



Mudembei & another v Malembi & another (Environment & Land Case 3 of 2020) [2023] KEELC 20613 (KLR) (13 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20613 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 3 OF 2020
EO OBAGA, J
OCTOBER 13, 2023**

BETWEEN

TRUFOSA CHEREDI MUDEMBEI 1ST PLAINTIFF

NEVIN EGESA JEDEVERA 2ND PLAINTIFF

AND

JOHN K. MALEMBI 1ST DEFENDANT

SETTLEMENT FUND TRUSTEE 2ND DEFENDANT

JUDGMENT

Introduction and Background

1. The 1st Plaintiff and 2nd Plaintiff are the administratrix and administrator respectively of the Estate of the late William Jedevera Mudembei (Deceased) who died on 25/4/1982. On 25/5/1968, the Deceased accepted a letter of allotment in respect of plot No. 14 at Mabusi Settlement Scheme in Kakamega.
2. On 13/3/1979 the register in respect of plot 14 was opened in the name of Settlement Fund Trustee(SFT). On 25/3/1998 the title for Kakamega/Mabusi/14 (suit property) was transferred to the 1st Defendant at a consideration of Kshs 5,400/=
3. On 23/10/2000, the 1st Plaintiff who is widow of the Deceased filed a suit against the Defendants alleging that the suit property had been fraudulently registered in the 1st Defendant's name. she sought for a declaration that the registration of the suit property in the 1st Defendant's name was illegal and void and called for its cancellation and registration of the same in her name. she also asked for an eviction order against the 1st Defendant and a permanent injunction against him as well as costs of the suit.



4. On 1/2/2005, the plaint was amended and the 2nd Plaintiff who is son to the Deceased was brought into the suit. Hearing of the Plaintiffs' suit commenced on 24/1/2017 and was concluded on 15/7/2015 before the High Court at Eldoret. Judgement was delivered on 17/11/2015.
5. The 1st Defendant who was aggrieved by the judgement preferred an appeal to the Court of Appeal. On 28/11/2019, the Court of Appeal set aside the judgement on grounds of lack of jurisdiction and remitted the file back to the Environment and Land Court for hearing and determination.

Plaintiffs' case;

6. The Plaintiffs testified that the suit property was allotted to the Deceased who was then given a loan which was to be repaid in terms of the conditions in the letter of allotment. The Deceased continued repaying the loan due to SFT until he died. After the demise of the Deceased, the 1st Plaintiff paid the remaining loan. When the 1st Plaintiff went to carry out a search at Kakamega Lands Registry, she discovered that the suit property had been registered in the name of the 1st Defendant.
7. The 1st Plaintiff testified that the Deceased had sold the suit property to one Kibutit Arap Yego at Kshs 50,000/= The Deceased later refunded the Kshs 50,000/= to Yego before selling the suit property to Charles Machungo vide a sale agreement dated 17/3/1979 at a consideration of Kshs 80,000/=
8. The Plaintiff further testified that she discovered during the search that the 1st Defendant was alleging that he had purchased the suit property through an oral agreement at a consideration of Kshs 200,000/=. She further discovered that the 1st Defendant had alleged that the Deceased appeared before Kitale Land Control Board where he thumbprinted an application for consent of land control board and thereafter signed a transfer on 13/7/1982.
9. The 1st Plaintiff testified that her husband who was a teacher knew how to sign and that there is no way he could thumbprint on one document and sign all the other documents. She further stated that on 13/7/1982 when the Deceased is alleged to have signed a transfer before a settlement officer called Muindi, he was already dead having died on 25//4/1982.
10. The 1st Plaintiff further testified that the 1st Defendant never took possession of the suit property from 1982 when he alleges to have purchased it until 1998 when he evicted the agents of Charles Machungo. Prior to the 1st Defendant evicting the agents of Charles Machungo, the 1st Defendant had written letters to the Land Adjudication Department and Settlement officers seeking help to remove what he alleged were squatters yet those in occupation of the suit land were relatives of Charles Machungo who had purchased the suit property.
11. PW3 Charles Onchuru Machungo testified on how he purchased the suit property from the Deceased on 17/3/1979 through an agreement prepared by Advocate A. M Nyairo. He paid Kshs 80,000/=. He further made a payment of Kshs 3,000 towards the outstanding loan due to Settlement Fund Trustee and legal fees of Kshs 1000/= to Mr. Nyairo. He purchased the suit property after an earlier agreement between the Deceased and Kibutit Arap Yego was cancelled. Mr. Yego was refunded his Kshs 50,000/= which he had paid. Mr. Yego acknowledged the refund of his money.
12. PW3 then took possession and put in a worker and his sister and brother in-law Mr. Makori to take care of the suit property as he was away in Nairobi. His relatives were on the suit property until 1998 when the 1st Defendant evicted them. He later learned that the 1st Defendant had obtained title to the suit property. He sought to know from the 1st Plaintiff whether she is the one who had sold the suit property to the 1st Defendant as her husband had already died. The 1st Plaintiff told him that her husband had not sold the suit property to the 1st Defendant.



