



REPUBLIC OF KENYA



**Muratha & 20 others v Wambaki & 5 others (Environment & Land Case
1206 of 2015) [2023] KEELC 19974 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19974 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1206 OF 2015
LC KOMINGOI, J
SEPTEMBER 21, 2023**

BETWEEN

MICHAEL NJUGUNA MURATHA 1ST PLAINTIFF
CATHERINE NJERI KIBOI 2ND PLAINTIFF
BENJAMIN NJUGUNA 3RD PLAINTIFF
DAVID KAHONGE KAMAU 4TH PLAINTIFF
SIMON MWANGI 5TH PLAINTIFF
ZACHARIA GITHINJI NG'ANG'A 6TH PLAINTIFF
CHARLES MWANGI GATU 7TH PLAINTIFF
VERONICA WAMBUI MUGO 8TH PLAINTIFF
PETER KIMANI 9TH PLAINTIFF
PETER WAWERU 10TH PLAINTIFF
PETER NJOROGE MWANGI 11TH PLAINTIFF
PETER NGIGE MOSES 12TH PLAINTIFF
JOSEPH MUIRURI MBUGUA 13TH PLAINTIFF
LUCY WAITHERA KAMAU 14TH PLAINTIFF
JOSEPH MBUGUA 15TH PLAINTIFF
FELISTAS NJERI 16TH PLAINTIFF
JOHNSON KINYUA 17TH PLAINTIFF
FRANCIS MUHORO GITHUI 18TH PLAINTIFF
LILLIAN NYAMBURA GATHIMA 19TH PLAINTIFF



PETER NJUGUNA 20TH PLAINTIFF
DAVID MIRITI MTOKIAO 21ST PLAINTIFF

AND

MARGARET NGENDO WAMBAKI 1ST DEFENDANT
TERESIA WANJIKU WAMBAKI 2ND DEFENDANT
JOSEPH KIMANI GATHECHA 3RD DEFENDANT
SAMUEL KAMAU KURIA 4TH DEFENDANT
MARY WAIRIMU MIRINGU T/A WAKIBUI HELP GROUP
INVESTMENT 5TH DEFENDANT
CHIEF LAND REGISTRAR, THIKA 6TH DEFENDANT

JUDGMENT

1. By a plaint dated 19th November 2015, the plaintiffs seek judgement against the defendants jointly and severally for;
 - a. A restraining order against the 1st and 2nd Defendants, their agents and or servants from encroaching, trespassing, transferring, charging or in any manner interfering with the Plaintiffs peaceful use and occupation or quiet enjoyment of the suit premises and individual plots known as Ruiru/Ruiru East Block 2/908 and 909.
 - b. An injunction restraining the 3rd Defendant, his agents and or servants from demolishing and evicting the Plaintiffs from their parcels of land No.Ruiru/Ruiru East Block 2/908 and after doing a subdivision on 8th July, 2015 and obtaining new numbers No.Ruiru/Ruiru East Block 2/17598 to 17613 respectively.
 - c. A declaration that the Plaintiffs are the legal and rightful owners of their individual subdivision plots of the No.Ruiru/Ruiru East Block 2/908 and 909 and none of the Defendants have no claim whatsoever.
 - d. The said parcels No.Ruiru/Ruiru East Block 2/908 and 909 on approval of their individual subdivisions plan provided are registered in the names of each of the Plaintiffs by the 6th Defendants.
 - e. The 3rd and 4th Defendants be barred from the suit premises altogether
 - f. General damages for trespass as the court may deem fit to assess.
 - g. Any other or further relief the honourable court may deem fit and just to grant.
 - h. In the alternative, a refund of money paid or value of the houses built by the Plaintiffs on both parcels under the current value.
2. The Plaintiffs' claim that 1st and 2nd Defendants were administrators of estate of Philisila Wambaki Kiguru in Nairobi High Court Succession Cause No.939 of 1994. The 1st and 2nd Defendants are sisters and daughters of Philisila Wambaki Kiguru, who owned Ruiru/Ruiru East Block 2/908 & 909. The properties were sold to the 5th Defendant by the 2nd Defendant. In 2000 and 2002, the 5th Defendant



subsequently sold the properties to the Plaintiffs for valuable consideration upon subdividing them into 32 parcels. The Plaintiffs claim that they constructed permanent residential houses and business premises on their respective parcels where they have resided with their families for more than 12 and 14 years. On 3rd February, 2006, the properties were bequeathed upon the 1st Defendant after confirmation of grant.

