



**Ituika (As the administrator ad litem of the Estate of the Late James Ituika Mbugua)
v Nyuiruri alias Jane Wairimu Muiruri & 14 others (Environment & Land Case
702 of 2015) [2023] KEELC 20012 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20012 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 702 OF 2015
LC KOMINGOI, J
SEPTEMBER 21, 2023**

BETWEEN

**JOHN MUCHIRI ITUIKA (AS THE ADMINISTRATOR AD LITEM OF THE
ESTATE OF THE LATE JAMES ITUIKA MBUGUA) PLAINTIFF**

AND

**JANE WAIRIMU NYUIRURI ALIAS JANE WAIRIMU
MUIRURI 1ST DEFENDANT
LAND REGISTRAR, THIKA 2ND DEFENDANT
CHIEF LAND REGISTRAR 3RD DEFENDANT
ATTORNEY GENERAL 4TH DEFENDANT
ANN WACHERA MUGO 5TH DEFENDANT
JOHN LUGAKA KINYURU 6TH DEFENDANT
MARY ADEN 7TH DEFENDANT
LILIAN AWOUR OKULLO 8TH DEFENDANT
DAVID PATRICK THARUYA 9TH DEFENDANT
SUSAN NJANJA GACHERU 10TH DEFENDANT
ELIZBETH WANJIRU 11TH DEFENDANT
ESTHER MUNEGI 12TH DEFENDANT
SIMON NGEI MUNIU 13TH DEFENDANT
ROSE NAFULA CHESEBE 14TH DEFENDANT
NICHOLAS MUREITHI NDWIGA 15TH DEFENDANT**



JUDGMENT

1. By a Plaintiff dated 20th July,2015 filed on 21st July,2015, the Plaintiff seeks the following orders against the Defendants jointly and severally;
 - a. A declaration that the purported registration of the 1st Defendant as the registered proprietor of Ruiru East/Juja East Block 2/2643, purported closing of the register thereof, registration of the purported sub-divisions 1500-1513 or Ruiru East/Juja East Block/2/15000-15027, and registration of the 5th -15th Defendants as the proprietors of the purported subdivisions is unlawful, fraudulent, corrupt, in violation of the *Land Registration Act*, void and did not extinguish the proprietorship of the Plaintiff on the suit property or pass any property interest in any party therefor to any of the Defendants.
 - b. An order directing the 2nd and 3rd Defendants to rectify the register by cancelling the purported registration of the 1st Defendant, purported closure of register for Ruiru East/Juja East Block 2/2643, cancellation of the purported registered for the purported subdivisions Ruiru East/ Juja East Block/2/15000-15027, a recall, and destruction of the title deeds for the purported sub-divisions.
 - c. A permanent injunction restraining the 5th to 15th Defendant by themselves, their servants and or agents from selling, leasing, mortgaging, gifting or otherwise disposing any interest and from entering, remaining on, construction, cultivating or otherwise interfering with the Plaintiffs title to and quite possession of the Ruiru East / Juja East Block /2/2643 or any of the purported sub-divisions Ruiru East/ Juja East Block/2/15000-15027.
 - d. In the alternative and without prejudice to the foregoing, an order directing the Defendants to jointly and severally indemnify the Plaintiff for the loss of Ruiru East/Juja East Block/2/2643 to the extent of the market value of the suit property or the subdivision thereof at the time of the judgment.
 - e. Any other relief as the court may deem fit.
 - f. Cost of the suit.

The Plaintiff's Case.

2. The Plaintiff is the Administrator of the Estate of the late James Ituika Mbugua. The plaintiff's claim is that the late James Ituika Mbugua, was the registered and beneficial owner of Ruiru East/Juja East Block/2/2643, measuring 1.30 hectares. The property was acquired on 30th June, 1984 from Juja Farm where he was a member. On 23rd June,1995, he became its registered owner after being issued with its title deed on 22nd June,1995. On 30th June, 1984, he obtained possession.
3. The Plaintiff accuses the 2nd Defendant of unlawfully, illegally and fraudulently registering the 1st Defendant as the owner of the property on 22nd October, 2012 without their consent, knowledge or any justification. In particular, it is asserted that when the change of ownership was done, the deceased had already passed on, on 23rd September, 2003. Further, forged documents purporting to effect change of ownership were never filed or kept as mandated by Section 6,7 and 40 of the *Land Registration Act*.
4. According to the Plaintiff, the register to the suit property was closed on 28th March, 2013 upon subdivision into parcels numbers 1500-1513. It was further subdivided into parcels numbers