13. The 1st Defendant wrote a demand letter to Mr. Makori through Kalya & Co. Advocates. PW3 gave the letter to his lawyers who replied to Kalya's letter. He thereafter instructed his lawyer to file a civil suit against the 1st Defendant and the 2nd Defendant. His lawyers filed Eldoret HCCC No. 78 of 1998 which was later dismissed for want of prosecution.
14. PW4 Penina Nyanduko Makori who is a sister to Charles Onchuru Machungo confirmed in her testimony that she and her husband the late Makori Nyachae were the ones taking care of the suit property until 1998 when the 1st Defendant evicted them claiming that he had purchased the suit property.

1st Defendant's Case;

15. The 1st Defendant testified that he purchased the suit property from the Deceased in February, 1982 at a consideration of Kshs 200,000/=. He and the Deceased proceeded to the Land Control Board at Kitale where they applied for consent of the Land Control Board. Consent was granted after it was confirmed that the suit property had been allotted to the Deceased.
16. The 1st Defendant stated that while at Kitale, they were given a number of documents to sign. One such document was a transfer which was thereafter pinned on a notice board for 90 days calling for any objections. When no objections were forthcoming, the suit property was registered in his name and he was given title.
17. There were some outstanding dues due to the Settlement Fund Trustee which he cleared after which he was given a discharge. He stated that between 1982 and 1998 he was not able to take possession of the suit property as there were squatters on it. He only took possession in 1998 when the squatters were evicted.
18. The 1st Defendant stated that he had a sale agreement between him and the Deceased but that the agreement got lost together with his certificates.

Second Defendant's Case;

19. The 2nd Defendant's case was stated by Evans Misati Orumi, Principal County Land Adjudication and Settlement officer, Kakamega. He testified that he was aware of parcel No. 14 within Mabusi Settlement Scheme which was established in 1966. Plot 14 was allocated to William Jedereva Mudembei. The allottee signed a certificate of acceptance. All dues to the Settlement Fund Trustee were cleared. He stated that the practice is that once SFT dues are paid, a discharge is issued to the allottee. He stated that he did not know how the land was transferred from the Deceased to the 1st Defendant.

Plaintiffs' Submissions;

20. The Plaintiffs submitted that the application for consent of Land Control Board was not signed but that it was thumbprinted. They submitted that this was not possible as the Deceased was a teacher and knew how to sign. They cited the same agreement between the Deceased and Charles Machungo which was signed by the Deceased as an example.
21. The Plaintiffs further submitted that the letter of consent was dated 23/3/1982. The date of the alleged meeting of the Land Control Board was not shown; the 1st Defendant did not know who was the chairman and no minutes of the meeting were availed.
22. The transfer was signed on 13/7/1982 whereas the Deceased died on 25/4/1982. The Plaintiffs submitted that the signature on the transfer was a forgery as it was different from the one appended



