



Mwangi (Suing as the legal representative of the Estate of Mwangi Mura - Deceased) v Mbuki & 4 others (Environment & Land Case E009 of 2021) [2025] KEELC 300 (KLR) (29 January 2025) (Judgment)

Neutral citation: [2025] KEELC 300 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E009 OF 2021
LN GACHERU, J
JANUARY 29, 2025**

BETWEEN

JULIUS NJUGUNA MWANGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MWANGI MURA - DECEASED) PLAINTIFF

AND

**KARIUKI KAMAU MBUKI 1ST DEFENDANT
HANNAH WARIGIA MWANGI 2ND DEFENDANT
WAMBUI MWANGI 3RD DEFENDANT
SARAH WAMAITHA 4TH DEFENDANT
LAND REGISTRAR, MURANGA 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff herein, Julius Njuguna Mwangi, the Legal Representative of the estate of Mwangi Mura, vide Plaint dated 17th February 2021, sought for Judgment against the Defendants herein jointly and severally for;
 1. Declaration that all transactions concerning the sale and transfer of land parcel number Loc20/Mirira/4481 and the registration of the 1st and 2nd Defendants as proprietors of the said parcel of land were fraudulent.
 2. An order directed to the 5th Defendant to cancel the registration of the 1st Defendant and the Title Deed issued to the 1st Defendant as proprietor of land parcel No. LOC2/Mirira/4481.



3. An order directed to the 5th Defendant to restore the status quo prevailing before the fraud and re-register Mwangi Mura as the proprietor of land parcel LOC.20/Mirira/4481, for purposes of filing a succession cause for distribution of his estate to the rightful heirs.
 4. Costs of the suit and interest at Court rates.
 5. Any other order that the Court may deem fit and just to grant.
2. It is the Plaintiff's claim that land parcel No. LOC.20/Mirira/4481 (the suit property), was registered in the name of Mwangi Mura (deceased) on 17th March 1997, who handed over the original title deed in respect of the suit land to the Plaintiff in year 2005, to keep it in his custody. That the said Mwangi Mura died on 19th April 2008, at the age of 108 years, and was survived by the Plaintiff and the 2nd, 3rd, and 4th Defendants.
 3. Further, that the Plaintiff was summoned by the Assistant Chief in Charge of Mirira Sub-location together with the Chief of Gikindu Location and the District Officer, Kiharu Division on 18th May 2010, 1st November 2010, and, 24th November, 2010, whereupon he was directed to hand over the title deed of the suit land, and the deceased's death certificate, but he declined to do so, as he alleged that there was no valid reason provided for handing over the said documents.
 4. That on 25th August, 2011, the Chief of Gikindu Location, Donald Mwangi Ng'ang'a, and the 1st Defendant entered unto the suit property and began ploughing the same using a tractor, whereupon the Plaintiff demanded to know the cause of the said ploughing, and was informed by the Chief that 1st Defendant purchased the suit land from the 2nd, 3rd and 4th Defendants.
 5. It was the Plaintiff's further averment that no succession cause was ever commenced in respect of the estate of the late Mwangi Mura, and therefore, the suit property could not become the subject of a lawful transfer to third parties by the deceased's successors-in-title.
 6. Further, that the Plaintiff conducted an official search on the suit land on 29th August 2011, whereupon he discovered that the 1st, 2nd, 3rd and 4th Defendants conspired and fraudulently transferred the suit property initially to the 2nd Defendant and later to the 1st Defendant using a Grant issued in Murang'a Succession Cause No. 44 of 2007;- Re Estate of Reuben Ngugi Kiagu Alias Reuben Ngugi which Grant was confirmed on 24th June, 2010.
 7. The Plaintiff particularized the Defendants' fraud as follows:
 - i. Fraudulently transferring the suit property registered in the deceased's name initially to the 2nd Defendant and, thereafter, to the 1st Defendant without first filing a Succession Cause in Court.
 - ii. Fraudulently using and presenting the Grant in Murang'a Succession Cause No. 44 of 2007 Re Estate of Reuben Ngugi Kiagu Alias Reuben Ngugi who was not a proprietor of the suit land to the 5th Defendant to register and transmit the said land to the 1st Defendant as the new proprietor.
 - iii. Fraudulently and secretly entering into a sale agreement to sell the suit property registered in the deceased's name to the 1st Defendant.
 - iv. Secretly and fraudulently obtaining a Letter of Consent from Kiharu Land Control Board to transfer the suit land to the 1st Defendant and falsely misrepresenting the 1st Defendant as a relative of the deceased thereby, deceiving the board that the 2nd Defendant would have a life interest in the suit property.



- v. Deliberately failing to involve the Plaintiff in the affairs of the deceased's property despite the Plaintiff being the only sons and one of the rightful heirs of the deceased.
8. He further averred that the 5th Defendant upon being notified by the Plaintiff concerning the unlawful alienation of the suit property, failed to take any remedial action hence the instant suit.