15000-15027 which were registered in the names of the 5th -15th Defendants. It is alleged that Githurai Division Land Control Board consent was forged to effect the purported subdivision as the Board never met on 15th January,2013. The Official stamp and signature of the Board Chairperson was not affixed neither was mandatory planning brief, subdivision scheme or FORM PPA3 paid for or received by the Director of Survey as at 7th April2015.Additionally, Registry Index Map was not amended to reflect the purported sub-division neither did the subdivision Numbers 1500-1513 exist as at 17th April,2015. The resultant subdivisions could not have been created as they were never existed when the property was registered in 1995.

5. It is the Plaintiff's case that the Defendants fraudulently attempted to cover the corrupt scheme when they were discovered and a report was made to the police. This was done by forging green card to show that Joseph Wanyoike Muiruri of ID No.422527/73 was the registered owner yet his ID No was canceled and replaced with 10425527/73.Subsequently, Joseph Wanyoike Muiruri was issued with forged title deed on 19th April, 1991.
6. It is further alleged that the 2nd Defendant refused to accept Plaintiff's application for certificate of search when he sought to know who the registered owners of the resultant sub-divisions were. Instead, they demanded production of copies of title deed of the resultant subdivisions. The Plaintiff's written request that a restriction be entered to limit fraudulent dealing on the property and its resultant subdivision was also rejected. It is the Plaintiff's case that his investigation established that the 5th -15th Defendants were the registered proprietors of the subdivisions.
7. It is stated that despite demand and notice of intention to sue being served upon the 1st -4th Defendants, they have failed to settle the claim. This court is therefore urged to restrain the Defendants from disposing, registering and transferring the properties to the third parties.

The 1st Defendant case.

8. The 1st Defendant neither entered appearance nor filed defence despite being served. An affidavit of service filed on 29th July, 2015 sworn by Isaac O. Oichoe on 28th July, 2015 confirms that the 1st Defendant was served with the Plaintiff.

The 2nd - 4th Defendants case.

9. The 2nd, 3rd and 4th Defendant in their statement of Defence dated 3rd August, 2017 and filed on 10th August, 2017 deny the allegations in the plaintiff and pray that the Plaintiff's suit be dismissed with costs. They maintain the argument that the suit offends Section 13A of the *Government Proceedings Act* and therefore they shall raise a preliminary objection that it be struck out for the reason that notice of intention to sue government was never issued.

The 5th -15th Defendant's case.

10. The 5th - 15th Defendants filed a statement of Defence dated 12th February, 2019 seeking dismissal of the Plaintiff's case with costs. They contend that before purchasing the property, they conducted due diligence at the Land Registry which confirmed that the 1st Defendant was the registered owner. The property was bought with vacant possession. They maintain the position that they obtained all the necessary consents from the 1st Defendant and state organs to subdivide the disputed property and therefore the Plaintiff does not have any grounds to fetter their proprietary rights. It is their case that they are strangers to fraud and corrupt allegations leveled against the 1st Defendant by the Plaintiff. They deny ever being involved in any attempts to cover up. They did not receive any notice of intention to sue.



The Plaintiffs Reply to 2nd -4th Defendants' defence

11. While responding to the 2nd -4th Defendant statement of defence through a reply dated 16th August,2017 filed on 18th August,2017, the Plaintiff highlighted that Section 13A of the [Government Proceedings Act](#) is not applicable in this suit because it was declared unconstitutional in *Kenya Bus Service Ltd & Another v Minister for Transport & 2 Other* (2012)eKLR which was affirmed on Court of Appeal No. 297 of 2004 *David Njenga Ngugi v Attorney general* (2016)eKLR.

Evidence of the Plaintiff.

12. PW1, John Muchire Ituika while adopting his witness statement and bundle of documents during examination in chief stated that he was the administrator of his father's estate who owned the suit property.
13. On cross examination, his evidence was that the property was bought from Juja farm. At the time he had its title, but the property had not been fenced. Despite the demise of his father on 28/9/2003, the land registrar was never issued with his death certificate notifying him of its occurrence. It was his evidence that he was notified by his neighbor that some people had put beacons on the property claiming they had bought it. PW1 stated that although he was not given the minutes and timetable of the land control board, he reported the matter to Thika CID for investigation. Persons claiming ownership of the land were summoned. It was his evidence that the documents and searches undertaken at Thika Registry did not tally.
14. During re-examination, PW1 maintained that the suit property belonged to his father. Although it was not fenced, they knew where the beacons were. They would occasionally visit it because they did not reside there.
15. PW2, Mary Gathoni Ituika relied entirely on her witness statement as part of her evidence. She stated that her son, John Muchire Ituika instituted this suit on behalf of the estate of the deceased. Upon sending her two sons to check the suit property when he husband died on 2003, they discovered that it had been surveyed and demarcated.
16. The court was informed during cross examination that when they discovered it had been demarcated, they inquired as to who had done it as evidenced in a letter dated 2015. It was her evidence that she never informed the land registrar about the demise of her husband because she had a patient at the time.