3. The Plaintiffs contend that in 2008, the properties were sold to the 3rd Defendant by the 1st Defendant. The 3rd Defendant further subdivided Block.2/909 into BLOCK.2/17598-17613. He also sold Block.2/908 to the 4th Defendant who charged it in favour of Equity Bank. The Plaintiffs accuse the 1st and 2nd Defendants of conspiring to obtain the confirmed grant and allocate the properties to the 1st Defendant instead of the 2nd Defendant. This is because the 1st Defendant knew the Plaintiffs had already occupied and developed the suit properties, when the grant was confirmed. She also proceeded to sell the properties to the 3rd Defendant after the grant was confirmed. In addition, when the properties was subdivided, changed ownership and charged in favour of Equity Bank, the Plaintiffs were never notified. They also accuse the 6th Defendant of illegally and fraudulently issuing title deeds to the 1st, 3rd and 4th Defendants.
4. The Plaintiffs aver that they suffered damage and physiological trauma when the 4th Defendant with the help of Police officers from Ruiru Police Station summoned them unnecessarily and tried to force them to vacate the suit properties. According to the Plaintiffs, this will make them lose the purchase price and render them homeless once their homes are destroyed. They further claim that the Defendants have ignored their demand and notice of intention to sue if they do not stop interfering with their quiet possession.
5. The Plaintiffs contend that Thika RMC No.755 of 2008 was dismissed for want of prosecution and non-attendance while High Court Case No.1040 of 2012 which they are not parties is the only pending suit in respect of the suit properties.

1st, 3rd and 4th Defendants case

6. The 1st, 3rd and 4th Defendants denied the Plaintiffs allegation levelled against them in a Statement of Defence dated 23rd February, 2016 and filed on the same date. They state that the suit properties belonged to Philisila Wambaki Kiguru. In 2006, the properties were bequeathed to the 1st Defendant upon confirmation of grant in the estate of Philisila Wambaki Kiguru estate. Subsequently, the properties were then sold to the 3rd Defendant by the 1st Defendant. The 3rd Defendant further sold Block.2/908 to the 4th Defendant who charged it in favour of Equity Bank. In addition, he subdivided Block.2/909 into Block.2/17598-17613. The 3rd and 4th Defendant deny ever selling their properties to any person hence the Plaintiffs ought to hand over vacant possession to the properties to them.
7. In their counterclaim, the 3rd and 4th Defendants accuse the Plaintiffs of illegally encroaching and occupying their properties. They ask the court to dismiss the Plaintiffs claim and order them to pay for trespass and general damages.

Reply to 1st, 3rd and 4th Defendant defence and counterclaim.

8. The Plaintiffs pray that the 1st, 3rd and 4th Defendants defence and counterclaim be dismissed with costs in a reply dated 18th May, 2016 filed on 24th May, 2016. They further restate that the 1st and 2nd Defendants were the beneficial owners of the suit property which was allocated to them when the grant was confirmed.



9. Even though, the 5th Defendant filed a memorandum of appearance dated 20th January, 2016, through the firm of Mbiyu Kamau & Co. Advocates, she never filed any response to the Plaintiffs' claims.
10. The 2nd and 6th Defendants did not file any defence to the plaintiff's claims. This was despite the fact they were served, according to Antony M. Kahuthu Affidavit sworn on 15th January, 2016 filed on 20 January, 2016.