The 1st Defendant's Response

9. The 1st Defendant filed a Notice of Preliminary Objection dated 28th July 2022, and averred that the Plaintiff's suit was rendered res judicata by the proceedings in Murang'a ELC No. 425B of 2017. Further, that the Plaintiff's suit was time-barred and the Court lacked jurisdiction to determine the same. Through a Ruling delivered on 23rd March 2023, the Court dismissed the 1st Defendant's Notice of Preliminary Objection dated 28th July 2022, and set down the matter for trial.
10. The 1st Defendant filed his Statement of Defence dated 4th May 2021, and denied all the allegations made in the Plaint. He further averred that he is the registered proprietor of the suit land, which he purchased from Hannah Warigia Mwangi (the 2nd Defendant herein), and was issued with a title deed on 18th August, 2011.
11. He also relied on his witness statement dated 10th August 2023, wherein he alleged that he purchased the suit property measuring 0.45 Hectares or 1.1 Acres from the 2nd Defendant through a sale agreement dated 13th June 2011 for the entire consideration of Kshs.150,000/- . That he had carried out an official search on the suit land on 23rd May 2011, which showed that the 2nd Defendant was the registered proprietor of the said land, and the same had no encumbrances.
12. That the 2nd Defendant obtained a letter from the Chief of Gikindu Location dated 7th June 2011, addressed to the Chairperson of the local Land Control Board, in order to obtain a consent for the transfer of the suit property from herself to the 1st Defendant, which consent was granted by the Land Control Board on 30th June 2011, and a title deed was issued to the 1st Defendant on 18th August 2011.
13. That the Plaintiff lodged a caution in respect of the suit land on 4th June 2014, which caution was removed by the 5th Defendant on 4th September 2014. That the 1st Defendant averred that the 2nd Defendant told him that the suit property was transmitted to her through Succession proceedings in respect of the estate of her late husband.
14. That the 2nd Defendant had furnished him with the following documents:
 - i. Grant of letters of administration (P & A 41) for the estate of Mwangi Mura issued on 15th March, 2007.
 - ii. Certificate of confirmation of grant dated 16th June, 2008.
 - iii. Transfer by personal representative (RL7) dated 19th May, 2011.
15. Further, that the deceased(Mwangi Mura), was the previous registered owner of land parcel No. LOC.20/Mirira/2440, which he sub-divided prior to his death in the following manner: Land parcel No. LOC.20/Mirira/4482, was allocated to the Plaintiff being the deceased's son; land parcel no. LOC.20/Mirira/4483, was allocated to the 3rd Defendant being a daughter to the deceased, while land parcel No. LOC.20/Mirira/4484, was allocated to the 4th Defendant who is also a daughter to the deceased.



16. Further, that the Plaintiff later sub-divided his land parcel No. LOC.20/MIRIRA/4482, to create land parcel nos. LOC.20/Mirira/8659, which he disposed and LOC.20/Mirira/8660, wherein he has constructed a permanent house.
17. It was the 1st Defendant's averment that he occupied land parcel No. LOC.20/Mirira/4481, upon obtaining the title thereto, and has carried out extensive developments thereon valued at Kshs.5,400,000/=, according to the Valuation Report prepared by Upcountry Valuers dated 21st July, 2023.
18. He refuted the allegations of fraud set out in paragraph 10 of the Plaintiff's Claim, and argued that he came to the scene when the suit property was already registered in the 2nd Defendant's name, and therefore, he is an innocent purchaser for value without notice of any fraud in respect of the suit land.
19. The 2nd, 3rd and 4th Defendants Entered Appearance in persons vide Memorandums of Appearance that were filed on 10th May 2021. However, only the 3rd Defendant Wambui Mwangi filed her Statement of Defence on 30th July 2021. The 2nd and 4th Defendants did not file their respective Statements of Defence.
20. In her statement of Defence, the 3rd Defendant denied all the allegations made against her by the Plaintiff in his claim. She alleged that their father, Mwangi Mura, before his death, subdivided his initial parcel of land, and gave each of his beneficiaries their rightful share, and left the suit land to the 2nd Defendant.
21. It was her allegation that there was no sale agreement between herself and the 1st Defendant, and that she was only a witness in the said sale agreement between the 1st and 2nd Defendants. She further claimed that the said land was in the name of the 1st Defendant, and therefore, she could transfer the same to a third party.
22. The 3rd Defendant denied receipt of demand and notice of intention to sue, and urged the court to dismiss the Plaintiff's suit with costs.
23. The 5th Defendant did not enter appearance nor file defence. However, the Land Registrar Murang'a, gave evidence as DW1, as a necessary party to the suit.
24. The Plaintiff filed a Reply to the 1st Defendant Defence on 6th July 2021, and reiterated the contents of his Plaint and denied all the allegations made by the 1st Defendant, and put him to strict proof thereof. The Plaintiff also filed a Reply to the 3rd Defendant Defence on 23rd August 2021, and denied that the late Mwangi Mura, had given his beneficiaries their rightful shares, and left the suit land to the 2nd Defendant. He did put the 3rd Defendant to strict proof thereof, and urged the court to enter judgement in his favour.

The Plaintiff's Case

25. PW1 Julius Njuguna Mwangi adopted his Witness Statement dated 16th December 2020, as his evidence in chief. He also produced his List of Documents as exhibits, which were marked P.Exhibits 1-21. It was his evidence that he is a son to the original registered proprietor of the suit land Mwangi Mura, and has sued the Defendants for disposing off the suit property without first filing Succession proceedings in respect of the estate of the said deceased. That the land was sold to the 1st Defendant in year 2011, by the 2nd, 3rd and 4th Defendants and that his mother Hannah Warigia Mwangi, the 2nd Defendant died in January 2022.