Evidence of the Defendants.

17. DW1, Robert Mugendi, Land Registrar based at Ruiru Land Registry produced two green cards in respect of the suit property. The first register which was also available at Registry Index Map at Survey of Kenya revealed that the suit property measuring appropriately 1.3hectares on Registry Map Sheet No.5 bearing the name Joseph Wanyoike Muiruri of Identification Card 10425527/73 was opened on 19th April 1991. The second register showed that the suit property measuring 1.3hectares on Registry Map Sheet No.2 was opened on 26th July 1995 shows James Ituika Mbugua of Identification No.0354568/63 as the owner on 23rd July 1995. He was issued with a title deed. On 28th March 2013, it was transferred to Jane Wairimu Muiruri of Identification No.4915384 who subsequently subdivided it into parcel numbers 15000-15027 on 28/3/2013. Parcels 15000-15010 were transferred to 5th -15th Defendants while the remaining resultant parcels were transferred to third parties who are not parties to this suit. The transfers were supported by payment receipts, executed transfer and consent. Although DW1 acknowledged that their record showed the suit property had two green cards with different registry map sheets, he recommended that the district surveyor should file a report



demonstrating whether the property existed on the ground. DW1 informed court that the area chief issued a confirmation on who the registered members of Juja farm were. His evidence was that once the registered owner of the property dies, his family ought to forward a copy of the death certificate to the Land Registrar. Notice could then be made on the parcel green card so that there would be no transaction for the property.

18. DW1 reiterated during cross examination that there would have been typographical error because of existence of two duplicate green cards with different RIM over the same property. Despite acknowledging that James Ituka Mbugua died in September, 2003, his testimony was that the death was never noted in the parcel register. He advised that the deceased family ought to have provided the Land Registrar with this information in order to safeguard the deceased property. Despite confirming that entry No. 4 indicated that the suit property was transferred to Jane W. Muiruri on 22/10/2013, there were no completion documents, transfer or land control board consent to support such transaction. He further stated that the said transfer would not have been effected without the land registrar seeing such documents.
19. DW2, Nicholas Mureithi Ndwiga informed court that in 2012, they jointly bought L.R No. Ruiru East/Juja East Blocks/26743 from Premier Nyaningo Self Help Group. When they bought it, the self-help group had not yet obtained the title deed for the reasons that they were in the process of purchasing it from Jane Wairimu Muiruri. They then approached Jane with whom they entered into a sale agreement. According to his testimony, sale and sub-division of the property into twenty eight (28) parcels was sanctioned by Thika Land Registry who issued them with their titles.
20. While being cross –examined, he reiterated that due diligence conducted through a search at Thika Land Registry indicated that the property belonged to the 1st Defendant and it never had any encumbrances. They were also shown a sale agreement between the 1st Defendant and Premier Nyaningo Self Help Group which had not yet been completed. On 21/11/2012, they entered into sale agreement with the 1st Defendant. He added that they have never undertaken any developments on the suit land since they were awaiting conclusion of this case.
21. During re-examination, he insisted that due diligence conducted before purchasing established that Jane W. Muiruri was the registered owner. Further, Premier Nyaningo Self-Help Group had not yet concluded their purchase of the property. Despite stating that Alice Njongo assisted them in conducting the search, they did not know whether she worked at the land registry.
22. DW3-Ruth Muchira, incharge of Ruiru survey office based at Kiambu County presented a report dated 4/2/2022. She confirmed that the site visit conducted on 18/11/2021 showed that the suit property was on Map Sheet No.5 and not No.2. Although there were beacons indicating subdivisions, the RIM never showed the said subdivisions.
23. During cross examination, she stated that although the site visit was carried out pursuant to this court directive, only the area chief and Samuel Ituika attended. The 5th -15th Defendant never showed up. She explained that once subdivision plan is submitted to the office of survey, a copy is given to the Registrar for registration while another is given to director of survey for amendment. Subdivision should also be reflected on the map sheet of the parcel. She noted that there was no subdivision of sheet No.5. It was also impossible to have a parcel on two sheets. Therefore if there was any subdivision on sheet map No.5, the Director of Survey would have noted such amendment. DW2 admitted that when she visited the suit land, they found it had beacons even though it was vacant. Two green cards for the suit property were also obtained from the Land registry. The court was informed during re-examination that facilitation of the site visit was borne by the Plaintiff as it is the tradition.



