubt it is declared that the declaration of a trust of agricultural land situated within a land control area is a dealing in that land for the purposes of subsection (1).
- (3) This section does not apply to—
  - (a) the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or
  - (b) a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.

38. In this case the parcel of land did not require the consent of the Land Control Board as it had been converted from Agricultural land use to residential land use. This court find that the plaintiffs are registered owners of resultant parcels of land from 6/288 and therefore have the locus standi to bring the suit to court. The upshot of the above is that the plaintiffs are entitled to the orders sought. I do grant judgment in terms a declaration that the suit property is not available for re-demarcation and re-allocation as the plaintiffs and defendants have been issued with individual titles as the mother title was surrendered to the commissioner of lands. This court further grants a permanent injunction restraining the defendants their servants and or agents from trespassing into and re-demarcating all those individual plots in the suit property. Cost of the suit to the plaintiffs. Orders accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2023.**

**A. O. OMBWAYO**

**JUDGE**