26. On cross-examination by Mr. Kirubi for the 1st Defendant, PW1 testified that he was not aware of the disposal of the suit property to the 1st Defendant, hence the filing of the present suit. Further, that the Succession cause in respect of his father's estate was filed after the year 2008, and his father sired three children namely, the Plaintiff, the 3rd and 4th Defendants. He affirmed that he was allocated land parcel No. LOC.20/Mirira/4482, by his father prior to his demise, the 3rd Defendant received land parcel No. LOC.20/Mirira/4483, while the 4th Defendant was allocated land parcel No. LOC.20/Mirira/4484, by their father.
27. He affirmed that the suit property was registered in the name of Hannah Warigia Mwangi, as at 23rd May 2011, however, he has not seen the consent of the LCB or the Succession documents relating to the transfer of the suit land to his mother. Further, that the 1st Defendant constructed his family home on the property in year 2011, and the suit land shares a boundary with the Plaintiff's land parcel No. LOC.20/Mirira/4482. He admitted that he did not challenge the 1st Defendant's ownership and occupation of the suit land during the 10 years between years 2011 and 2021, when he filed this suit.
28. He also admitted that he subdivided his land parcel No 4482, into two portions, being 8659 and 8660, to having sold one portion of his land, being Land parcel Loc 20/ Mirira/ 8659, without first consulting anybody. Further, that his mother disposed off the suit property without obtaining the Plaintiff's consent.
29. On further cross -examination by the 3rd Defendant, PW1 testified that the 2nd Defendant disposed of their father's land secretly, as he was never informed of the said sale and he was in possession of the original title deed. He denied having taken the title deed by force from the 2nd Defendant, after the death of their father (Mwangi Mura).
30. On re-examination, PW1 stated that this suit concerns land parcel No. LOC.20/Mirira/4481, which was disposed of without his approval, as he continued to retain the original title deed thereof following his father's demise on 19th April 2008, and who was buried on the suit land, while his mother was buried on land parcel No. LOC.20/Mirira/4483.
31. PW2 Josephine Gitau, a Court Administrator at Murang'a Law Courts, was summoned to produce Succession cause No. 44/07, for the estate of one Reuben Ngugi Kiagu(deceased). According to her evidence, the properties to be distributed were listed thereon and did not include the suit property. Further, that nobody confirmed that the suit land was distributed through Succession Cause No. 44/07. The original file for the said Succession Cause No. 44/07, was produced as an exhibit in court.
32. On cross-examination by Mr. Kirubi for the 1st Defendant, PW2 testified that there is another Succession cause No. 44/07, in respect of the estate of Mwangi Mura wherein ,a Certificate of Confirmation of Grant was issued, and the suit land distributed to one Hannah Warigia Mwangi, and in which suit the Plaintiff was not a party. That the said Succession Cause took place in year 2007, and the certificate issued thereunder is not a forgery.
33. On re-examination, the PW2, confirmed that it not possible to have two Succession causes relating to the same parcel of land, and where two files share the same number, they are distinguished by being marked as A and B.
34. Though the 5th Defendant did not file ant Defence, the Land Registrar testified as a necessary party, and produced a number of exhibits.



35. Dw1 Elosy Muthoni Mpuhia ,the Land Registrar, Murang'a testified that the Green Card for the suit property was opened on 17th March 1997, under the name of Mwangi Mura. Further, that entry No. 2, was made on 19th January 2001, whereby a title deed to the suit land was issued to Mwangi Mura.
36. That thereafter, a title deed was issued to Hannah Warigia Mwangi, on 23rd May, 2011. Further, a title deed was issued on 18th November 2011, in the name of Kariuki Mbuki (the 1st Defendant herein), and Hannah Warigia Mwangi was listed as having a life interest therein.
37. That entry No. 6 in the Green card to the suit land is a caution dated 4th June 2014, which was placed by the Plaintiff, and which caution was removed by the Land Registrar on 4th September 2014. She further testified that the parcel file to the suit property was produced before the Court marked as D exhibit 2.
38. It was her evidence that the suit land was distributed to Hannah Warigia Mwangi, upon presenting documents issued by the Succession Court. DW1 further testified that she has not seen the transfer documents through which the ownership of the suit property devolved to the current registered owner from Hannah Warigia Mwangi.
39. On cross-examination by Mr. Tim Kariuki for the Plaintiff, DW2 testified that she was supplied with the Confirmed Grant issued in respect of the estate of the deceased who allegedly died on 19th September 2006. She disclaimed knowledge of two different Succession causes sharing the same number.
40. It was her evidence that according to the Death Certificate before her, the deceased Mwangi Mura, died on 19th April 2008, and she admitted that she did not inquire from the Court whether the documents presented before her purporting to be in respect of the estate of the deceased were authentic.
41. That Hannah Warigia Mwangi presented herself to the Land Registrar, and claimed to have mislaid the title deed to the suit land. However, DW2 did not see any Police report or Gazette notice in regard to the lost title, nor a Court Order directing that the old title deed be dispensed with.
42. She affirmed that it is within the discretion of the Land Registrar to enquire as to whether a claimant is in possession of a Court order or not, and in the particular instance, the Land Registrar appears to have been satisfied with the Affidavit sworn by Hannah Warigia Mwangi. That there was nothing on record indicating that the Land Registrar exercised his discretion.
43. On further cross-examination by Mr. Kirubi for the 1st Defendant, DW2 testified that she is not the one who made the entries contained in the Green card which she relied upon. She affirmed that Hannah Warigia Mwangi, transferred the property to the 1st Defendant on 23rd May 2011, free of any encumbrances.
44. She further testified that she was not aware of whether the Succession cause vesting ownership of the suit land in Hannah Warigia Mwangi, was a forgery or not. That the Court seal is dated 16th June 2008, and the grant was issued on 15th March 2007. She further admitted to not knowing whether or not Succession cause No.44/07, related to the estate of Mwangi Mura.
45. On re-examination, she affirmed that the 1st Defendant was not party to the Succession proceedings in respect of the estate of the deceased. Further, the Land Registrar relied on the documents produced by Hannah Warigia Mwangi, in respect of the Succession Cause, and that the Land Registrar would have no knowledge of fraud unless such information was brought to his/her attention