24. At the close of the oral testimonies parties filed final written submissions.

The Plaintiff's submissions.

25. The Plaintiff's counsel reiterated the parties pleading and evidence through submission dated 31st October, 2022 filed on 24th February, 2023 which raised two issues namely, whether the 1st Defendant had proper title and what are the 2nd Defendants obligations if any.
26. Counsel sustained the argument that James Ituika Mbugua, the registered owner of the disputed property who died on 28th September, 2003 was issued with the title on 23rd June, 1995. On 3rd June, 2015, the Plaintiff was issued with letters of administration ad litem authorizing him to institute this claim on behalf of the estate. It was argued that the 2nd Defendant does not have any completion documents to support how the property was transferred to the 1st Defendant on 22nd June, 2012. The only completion documents which were available were those supporting transfer of the disputed property to the deceased. This therefor implied that the 1st Defendant procured registration illegally, unprocedurally and through corrupt schemes. Her title is therefore impeachable by dint of Section 26(1) of the *Land Registration Act* and must be canceled because she never had the capacity to transact as was held in *Elijah Makeri Nyangwara v Stephen Mungai Njuguna & Another, Eldoret ELC Case No.609B of 2012* which was cited in *Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others (2015)eKLR*.
27. Section 7(1), 9 and 10 of the *Land Registration Act* is quoted to argue that the 2nd Defendant is obligated to maintain land register parcel file containing supporting documents of subsisting entries and such information must be accessible by the public. Considering DW1 testified that the 2nd Defendant did not have any documents to support entry No. 4 made on the disputed property register neither were they available when the Plaintiff requested in a letter dated 7th April, 2015. Failure of the 2nd Defendant to discharge its obligations contributed to the illegal and unprocedural registration of the 1st Defendant as the owner of the suit property.
28. According to the Plaintiff counsel, the 1st Defendant title and any subsequent transaction must be cancelled because the 1st Defendant did not have the capacity to hold the title in the first place.

The 2nd -4th Defendant's submissions

29. They are dated 16th January, 2023 filed on behalf of the 2nd -4th Defendant on 2nd March, 2023 repeating parties claim raised three issues for determination. Whether the Plaintiff is the owner of Ruiru East Juja East Block 2/2643, whether the Plaintiff has proved any fraud on the part of the 2nd, 3rd and 4th Defendants and whether the Plaintiff is entitled to the prayers sought.
30. It is submitted that the Plaintiff never proved whether the disputed property belonged to the James Ituika Mbugua (deceased) or Joseph Wanyoike Muiruri. The Land registrar while giving his evidence produced Registry Map Sheet 2 which indicated that on 23rd June, 1995, the deceased was registered as the proprietor of the property and transferred effected to him on the same date. However, Registry Map Sheet 5 indicated that Joseph Wanyoike Muiruri became the registered proprietor of the suit property on 19th April, 1991. Transfer of land was also registered on the same date when the title was issued. This therefor meant that the disputed land was on Registry Map Sheet No.5 and not sheet No.2. It is further argued despite the Plaintiff knowing that Joseph Wanyoike Muiruri, was issued with disputed land title which he sought to be canceled, he was not party to this suit.



31. Various citation including Section 107 and 109 of the *Evidence Act* and *Gichinga Kibutha v Caroline Nduku (2018)eKLR* and are put forward to argue that the Plaintiff has not proved that the 2nd and 3rd Defendant fraudulently registered and transferred the suit property. For this reason, this suit should be dismissed with costs as against the 2nd, 3rd and 4th Defendant for being frivolous and farfetched.

The 5th -15th Defendants’ submissions.