Evidence of the Plaintiffs

11. PW1, Zachariah Githinji testified that in 2000 and 2001, he bought two plots of Block.2/909 from the 5th Defendant, where he resides upon constructing a permanent storey house. Before purchasing the plots, the 5th Defendant showed him a sale agreement dated 27/4/2000 between her and the 2nd Defendant as well as a certificate of official search in respect of the suit properties. He further stated that he was physically shown the plot and issued with a share certificate upon payment of the entire purchase price. He explained that in 2008 and 2012, someone came to claim ownership of the suit properties hence prompting them to file this suit. According to their investigation, they discovered that the properties were sold to 5th Defendant by the 2nd Defendant. Further, the 1st and 2nd Defendants were sisters while the properties were bequeathed to the 1st Defendant upon conclusion of succession proceedings in respect of their mother's estate. The court was also told that in 2007, the 1st Defendant sold the properties to 3rd and 4th Defendants. Even though he stated that he did not know the Plaintiffs, it was his evidence that when the 4th Defendant visited the suit properties, he asked them to pay him twice the purchase price. According to him, the current market price of his plot which he purchased at Ksh.37, 000/= was Ksh.1.5 million. He was of the view that given the land does not belong to the 3rd Defendant, the 5th Defendant should be compelled to issue the Plaintiffs with title deeds for their plots. He also asked the court to grant them costs and interest and order that the 5th Defendant be restrained from interfering with quiet possession of their plots. This is because when the 3rd and 4th Defendant bought the properties, the Plaintiffs were already in occupation.
12. During cross examination, he reiterated that he purchased his plot from the 5th Defendant who issued him with a share certificate. He confirmed that he has resided on the plot for 18 years. At the time of purchase, the 5th Defendant showed them title deeds for the suit properties, registered in the name of Priscillah Wambaki, the 2nd Defendant's mother. Although they were never informed by the 5th Defendant how many children Priscillah Wambaki had, they found out that, one of her daughters had instituted succession proceedings, and that that the properties were bequeathed upon the 1st Defendant when the grant was confirmed. When he was referred to the green card for BLOCK.2/909, he acknowledged that the title deeds to the suit properties were issued to Priscillah Wambaki Kiguru on 26/8/1988. Their title was subsequently transferred to the 1st Defendant in 2007 and later transferred to the 3rd Defendant in 2009. He also stated that even though legal action was instituted against the Plaintiff's at Thika Law Courts in 2008, the Plaintiff's also instituted legal action against the 5th Defendant in 2012.
13. PW1's evidence during re-examination was that he was not aware of Thika ELC 755 of 2008. The Plaintiffs are therefore innocent purchasers since 1st and 2nd defendants did not act in good faith.
14. PW2, Peter Ngige Moses stated that he was issued with a share certificate upon purchasing his plot from the 5th Defendant. Upon payment of consideration of Ksh.100, 000/=, he undertook development therein. Before undertaking the purchase, the 5th Defendant told him that she bought the property from the 2nd Defendant and even showed them title deeds in the name of the 2nd Defendant's mother. It was his testimony that given the 1st and 2nd Defendants were administrator of the estate, the 5th



- Defendant should be compelled to issue title deed to the Plaintiff's as she ought to have made a follow-up. He stated that it was impossible for the 4th Defendant to secure a loan over the suit land as the Plaintiffs were in possession.
15. During cross examination, he reiterated that he purchased his plot from the 5th Defendant who had previously purchased it from the 2nd Defendant, an administrator of the estate Priscillah Wambaki. The properties were however distributed to the 1st Defendant when the grant was confirmed in 2006. Despite confessing that the 1st Defendant never sold him the plot, it was his evidence that they Plaintiff's already resides therein and have even undertaken developments.
 16. He maintained his position during re-examination that the Plaintiffs are innocent buyers who were never aware of the 5th Defendant transaction with the 2nd Defendants. In addition, the 3rd Defendant already knew they were in occupation of the land when she bought it..
 17. PW3, David Kahonge stated that he bought the suit property from the 5th Defendant who previously purchased it from the 2nd Defendant. Payment was done through instalments. He begun construction in 2000 which was concluded in 2003. Later on, they discovered that 2nd Defendant was one of the owners of the property and that she and the 1st Defendant were sisters. Ownership of the properties was also claimed by the 3rd Defendant who threatened to evict them and demolish their houses. However, they did not know when succession proceedings were undertaken and grant confirmed bequeathing the properties upon the 1st Defendant. It was his evidence that the 1st and 2nd Defendants defrauded the Plaintiff's when they sold the properties to the 3rd and 4th Defendants. He was of the view that the 3rd Defendant ought to have requested them for more money instead of attempting to evict them. He seeks that this court does compel the Defendants to issue the Plaintiff's with their title deeds.
 18. On cross-examination, he stated that when he purchased his plot from the 5th Defendant, he knew it was registered in Priscillah Wambaki's name according to a certificate of official search conducted. However, when the 5th Defendant showed them an agreement between her and the 2nd Defendant, she assured them that she was in the process of transferring the title to her name. By his own admission, he acknowledged that the property was distributed to the 1st Defendant and not the 2nd Defendant when the grant was confirmed. He also admitted that the Plaintiff's never obtained land control board consent.
 19. PW4, Michael Muratha's, evidence was that the 1st Defendant knew the Plaintiff's had already purchased the properties when the grant was conformed yet she wanted them to be evicted on allegations that the property was purchased by the 3rd Defendant in 2007.
 20. On cross-examination, he stated that the suit properties were allocated to the 1st Defendant after conclusion of the succession proceedings. Considering the properties did not belong to the 2nd Defendant, nothing prevented the 1st Defendant from selling it to the 3rd Defendant. The court was informed that the 3rd Defendant knew the Plaintiffs were already in occupation yet he purchased it. PW4 did not know whether this suit was consolidated with ELC 1040 of 2012.
 21. During re-examination, he reiterated that the 1st and 3rd Defendants conspired to defraud the Plaintiffs because they disposed the property knowing very well it was occupied.
 22. PW5, Eric Macharia's witness statement dated 22nd September, 2022 was adopted in support of the Plaintiffs case without any objection. The statement restated the Plaintiffs claim. It provided that PW5 was a son to George Ndere, who was one of the Plaintiff in CMCC 5158 of 2015 who sued the 3rd Defendant.