The 1st Defendant's Case

46. DW2, Kariuki Kamau Mbuki, adopted his Witness Statement dated 18th August 2023, as his evidence in chief, and also produced his List of Documents as exhibits, which were marked as D exhibit 1. He further stated that he knows the Plaintiff, but was not related to him. He also testified that he purchased the suit land from the 2nd Defendant during her lifetime, on 13th June 2011, and that he settled thereon.
47. That he carried out an official search prior to purchasing the suit land, whereupon he discovered that it was registered in the 2nd Defendant's name. That he paid the full purchase price to the vendor, and they both attended the KIHARU LCB, and obtained the requisite consent. That the vendor's daughters were witnesses in the transaction through which he acquired the suit property.
48. That he has constructed a permanent house on the property, and that he was not a party to the Succession cause in respect of the estate of the Plaintiff's father, and that the Plaintiff has never stopped him from constructing on the suit land, and that the 2nd Defendant was buried on a separate property.
49. On cross-examination by Mr. Tim Kariuki for the Plaintiff, DW1 stated that he executed a sale agreement with the 2nd Defendant to dispose of the suit property, and he visited the property prior to purchasing it, and there was a grave therein. That the suit land adjoins the Plaintiff's parcel of land, and that the Plaintiff did not inform him that the suit property belonged to his father, and that no succession proceedings were undertaken to distribute his father's estate.
50. He denied using the local administration to harass the Plaintiff, and he admitted having seen the title deed which was in custody of the Plaintiff. He also testified that the 2nd Defendant was old, but she was not blind, and that he saw that there was a Succession cause, which transmitted the suit land from Mwangi Mura to the 2nd Defendant(Hannah Warigia Mwangi, now deceased).
51. He produced Letters of Administration in respect of the estate of Mwangi Mura, and that he was not aware that no succession proceedings were filed to transmit the property to the 2nd Defendant.
52. On re-examination by Mr. Kirubi, he testified that he obtained the Succession documents only after purchasing the suit land, and that before the purchase, he carried out a search and established that the 2nd Defendant was the registered proprietor.

3rd Defendant's Case.

53. DW3 Wambui Mwangi (the 3rd Defendant herein) testified that she is 72 years old ,and the Plaintiff is her elder brother. It was her evidence that she is the registered proprietor of land parcel No. 4483, wherein her mother was buried thereon. Further, that the 4th Defendant is her younger sister, and that the Plaintiff took all documents belonging to their father upon his demise. That their mother reported the matter to the Chief, but the Plaintiff declined to release the documents in question.
54. It was her further testimony that at another instance, the Plaintiff was summoned by the District Officer, and that the 2nd Defendant disposed of the suit land to the 1st Defendant for the entire consideration of Kshs.150,000/=, after filing a Succession cause in respect of the estate of their father(Mwangi Mura).
55. On cross-examination by Mr. Tim Kariuki for the Plaintiff, the 3rd Defendant testified that her mother spent Kshs.40,000/=-, in respect of the Succession cause in respect of their late father's estate, and that they attended the LCB to obtain the necessary consent. That her mother died at the age of 100 years, but she was not blind, and during the transaction of disposing the suit property, and that she



was guided by a sister to the 1st Defendant. Further, that the sale agreement was prepared by the 1st Defendant, and his sister MARY, and was not read out to her during the transaction.

56. On cross-examination by Mr. Kirubi for the 1st Defendant, she testified that she witnessed the sale agreement to dispose of the suit property together with the 4th Defendant, and she attended the LCB together with the 1st Defendant. Further, that her mother sold the suit land voluntarily, and that the Plaintiff refused to release the title deed. That the 1st Defendant has built his permanent home on the property.
57. After the close of viva voce evidence, the parties were directed to file and exchange written submissions, wherein they complied as follows;

The Plaintiff's Submissions

58. The Plaintiff filed his written submissions dated 15th September 2024, through the Law Firm of Tim Kariuki & Co. Advocates, and submitted that during the trial, it emerged as an undisputed fact that no Succession proceedings were instituted in respect of the estate of the late Mwangi Mura
59. That the evidence of PW2 Josephine Gitau who is Court Administrator at Murang'a Law Court to the effect that the Succession Cause No.44 OF 07, related to the estate of Reuben Ngugi Kiagu alias Ngugi, was not disputed. Further, that the suit land is not listed among the properties to be distributed under the Certificate of Confirmation of Grant appearing on page 30 of the Plaintiff's bundle of documents. That the foregoing Confirmation is dated 12th June 2008, while the original registered proprietor of the suit land died on 19th April 2008, and is not in keeping with the applicable statutory timelines.
60. That DW1, the Land Registrar, in her oral testimony admitted that she could not confirm the authenticity of the documents used to transmit the suit land from the deceased to the 2nd Defendant. Further, that the 1st Defendant did not exercise due diligence when purchasing the suit property, as he admitted during the trial that he failed to authenticate the Grant obtained from the 2nd Defendant. That the 3rd Defendant testified that she only saw Kshs.40,000/=, change hands from the 1st to the 2nd Defendants, although the consideration for the suit land was expressed to be Kshs.150,000/=.
61. The Plaintiff identified a single issue for determination, being whether the suit land was fraudulently transferred to the 1st Defendant. It was his further submissions that the 2nd Defendant lacked the necessary capacity to dispose of the suit property, as she did not take out Letters of Administration in respect of her husband's estate. Reliance was placed in the decision of the Court in the case of Isaya Masira Momanyi Vs Daniel Omwoyo & Another [2017] eKLR to anchor the proposition that only a person holding letters of Administration can represent the estate of the deceased.
62. It was further submitted that the 1st Defendant is the beneficiary of a fraudulent transaction; hence, is not an innocent purchaser for value, without notice. Reliance was placed in the holding of the Court in the cases of Suleiman Rahemtulla Omar & Another Vs Musa Hersi Fahiye & 5 Others [2014] eKLR; Samuel Odhiambo Oludhe & 2 Others Vs Jubilee Jambo hardware Limited & Another [2018] eKLR; Arthi Highway Developers Ltd Vs West End Butchery Ltd & Others (Civil Appeal No. 246 of 2013); Lawrence Mukiri Mungai Vs The Hon. A-G & 6 Others [2019] eKLR; and, Dina Management Ltd Vs County Government of Mombasa & 5 Others (petition 8 (E010) of 2021 [KESC 30 (KLR) (21 APRIL 2023).