32. Counsel for the 5th -15th Defendant insisted that the Defendants legally acquired their properties in submission dated 22ndFebruary,2023 filed on 9th February,2023 which raised the following issues for determination
- i. Whether the 5th -15th Defendants are bonafide purchasers for value without notice?
 - ii. Whether the Plaintiff ‘s relief are merited
 - iii. Who bears the costs of the suit?
33. Section 107(1) of the *Evidence Act* and decision of *Susan Mumbi v Kefala Grebedhin (Nairobi HCC No. 332 of 1993)* are relied upon to support the argument that the Plaintiff is obligated to prove his case. Counsel argued that the 5th -15th Defendants are bonafide purchaser for value without notice since they hold a certificate of title. This is because they purchased their properties in good faith for value consideration from the vendor who had an apparent valid title. They were therefor not party to the fraud. It is further argued that due diligence conducted before purchasing the properties showed that the 1st Defendant was the registered owner of the property. DW2 also testified that requisite documentation, land control board and execution of transfer documents were undertaken by the 1st Defendant.
34. It is submitted that the Defendants should not be punished due to inaccuracy or malfeasance arising from the land records. A remedy should therefor lie against the state as was held in *David Peterson Kiengo & 2 Others v Kariuki Thuo(2012) eKLR*. This is because the 5th -15th Defendants right to property guaranteed by Article 40 of *the Constitution* should not be arbitrarily deprived from them.
35. The court is urged to dismiss the Plaintiff’s claim with costs since DW1’s and DW3’s testimony demonstrated existence of inconsistency of documentation with regard to the suit property. Nevertheless, there existed accurate records which showed that the disputed property initially belonged to Joseph Wanyoike, the first allottee who probably is a victim of fraud.
36. I have considered the pleadings the evidence on record, the written submissions and the authorities cited. The issues for determination are:
- a. whether the Plaintiff is the legal and beneficial owner of Ruiru East Juja East Block2/2643?
 - b. whether the Plaintiff has proved any fraud on the part of the, 1st, 2nd, 3rd and 4th Defendants?
 - c. whether the Whether the 5th -15th Defendants are bonafide purchasers for value without notice?
 - d. What remedy does the 5th - 15th Defendants have against the 1st Defendant?
 - e. Who should bear costs of this suit?
37. It is not in dispute that James Ituka Mbugua died on 28th September 2003. On 3rd July 2015, John Muchiri Ituika was issued with letters of administration ad Litem vide Nairobi High Court Succession Cause No.1197 for purposes of this suit.



38. To support their case, the Plaintiff filed a title deed issued to James Ituika Mbugua on 23rd June, 1995. A duly executed transfer form dated 21st June, 1995 supporting issuance of the said tile was also filed before this court. A second green card for the suit property opened on 21st June, 1995 bearing Registry Map sheet No.2, also shows that the title was issued on 23/6/1995. It also shows that the title was transferred to Jane Wairimu Nyuiruri of ID. 4915384 on 22/10/2012 and closed on 28/3/2023 upon subdivision into parcels 1500-1513. The subdivisions are supported by mutation dated 12/3/2013 lodged on 13/3/2013. On 15/1/2013, the 1st Defendant was issued with a letter of consent authorizing the said subdivision after she lodged the application. DW2 testified that the land registry has supporting documentation authorizing the transfer and the said subdivisions.

39. It is the plaintiff's case that once the fraud was discovered and reported to the police, the defendants attempted to cover the fraud by making a false green card purporting it to be genuine by stating that the initial registered owner to be one Joseph Wanyoike Mwai ID/No.422527/73.

40. On the 22nd July 2012, the 2nd defendant registered the 1st defendant as the proprietor of the suit property. She subsequently purported to sell it to the 5th – 15th defendants.

From the evidence adduced, the 2nd defendant does not have in his custody the completion documents for entry NO.4, on 22nd October 2012 that is the transfer of the suit property to the 1st defendant. This is contrary to Section 7 of the [Land Registration Act](#).

The 2nd Defendant had in possession of the transfer of the suit property from Juja Farm (1976) Limited to the deceased.

It goes without saying that the registration of the 1st Defendant as the proprietor was illegal, unprocedural or through a corrupt scheme and in violation of the [Land Registration Act](#).

41. Section 26 of the [Land Registration Act](#) 2012 provides that;

26. "A 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, 19 CAP. 300 Land Registration [Rev. 2020] 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.

In the case of *Alice Chemutai Too Vs. Nickson Kipkurui Korir & 2 Others* (2015) eKLR the court stated thus;

"The deceased herein died in the year 1987. It has not been shown how the 1st Respondent had himself registered as proprietor of the suit property 25 years after the death of the previous registered owner. No succession proceedings have ever been filed in respect of the estate of the deceased and it follows that the estate of the deceased has not been distributed.