Evidence of the defendants

23. DW1, Joseph Kimani Gathecha, stated that Block.2/909 belonged to the 4th Defendant who was issued with a title deed on 1/7/2011. He produced the green card to prove that upon purchasing the property from the 1st Defendant through a sale agreement dated 13/6/2007, he was issued with a title deed on 11/11/2009. The property was subsequently charged in favour of Equity Bank. He explained that initially, the properties belonged to the Priscillah Wambaki Kiguru who died on 10/3/1993. He produced a confirmed grant to show that the properties were distributed to the 1st Defendant. It was his evidence that the 2nd Defendant would not have sold the properties to the Plaintiff, as it was never allocated to her. He explained that when he was physically shown the properties, he only found Emma Nyambura who had filed CMCC 755 of 2008 in Thika. The Plaintiffs were not in occupation at the time. They should be evicted and their claim dismissed.
24. When he was cross-examined, he stated that due diligence undertaken before purchasing the properties showed that the property belonged to the 1st Defendant. He was even shown a title issued on 8/10/2007 and the beacons as well. At the time of purchase, the Plaintiffs had not yet undertaken any construction. He did not know if the 1st and 2nd Defendants were related nor if the suit property had been sold to the 5th Defendant by the 2nd Defendant. Even though he stated that he withdrew the suit he had instituted against the 2nd and 5th Defendants, he denied ever suing them in Thika Law courts.
25. His evidence on re-examination was that Block.2/908 & 909 was not distributed to the 2nd Defendant when the grant was confirmed on 3/2/2006.
26. DW2, Samuel Kamau Kuria's, evidence was that he bought Block.2/908 in 2012 from the 3rd Defendant. He further stated that the property was charged in favour of Equity Bank who advanced him money to purchase it. When the bank undertook its valuation, the Plaintiffs were not in occupation. Only a small house had been constructed. He however found a woman who claimed to have bought the land, who indicated she was willing to vacate. He therefor prays that the Plaintiff's be compelled to vacate the suit property.
27. While being cross examined, he reiterated that when he bought the property in 2012, the Plaintiffs had not undertaken any construction. The woman whom he found on the land stated that she would leave. He also undertook due diligence of the land which was valued by Equity bank. He stated that the 3rd Defendant never told him of any existence of any lawsuit in respect of the suit property.
28. At the close of the oral testimonies parties were directed to file final written submissions.

The Plaintiffs' Submissions.

29. The Plaintiffs' counsel did not file any submissions despite the court directing that he does file.

The 1st,3rd and 4th Defendants' Submissions.

30. Counsel for the 1st, 3rd and 4th Defendant restated their claims in submissions. He further added that given the Plaintiff knew the property belonged to Philisila Wambaki Kiguru when they purchased it, they were intermeddling in the estate of the deceased. According to counsel, the Plaintiffs ought to have waited until the succession proceedings were concluded before undertaking the said purchase.
31. Section 26 (1) of the [Land Registration Act](#) and Munyao Sila J's decision in *Elijah Makeri v Stephen Mungai Njuguna and Another* (2013) eKLR are cited to put forward the argument that 3rd and 4th Defendants are the registered owners of the suit properties. Given they legally acquired their titles, the Plaintiffs were in illegal occupation when they developed semi-permanent structures. They must



therefore be condemned to pay general damages for trespass as held in *Nancy Wanjiru Wangai v National Social Security Fund & 4 Others* ELC No. 55 of 2008 and *Straman East Africa Limited v Hassan Guyo Wakalo* ELC No.528 of 2012.

Analysis and Determination

32. I have considered the pleadings the evidence on record, the written submissions and the authorities cited. The issues for determination are;

- i. Whether the plaintiffs are entitled to be declared owners of the suit properties.
- ii. Are they entitled to the other reliefs sought?
- iii. Whether the 3rd and 4th Defendants illegally and fraudulently acquired the suit properties.
- iv. Are they entitled to the reliefs sought in the counter claim?
- v. Who should bear costs of this suit?