The 1st Defendant's Submissions

63. The 1st Defendant filed his written submissions dated 27th June 2024, through the Law Firm of Kirubi Mwangi Ben & Co Advocates and submitted that property rights are enshrined under Article 40 of *the*



- Constitution of Kenya. Reliance was sought in the Supreme Court's holding in the case of Rutonget Farm Ltd Vs Kenya Forest Services & 3 Others (2018) eKLR. Further, that the 1st Defendant carried out due diligence prior to purchasing of the suit property from the 2nd Defendant by obtaining an official search of the property. Reliance was sought in the holding of the Court in the case of Nairobi ELC Case No. 1 of 2018-In the Matter of Drive-In Primary School Ruraka Nairobi Vs National land Commission & 11 others.
64. Further, that the 1st Defendant executed a sale agreement dated 13th June 2011, disposing the suit land with the 2nd Defendant as attested by his exhibit No.2, and subsequently obtained the consent of the LCB thereby, complying with the applicable provisions of Land Control Act.
65. It was submitted that the allegations of fraud are serious and require strict proof as adverted to by the court in the case of Ndolo Vs Ndolo (2008) (IKLR) (G&F0 742; Vijay Morjaria Vs Nansingh Madhusingh Darbar & Another (2000) eKLR; Central Bank of Kenya Vs Trust Bank Limited & 4 Others. Further, that the 2nd Defendant acquired the suit property pursuant to the Certificate of Confirmation of Grant issued in Muranga Chief Magistrate's Succession Cause No. 44 of 2007, and that the 1st Defendant was not a party to any fraud attending to the transfer of the suit land; therefore, he is an innocent purchaser for value without notice of fraud as understood by the Court in the case of Katende Vs Haridar & Company Ltd [2008] 2 E.A. 173.
66. It was his further submissions that equity aids the vigilant and not the indolent, and that the Plaintiff has brought the instant suit ten (10) years after the 1st Defendant settled on the suit land, and established a permanent house thereon, and developed the property to the value of Kshs. 3 million, as attested by the Valuation Report appearing on page 10 of the 1st Defendant's bundle of documents. He prayed for dismissal of the Plaintiff's suit for exhibiting indolence on the part of the mover thereof.
67. The court has considered the available evidence and the rival written submissions, together with the cited authorities, and the court finds that there are facts that are not in dispute herein. There is no doubt that the Plaintiff, the 3rd and 4th Defendants are all siblings, as the son and daughters of Mwangi Mura(deceased), and Hannah Warigia Mwangi(the 2nd Defendant now deceased).
68. There is also no doubt that the suit land herein Loc 20/ Mirira/4481, was initially owned by Mwangi Mura, the father to the siblings herein, who died in the year 2008. This suit land is a subdivision of land parcel No Loc 20/ Mirira/ 2440 , and the suit land was registered in the name of the siblings' father, Mwangi Mura, in 1997.
69. However, in the said Mwangi Mura subdivided his initial land parcel No.2440, into various parcels of land and distributed the resultant subdivisions to his children during his lifetime, as gifts inter-vivos, as follows; Loc 20/ Mirira/4482, to the plaintiff, Loc 20/ Mirira/ 4483 to 3rd Defendant , Loc 20/ Mirira/ 4484 to 4th Defendant& Loc 20/ 4481(suit land) remained in his name.
70. The suit land remained in the name Mwangi Mura(deceased), and when he passed on, he was survived by his wife, Hannah Warigia Mwangi(2nd defendant, now deceased), and the siblings herein, being the Plaintiff, 3rd and 4th Defendants.
71. It is also evident that the suit land allegedly devolved to Hannah Warigia Mwangi(2nd Defendant), through transmission vide Muranga Succession Cause No. 44 of 2007, in the year 2011, and later the same year the said Hannah Warigia Mwangi, transferred the said land to Kariuki Kamau Mbuki, the 1st Defendant as a purchaser. Thereafter, the suit land was registered in the name of the 1st Defendant on 18th August 2011,(and Hannah Warigia Mwangi, was to have a life interest) and a title deed was issued.



72. Therefore, at the instance, the suit land is in name of the 1st Defendant herein Kariuki Kamau Mbiuki, which registration was done on 18th August 2011, under the Registered Land Act, Cap 300(repealed). Under the said Cap 300(repealed) section 27, provides;
- a the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
 - b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.”
73. Also section 28 of the said Cap 300(repealed) provides that the rights of a proprietor cannot be defeated except as provided by the Act, or the law. Therefore, the 1st Defendant rights as a proprietor of the suit land can only be defeated under the written law, or through a court order.
74. It is the Plaintiff’s claim that the Defendants herein fraudulently conspired to have the suit land transferred from the initial owner, Mwangi Mura, to Hannah Warigia Mwangi, the 2nd Defendant, and subsequently to 1st Defendant, Kariuki Kamau, using a fake grant in Muranga succession Cause No. 44 of 2007.
75. The 1st Defendant denied the said allegations, and averred that he was an innocent/ bona fide purchaser for value, without notice. He urged the court to dismiss the Plaintiff’s suit, and confirm his ownership of the suit land. He further alleged that he has been in occupation of the suit land since 2012, and has built his permanent house thereon, and that the Plaintiff being his neighbor has seen all the said development and did not complain until 2021, when he filed this suit.
76. The above are the undisputed facts, and the court proceeds to determine the disputed facts. From the available evidence, the court finds the issues for determination are as follows; -
- i. Whether the instant suit is merited
 - ii. Who shall bear the costs of the suit?
 - i. Whether the instant suit is merited?
77. In order to determine whether this suit is merited, the court will have to answer these issues;the suit land having been sold by the 2nd Defendant who was the registered as the owner in 2011, and who died during the pendency of this suit, did the withdrawal of suit against her have any effect on the sustenance of this suit?The suit land having been sold to the 1st Defendant in 2011, and the suit herein having been filed in 2021, did the Plaintiff file this suit after inordinate delay? Was the Plaintiff indolent, and cannot be aided by Equity. Was the 1st Defendant an innocent purchaser for value without notice?
78. As analyzed earlier by this court, it is evident that Hannah Warigia Mwangi, the 2nd Defendant, who was the wife of the original registered owner Mwangi Mura, was registered as the owner of the suit land allegedly through transmission. The Plaintiff has alleged that there was no succession cause filed in respect of the estate of Mwangi Mura, and the Succession Cause No 44of 2007, was in respect of a totally different estate. Therefore, the confirmed grant used to transmit the land to 2nd Defendant was a forgery.
79. It is very clear that Hannah Warigia Mwangi, transferred the suit land to 1st Defendant on 18th August 2011. If there was any forgery done in respect of fake Succession Cause, and transfer of the suit land illegally, then the same was done by Hannah Warigia Mwangi, maybe with the collusion of others, 1st