I do not think it necessary to belabor the point that the title of the 1st respondent was improperly acquired. It does not need space science to bring one to the conclusion that the 1st respondent must have acquired registration of the suit property by way of fraud. He obviously could not have perpetrated the fraud on his own and he must collude with corrupt and morally deficient fellow in the land registry....

42. The 1st Defendant, was served but neglected to enter appearance and or file defence. She did not participate in these proceedings. Her participation was crucial. It would have assisted this court in determining whether she acquired the suit property from the deceased. I agree with the plaintiff's submission that the 1st defendant procured title to the suit property illegally, unprocedurally or through a corrupt scheme and the same is impeachable by dint of Section 26(1) of the [Land Registration Act](#).

The same must be cancelled.

43. The 5th -15th Defendants contend that they undertook due diligence before purchasing the property. They stated that Alice Njongo filed an application for official search for the suit property on their behalf. A certificate of official search dated 6th November, 2012 demonstrated that the 1st Defendant was the registered proprietary of the suit property. This is what prompted them to enter into an agreement with the 1st Defendant for value consideration whose purchase price was fully paid and acknowledged. They even produced letters of consent and duly executed transfer to demonstrate they legally acquired their titles which were issued on 16th January, 2014. DW2 testified that the 5th -15th Defendants have not undertaken any developments on their acquired plots because they are awaiting the conclusion of this suit.
44. From the foregoing, the 1st defendant's title cannot stand and ought to be cancelled. Any subsequent transactions have to be cancelled since they 1st defendant did not have capacity to sell the suit property to the 5th – 15th defendants. This is because she did not have a good title to pass into the purchasers.
45. DW1 admitted on cross-examination that the 2nd defendant did not have any documents to support entry No. 4 on the suit property's register. Entry No.4 is the registration of the 1st Defendant as the proprietor. The plaintiff through his letter dated 7th April 2015 sought to be supplied with these documents but the 2nd defendant did not avail them.
46. I find that the 2nd defendant failed in his obligation to maintain a proper register with the relevant documents contrary to the provisions of the [Land Registration Act](#). This could mean that the said officers were part of the fraud which culminated in the registration of the 1st defendant as the owner of the suit property.
47. It is unfortunate that the 5th – 15th defendants were duped into buying the suit property from the 1st defendant who did not have a good title to pass onto them. They are really the victims of the fraud.
- It is my view they ought to seek a refund of the purchase price from the 1st defendant. They are also faulted for not doing due diligence. An example is where the sub divisions were undertaken without seeking consent from the Land Control Board. This ought to have jostled them into inquiring more about the suit property.
48. In conclusion I find that the plaintiff has proved his case against the defendants on a balance of probabilities.
49. Accordingly judgement is entered for the plaintiff as against the defendants jointly and severally as follows:



- a. That a declaration is hereby issued that the registration of the 1st Defendant as the proprietor of Ruiru East/Juja East Block 2/2643, the closing of the register thereof the registration of the purported sub-divisions of Ruiru East/ Juja East Block 2/15000-15027 and registration of the 5th to 15th defendants as proprietor the sub divisions is unlawful, fraudulent, corrupt and in violation of the *Land Registration Act*, void and did not extinguish the proprietorship of the plaintiff on the suit property or pass any proprietary interest to any of the defendants.
- b. That an order is hereby issued directing the 2nd and 3rd defendants, to forthwith rectify the register by cancelling the registration of the 1st defendant, closure of the register for Ruiru East/Juja East Block 2/2643, cancelling of the sub-divisions Ruiru East/Juja East Block 2/15000-15027 a recall and destruction of the title deeds for the sub-divisions.
- c. That a permanent injunction is hereby issued restraining the 5th to the 15th defendants by themselves, their servants and or agents from selling, leasing, mortgaging, gifting or otherwise disposing any interest and from entering, remaining on, constructing, cultivating or interfering with the plaintiffs title to and quiet possession of Ruiru East/Juja East Block 2/2643 or any sub-divisions Ruiru East/Juja East Block 2/15000-15027.
- d. That the plaintiff shall have costs off the suit and interest.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 21ST DAY OF SEPTEMBER 2023.

L. KOMINGOI

JUDGE.

In the presence of:

Mr. Mungai for the plaintiff present.

N/A for the 1-4th Defendants.

Mr. Koech for Mr. Legami for the 5th – 15th Defendants.