33. The Plaintiffs claim that the 1st, 3rd and 4th Defendants illegally and fraudulently conspired evict them from the suit properties from them yet they knew they were in occupation as innocent purchasers for value without notice. Section 107 and 109 of the *Evidence Act* provides as follows with regard to burden of proof

“Section 107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

34. It is not in dispute that Block.2/908 and 909 initially belonged to Philisila Wambaki Kiguru. The 1st and 2nd Defendants were appointed as administrators of her estate on 9th August, 1994 in Nairobi High Court Succession Cause No.989 of 1994. When the grant was confirmed on 3rd February, 2006 the properties were distributed to the 1st Defendant. Even though the mode of distribution of Philisila Wambaki Kiguru’s estate was contested by the 2nd Defendant, allocation of the properties upon the 1st Defendant was not affected by a judgment delivered by Martha Koome J, as she was then on 3rd January,2006.

35. The Plaintiffs contend that when they purchased the suit properties, they knew it was registered in the name of Philisila Wambaki Kiguru. Besides conducting due diligence through a certificate of official search dated 27th April, 2000, the 5th Defendant also showed them title deed issued Philisila Wambaki Kiguru on 26th August,1988 to prove the property belonged to her. The 5th Defendant claimed that she was awaiting conclusion of succession proceedings so that the title could be transferred to her. Her justification was that she bought the properties from the 2nd Defendant who was one of the administrators of the Estate of Philisila Wambaki Kiguru. She even showed the Plaintiffs an agreement for sale dated 27th April,2000 between herself and the 2nd Defendant relating to the suit properties. According to the agreement Ksh.50,000/= was to be paid on execution. Acknowledgment that Ksh.70,000/= was paid to the 5th Defendant on 3rd May,2000 was also filed in court. No proof has filed to prove if the remaining balance of Ksh.20,000/= was paid by 15th May,2000 according to the Agreement.



36. It is the plaintiffs case that each of them bought their individual plots from the 5th Defendant who was trading as Wakibui Help Group Investments. They were given share certificates dated between 2000 and 2022. An examples PW1 Zakaria Githinji who was given share certificate number 1698 for Plot No.7(AA1).

PW3 David Kahange Kamau; Share Certificate No.2264 for Plot No. 92AA.

PW2 Peter Nyigi Moses; share certificate No.1203 for Plot NO. 4 (vi).

PW4 Michael Njuguna Mwatha; share certificate No.1670; Plot 14 (AA) others are; James Mburu Muiruri; share certificate No.1701 for plot No.5(v)

Emma Nyambura Mwangi share certificate No.1740 for Plot No. 4 (AA).

37. The plaintiffs were also issued with receipts from Wakibui Help Group Investments confirming that they made payments to the 5th defendant.

They claim to be innocent purchasers for value without notice of any defect in title. They stated that they were shown a sale agreement between the 2nd defendant and the 5th defendant. The same is dated 27th April 2000. The 5th Defendant also showed them a title in the name of Philisila Wambaki Kiguru herein after referred to as “the deceased”.

38. It is not in dispute that by the year 2000 the succession proceedings in the Estate of Philisila Wambaki Kiguru had not been finalised. The plaintiffs ought to have done due diligence. Had they done they would have realised that the succession proceedings were ongoing.

39. In my view they bought the plots from a stranger who was neither an administrator nor a beneficiary of the estate of the deceased. The 2nd defendant despite being served neither entered appearance nor filed a defence to the plaintiffs claim. She did not participate on these proceedings. This court never got to hear her side of the story.

40. It would have been interesting to hear why she did not disclose to the court handling succession proceedings that she had sold the suit properties to the 5th defendant. She did not say anything even after the suit properties were distributed to the 1st defendant.

41. I notice that the plaintiffs have not produced any sale agreement with the 5th defendant. This is in contravention of Section 3(3) of the Law of Contract Act which provides that a contract for disposition of an interest in land must be in writing, signed by all the parties and their signatures attested by witnesses. It should also be signed.

42. The 5th defendant despite entering appearance did not testify at the hearing. This court will never hear her side of the story. In an application filed in this case she admitted that she bought the suit properties from the 2nd defendant and later sold to the plaintiffs. But the question is, did she have good title to pass to the plaintiffs?

The answer is in the negative.