Defendant included. However, evidence must be availed to prove that the 1st Defendant was a party to the said collusion.

80. The court has considered the particulars of fraud that the Defendants are alleged to have committed. All those particulars cannot attach to any other Defendant in absence of the 2nd Defendant, Hannah Warigia Mwangi. It was alleged that the said Hannah died during the pendency of this suit in January 2022.
81. The Plaintiff filed a Notice to withdraw suit against the 2nd Defendant, and on 4th March 2024, the Plaintiff through his advocate, applied to withdraw suit against the 2nd Defendant herein, who was alleged to have passed on in 2022. No death certificate was availed, and thus the court cannot ascertain the exact date of death of 2nd defendant to determine whether at the time of withdrawal, the suit had abated by operation of law or not.
82. Be that as it may, when the suit against the 2nd Defendant was withdrawn, then it meant, there was no claim remaining against the said Defendant. The 1st Defendant owns the suit after purchasing it from the said 2nd Defendant. How can fraud then attach to 1st Defendant, without having Hannah Warigia Mwangi, the vendor as a party to this suit? Can the tortious act of a party not in the suit attach to another party?
83. In the case of Priscilla Nyambura Njue vs Geovhem Middle East Ltd; Kenya Bureau of Standards (Interested Party) [2021] eKLR, which cited with approval the case of Rais Sultana Begam v Abdul Qadir & Others, the court held: -

“Withdrawal of a suit is itself its end. The right of a plaintiff to withdraw his suit is not a divine right but a right expressly conferred upon him by Order 25.The consequence of an act of withdrawal is that the Plaintiff ceases to be a Plaintiff before the Court. If he is the only plaintiff and withdraws the whole of the suit, the suit comes to an end and nothing remains pending before the Court, If he withdraws only a part of the suit that part goes out of the jurisdiction of the court and it is left with only the other part.

As far as the withdrawn suit is concerned the suit is at an end and no further proceedings can be taken in it;”

84. The Plaintiff having withdrawn or discontinued the suit against the 2nd Defendant, then any claim against the 2nd Defendant came to an end. The Plaintiff cannot adduce evidence on the acts of the withdrawn or discontinued party to attach liability on the remaining Defendants.
85. Having found that the remaining Defendants/ parties cannot bear responsibility for the tortious acts of the withdrawn defendant, what is the effect of non-joinder of the necessary party?
86. In the case of Kingori vs. Chege & 3 Others [2002] 2 KLR 243 the court held as follows:

“... Necessary parties who ought to have been joined are parties who are necessary to *the constitution* of the suit without whom no decree at all can be passed. Therefore in case of a defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings.”



87. From the above decision of the court, it is evident that without a necessary party in a suit, the court cannot pass a decree. The presence of Hannah Warigia Mwangi, was necessary for this court to effectively and completely adjudicate this matter, given that she is the one who acquired the suit land through transmission, and later sold it to 1st Defendant. The Plaintiff has alleged fraud on the part of the Defendants, can fraud be attached to the 1st Defendant, as a purchaser, in the absence of the vendor, Hannah Warigia Mwangi?
88. The 3rd and 4th Defendants are sisters to the Plaintiff and are not the ones who sold the suit land, as per the sale agreement. How could fraud be attached to them, without Hannah being a party to the suit? Fraud is a serious allegation, which must be strictly proved. See the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another (2000) eklr, where the court held; it is well established that fraud must be specifically pleaded and that particulars of fraud alleged must be stated on the face of the pleadings.
89. Though it was alleged that Hannah Warigia Mwangi, was deceased although without proof of a death certificate, it is clear from the provisions of order 24 rule that death of one of the a defendant is not necessarily the end of a case. This case being based on fraud, succeeded the deceased defendant, being the 2nd Defendant(Hannah Warigia Mwangi). The Plaintiff had the option of substituting the said deceased defendant with the legal representative of her estate, but instead of substituting, the Plaintiff chose to withdraw suit against the said necessary party. Once the suit was discontinued against the 2nd Defendant, then any claim against her including fraud, and allegedly acquiring the suit land using an illegal grant, came to an end.
90. Without the necessary party, Hannah Warigia Mwangi, no decree can be passed on the issue of fraud, and the tortious acts of an absent necessary party cannot be passed to another Defendant. Therefore, the effect of withdrawal or discontinuous of the suit against Hannah Warigia Mwangi, means that this court cannot effectively and completely adjudicate upon this case. The allegation of fraud has no base, and thus cannot be sustained.
91. Be that as it may, it is also evident that the suit land herein was sold to the 1st Defendant in the year 2011, specifically on 18th August 2011. The 1st Defendant testified that he entered into the suit land in 2012, and that this suit land shares the same boundary with land parcel No Loc 20/ Mirira/ 4482, which was allocated to the Plaintiff by their late father during his lifetime. The Plaintiff therefore witnessed the entry of the 1st Defendant on the suit land, and the said development coming up
92. However, the Plaintiff did not file any suit against the 1st Defendant and the vendor, Hannah Warigia Mwangi until 2021, which was about 10 years from the time of acquisition of the suit land by 1st Defendant. Was this suit brought after inordinate delay? It is very clear that equity aids the vigilant, and not the indolent. The Plaintiff did not explain the reasons for the delay in filing of the instant suit, and it evident from the various correspondences produced as the Plaintiff's exhibits, he starting agitating as far as the year 2014. Though the Plaintiff alleged that he had to filed an earlier suit, and it was dismissed by the court for being time barred, and later he sought for leave to file this suit, those proceedings were not part of his exhibits. The court relies on evidence and exhibits produced by the parties. The court cannot rely on allegations only.
93. The Plaintiff herein saw and witnessed the 1st Defendant enter unto the suit land and start construction of his permanent house thereon. He did not file a claim then to bar the 1st Defendant from further development. The Plaintiff came to court after 10 years, and he cannot allege that is when he discovered the alleged fraud.



94. In the case of Ibrahim Mungara Mwangi vs Francis Ndegwa Mwangi [2014] eKLR, the Court while quoting a passage from Snell's Equity by John MC Ghee Q.C. (31st Edition) at page 99 held as follows:
- “The Court of equity has always refused its aid to stale demands where a party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence; where these want the court is passive, and does nothing.”
95. Even upon bearing in mind that this is a court of law, it is also a court of equity, and will not hesitate to invoke the maxims of equity where applicable. Courts in this country have held time and again that; Equity aids the vigilant, not the indolent” which is a legal maxim that means people who have been wronged must act quickly to preserve their rights. If they delay, they are guilty of laches, which is an unreasonable delay in litigation. This maxim is also known as "delay defeats equity". The Plaintiff herein is therefore guilty of laches, and without any reasonable explanation, this court finds and holds that he was indolent.
96. The next issue that this court should answer is whether the 1st Defendant is an innocent / bona fide purchaser for value without notice of fraud. Black's law Dictionary (8th Edition) defines a “bona fide purchaser” as: “One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable.
97. Does the 1st Defendant qualifies as defined above. In his defence, the 1st Defendant testified that he purchased the suit land from the 2nd Defendant, upon undertaking due diligence by taking out a Certificate of Official Search, which showed that the 2nd Defendant was the registered proprietor of the suit land. Further, the 2nd Defendant being the vendor of the suit property, showed the 1st Defendant the Certificate of Confirmation of Grant issued in Muranga Chief Magistrate's Succession Cause No. 44 of 2007, transmitting the suit property to herself from the estate of her late husband.
98. Though the Plaintiff alleged that the 2nd Defendant colluded with the 1st Defendant to have the suit land registered in the name of 2nd Defendant using an illegal or fake confirmed grant, there was no evidence called to support that allegation. It is evident that he who alleges must prove, as provided by sections 107 and 108 of the Evidence Act. The Plaintiff being the one who has alleged had the onerous task of calling evidence to prove his allegation.
99. This court has seen the various communication from the Plaintiff to various state organs like the DCIO, the Police and the Land Registrar. Complaining about the sale of the suit land to 1st Defendant by 2nd Defendant. However, there is no evidence of whether the Police carried out investigations on the alleged fraud, and what was the outcome. The allegations of fraud on the part of 1st Defendant is from the Plaintiff, but without further prove, this court would find it difficult to attach any blame on the Defendants herein.
100. The Plaintiff should have availed evidence of the outcome of the investigations, and whether the police found the said claim viable. He should have called evidence from any of the officers from the named state offices to confirm their findings on the allegations made by the Plaintiff.
101. The court has seen the sale agreement, and it is clear that the 1st Defendant entered into a sale agreement with one Hannah Warigia Mwangi, who was the registered owner of the suit land. The said sale agreement has not been disputed by the Plaintiff, and this court finds that the said sale agreement was the basis of the 1st Defendant purchase of the suit land, and he paid the purchase price as indicated in the sale agreement.



102. The 1st Defendant had also testified that he carried out due diligence before purchasing the suit land and obtained a Certificate of Official search which indicated that the 2nd Defendant was the registered proprietor of the said parcel of land. There was no caution/inhibition and or restriction on the title by the time the 1st Defendant carried out the official search, and therefore, he could not have had any notice of any claim over the suit land by another person.
103. In the case of *Katende v. Haridar & Company Limited* [2008] 2 E.A.173, the Court held as follows:
- “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:
- a. he holds a certificate of title;
 - b. he purchased the property in good faith;
 - c. he had no knowledge of the fraud;
 - d. he purchased for valuable consideration;
 - e. the vendors had apparent valid title;
 - f. he purchased without notice of any fraud;
 - g. he was not party to any fraud.
104. From the available evidence, there is no doubt that the 1st Defendant holds a certificate of title that was issued to him on 18th August 2011. He purchased the suit land after carrying out due diligence, and thus purchased in good faith; there is no evidence that he had knowledge of fraud; the vendor Hannah Warigia had a valid title, and there was no evidence that he was a party to any fraud. Therefore, this court cannot hesitate to find and hold that the 1st Defendant was an innocent/bona fide purchaser for value without notice.
105. Even if the court was to hold that the 1st Defendant was not a Bona fide purchaser for value, without notice, has the Plaintiff proved his case on the required standard of balance of probabilities? The burden of proof was upon the Plaintiff herein, who had alleged. He needed to call sufficient evidence to prove his allegations. See the case of *Muriungi Kanoru Jeremiah vs Stephen Ungu M’warabua* [2015] eKLR where the court held as follows with regard to the burden of proof:
- “....As I have already stated, in law, the burden of proving the claim was the appellant’s including the allegation that the respondent did not pay the sum claimed as agreed; i.e. into the account provided.....The trial magistrate was absolutely correct in so holding and did not shift any legal burden to the appellant.....The appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove.... In the circumstances of this case, the respondent bore no burden of proof whatsoever in relation to the debt claimed. By way of speaking, the shifting of burden of proof would have arisen had the trial court magistrate held that the respondent bore burden to prove that he deposited the sum of Kshs. 98,200/= the debt being claimed herein.”
106. As observed by this court earlier, the Plaintiff, the 3rd and 4th Defendants are all beneficiaries of subdivisions of their parcels of land. The suit land remained in the name of their father Mwangi Mura, who allegedly died in 2008. This suit land Loc 20/ Marira/4481, was transmitted to Hannah Warigia Mwangi, vide succession Cause No 44 of 2007.