She proceeded to subdivide the land into smaller parcels. One wonders whether the consent from the Land Control Board was obtained. This amounts to intermeddling with the estate of the deceased.

43. Both the sale to the 5th defendant by the 2nd defendant and subsequently to the plaintiffs is void for lack of consent from the Land Control Board. The effect of the failure to obtain the consent of Land Control Board is that the transactions are null and void.



44. The Plaintiff's claims are based on the purchase of individual plots between the years 2000 and 2003. Parties are bound by their pleadings. Though they maintain in the respective witness statements that they have been on the land for more than twelve (12) years, the pleadings say otherwise. I find that their claim was not based on the doctrine of adverse possession.
45. I also note from the prayers in the plaintiff, that they are not seeking to be declared as owners by way of adverse possession.
46. I find that the plaintiffs have also not proved the particulars of fraud against the defendants set out in paragraphs 15 of the plaint.

Fraud is a serious claim which must be pleaded and proved.

In the case of *Vijay Marjara v Narsingh MadhuSingh Darbar & Another* [2000] eKLR Tunoi (JA) (as he then was) stated that;

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved and it is not allowable to leave fraud to be inferred from the facts”.

47. From the foregoing I find that the plaintiffs are not entitled to be declared as the owners of the suit properties.
48. I also find that they are also not entitled to the other reliefs sought except for the refund of the purchase price. This is because the 5th defendant admitted that she sold the parcels to the plaintiffs. The plaintiffs also in their testimonies stated that the 5th defendant urged them to stay on the suit properties ever after the 3rd defendant asked them to vacate. The plaintiffs are therefore entitled to a refund from the 5th defendant at the current market value.
49. The 1st Defendant insists she legally acquired the properties from her mother's estate. She admitted that she sold the properties to the 3rd Defendant at Ksh.2,800,000/= through a sale agreement dated June,2007. The 1st, 3rd and 4th Defendants filed green card for Block.2/908 and 909 to prove they lawfully disposed off the properties. A perusal of the Green cards shows that they were opened on 10/05/1988 with titles being issued to Philisila Wambaki Kiguru on 26/08/1988. The titles were further transferred to the 1st Defendant pursuant to succession Cause No.989 of 1994 who transferred it to the 3rd Defendant. Block.2/908 title was transferred to the 4th Defendant by the 3rd Defendant who charged it in favour of Equity Bank on 1/07/2011 while the register for Block.2/909 was closed on upon subdivision into Block.2/17598-17613. Mutation forms supporting such subdivision were availed before this court. The 4th Defendant produced a sale agreement dated 5th April,2011 to show that he purchased Block.2/908 from the 3rd Defendant for value consideration of Ksh.2,400,000/=.
50. It is the 3rd Defendants case that he bought the suit properties from the 1st Defendant. That they were vacant and the plaintiffs were not in occupation. However I find that this could not be case as he admitted on cross examination that there was someone on the suit properties who agreed to vacate.
51. The 4th defendant's case is that he bought land parcel No. Ruiru/Ruiru East/Block 2/908 from the 3rd defendant. He too admitted that there was one house on the land. The 3rd defendant bought the suit properties from the 1st defendant who was the rightful owner.
52. I find that the 3rd and 4th Defendants did acquire the suit properties legally as there was no fraud at all.



It goes without saying that they are entitled to the prayers in the counter claim.

53. This court is unable to find the plaintiffs as trespassers on the suit properties. It appears they were victims of the 2nd and 5th Defendants' actions. They entered the land believing that they would eventually get titles from the 5th defendant.
54. In conclusion, I find that the plaintiffs have not proved their case against the 1st, 3rd and 4th defendants on a balance of probabilities. They are only entitled to a refund of the purchase price from the 5th defendant, at the current market value considering the developments undertaken on the suit properties.
55. Accordingly I enter judgment in favour of the 1st, 3rd and 4th defendants in their counterclaim.
56. I make the following orders:
 - a. That the 5th Defendant do refund the plaintiffs the value of the suit plots at the current market rate.
 - b. That the plaintiffs do vacate the suit properties within one hundred and fifty (150) days from the date of this judgement. In default, the 3rd and 4th defendants be at liberty to use lawful means to evict them.
 - c. That costs of this suit shall be borne by the 2nd and 5th defendants.

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

L. KOMINGOI

JUDGE

IN THE PRESENCE OF:

Mr. Kahuthu for the Plaintiffs.

Mr. Njonjo for the 1st, 3rd, 4th Defendants.

N/A for the 2nd & 5th Defendants.

Court Assistant – Mutisya.