107. The Plaintiff alleged that this succession cause was in respect of another estate, and not that of Mwangi Mura, the father to the siblings herein. However, PW2, did not dispute whether a succession cause had been filed for the estate of Mwangi Mura, or not. Her evidence was to the effect that Succession Cause No44 of 2007, was in respect of the estate of Ngugi Kaigai. She did not rule out existence of another cause with similar number, but for the estate of Mwangi Mura.
108. Further, as observed earlier, even if the succession cause used to transmit the land to Hanna Warigia Mwangi, was not in existence, the suit against her was withdrawn, and therefore, this court cannot make any findings against a discontinued claim.
109. The said Hannah Warigia Mwangi, was a mother to the siblings herein, who allegedly inherited the suit land that belonged to her husband. The Plaintiff alleged that their father had given him the original title deed to keep in safe custody. However, 3rd Defendant alleged that the Plaintiff took the title deed from their mother by force.
110. This court also observed that each of the siblings herein were given their portion of land by their father before his death. The Plaintiff herein was a beneficiary of Loc 20/ Mirira/ 4482, which shares a boundary with the suit land. In cross examination, the Plaintiff admitted that he subdivided his land into two portions being Loc 20/ Mirira/ 8659 & 8660.
111. The Plaintiff also admitted that he sold one portion No 8659, without consulting anyone. If that was the case, why did he expect their mother, who was registered as the owner of the suit land herein, to consult him while selling the said land? The Plaintiff has his portion of the land that was given to him by his father. He took long to file this claim, and the court has found that he is guilty of laches; he is not a destitute, and as submitted by the Plaintiff, he has his respective parcel of land.
112. In his claim, the Plaintiff alleged fraud on the part of the Defendants. This court has found and held that the 1st Defendant is a bona fide purchaser for value, and cannot be accused of fraud. On the part of the 3rd and 4th Defendants, they are sisters to the Plaintiff and daughters of Hannah Warigia Mwangi, the vendor.
113. The Plaintiff did not adduce any evidence to link them to any fraud, allegedly perpetrated by Hannah. They are not parties in the sale agreement, and no evidence that they were recipients of the purchase price, and they were not registered owners. How could they be linked to fraud? It is trite that acts of alleged fraud must be set out, they should be stated that these acts were done fraudulently. Further, fraudulent acts or conduct must be distinctly alleged and proved, and should not be left to court to infer frauds from the facts.
114. The 5th Defendant is the Land Registrar, Muranga, and DW1, adduced evidence on the fact that their office relied on the documents supplied by the parties to have the suit land transferred from Mwangi Mura to Hannah Warigia Mwangi, and later to 1st Defendant. There was no evidence adduced on the wrong doing by the 5th Defendant, while carrying its mandate.
115. The suit herein is brought under the provisions of the *Civil Procedure Act*. In determining this matter, the court will be bound by the provisions of sections 1A,1B and 3A of the said Act. Section 3A provides;

“Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as



may be necessary for the ends of justice or to prevent abuse of the process of the court.”

116. Having considered and analyzed the available evidence as above, the court finds that the necessary orders that this court should issue, so that the end of justice can be met, is to find and hold that the Plaintiff herein has failed to prove his case on the required standard of balance of probabilities.
117. For the above reasons, the court finds and holds that withdrawal of the suit against the necessary party, meant that the suit could not be effectively and completely adjudicated, and no decree can issue herein in the absence of a necessary party. Further, the Plaintiff was indolent in filing this suit and is guilty of laches, and cannot be aided by the court.
118. For the above reasons, the court finds and holds that the case herein has not been proved on the required standard of balance of probabilities against any of the Defendants herein. Consequently, this case is dismissed entirely against all the defendants.
 - ii. Who should bear costs of this suit?
119. On the issue of costs, the court will be guided by the provisions of section 27 of the [Civil Procedure Act](#), which provides;
 1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
 2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”
120. Further, it is clear that costs follow the event and is awarded to the successful litigant. See the case of Party of Independent Candidate of Kenya & another vs Mutula Kilonzo & 2 others (2013) eKLR, which cited with approval the words of Murray CJ in *Levben Products vs Alexander Films (SA) (PTY) Ltd 1957 (4) SA 225 (SR)* at 227, it was stated:

“It is clear from authorities that the fundamental principle underling the award of costs is two-fold. In the first place the award of costs is the matter in which the trial Judge is given discretion ...But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at...In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
121. The Defendants herein are the successful litigants. However, only the 1st and 3rd Defendants participated and filed their respective defenses in this suit. DW1, representing the 5th Defendant gave evidence as a necessary witness, and did not file a defense, and is thus not entitled to costs.
122. In the final analysis, this court finds and holds that the Plaintiff’s suit is not merited, and the said suit is dismissed entirely with costs to the 1st and 3rd Defendants herein.

It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF JANUARY, 2025.

L. GACHERU

JUDGE

29/1/2025

Delivered online;

In the presence of

Joel Njonjo – Court Assistant

Mr Kariuki for the Plaintiff

Mr Kirubi for 1st Defendant

N/A for the other Defendants.

L. Gacheru

Judge

29/1/2025