- on the sale agreement of 17/9/1979 and that the 1st Plaintiff had denied that that was the Deceased's signature.
23. There was no evidence of payment of Kshs 200,000/=. The Plaintiffs wondered why there was a difference between the amount shown in the green card and the amount the 1st Defendant alleges to have paid. The amount of consideration in the green card is Kshs 5,400/=
24. In support of the fact that there was no sale agreement between the 1st Defendant and the Deceased, the Plaintiffs relied on section 3(3) of the Law of Contract Act which states as follows: -
- “No suit shall be brought upon a contract for the disposition of an interest in land unless— (a) the contract upon which the suit is founded— (i) is in writing; (ii) is signed by all the parties thereto; and cap. 23 Law of Contract [Rev. 2012] L11 - 6 (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party: Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”
25. The Plaintiffs cited the case of Fabiye & 2 others v Omar & 4 others 2010 (2) KLR 224 where Justice Mbogholi Msagha (as he then was) stated as follows:-
- “Any contract for the disposition of land under the Kenyan law had to be in writing and signed by both parties and the signatures of both parties had to be witnessed.”
26. The Plaintiff also submitted that the 1st Defendant took 16 years to take possession. They submitted that if indeed the 1st Defendant had purchased the suit property in 1982, he would not have waited for 16 years to take possession. He took possession in 1998 after eviction of the agents of Charles Machungo.

First Defendant's submissions;

27. The 1st Defendant submitted that the Plaintiffs had not discharged the burden of proof bestowed on them. He cited section 107 of the Evidence Act which states as follows: -
1. Whoever desires any court to give judgement 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.
28. The 1st Defendant relied on the case of James Muniu Macharia v National Bank of Kenya Ltd Civil Appeal No. 365 of 2017 (2019) eKLR where the Court stated as follows:-
- “Indeed, it is settled law in Civil cases the standard of proof is on a balance of probability. This is in effect to say that the court will make a finding based on which party's version of the story is more believable.”
29. The 1st Defendant also submitted that the Plaintiffs have no locus standi to bring this suit as they had admitted that the Deceased had relinquished his interest in the suit property as he had sold it to Charles Machungo. He therefore argues that the suit property was not part of his free estate which will be subject to succession.



30. The 1st Defendant further submitted that the Deceased had not acquired any interest in the suit property. The 1st Defendant further submitted that the Plaintiffs had not proved the alleged fraud as pleaded. In support of this, he cited a number of decisions including the case of *Vijay Morjaria v Nansingh Madhusing Darbar & another* (2000) eKLR, *Kinyanjui Kamau v George Kamau* (2015) eKLR, *Emfil Ltd v Registrar of Titles Mombasa* (2014) eKLR and *Central Bank of Kenya Limited v Trust Bank Ltd & others* (1996) eKLR.
31. The 1st Defendant submitted that the issue of whether there was a written agreement was never pleaded and that it could not therefore be raised by the Plaintiffs. The 1st Defendant cited the case of *Independent Electoral & Boundaries Commission & another v Stephen Mutinda Mula & 3 others* (2014) eKLR which cited with approval decision of the Supreme Court of Nigeria in *Adetoum Oladegi (NIG) v Nigeria Breweries PLC* SC 91/2002 where Adereji JSC stated as follows:-
- “It is now trite principle in law that parties are lead by any of the parties which does not support the averments in the pleadings, or put in averments of the pleadings goes to no issue and must be disregarded...
- Infact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and void any surprises by which no opportunity is given to the other party to meet the new situation.”
32. Finally, the 1st Defendant submitted that the Plaintiffs had not proved a prima facie case to warrant issuance of a permanent injunction. In support of this, he cited the case of *Mrao Limited v First American Bank of Kenya Limited & 2 others* (2013) eKLR where a prima facie case was defined as follows: -
- “Prima facie case is one which on the material presented in court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the Respondent.”

Second Defendant’s Submissions;

33. The 2nd Defendant submitted that the Plaintiffs had failed to prove the particulars of fraud attributed to it. In support of this, it cited the cases of *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* (2013) eKLR, *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* (2015) eKLR, *Ndolo v Ndolo* (2008) I KLR 742, *Central Bank of Kenya v Trust Bank Ltd & 4 others* NAI Civil Appeal No. 215 of 1996 (UR), *Rosemary Wanjiku Muriithi v George Maina Ndinwa* (2014) eKLR and *Mary Jerono Mengich v David Kipleting Rugut* (2013) eKLR.

Analysis And Determination;

34. I have carefully considered the evidence adduced by the Plaintiffs as well as the evidence by the Defendants. I have also considered the submissions by the parties herein. The parties herein filed agreed issues for determination of court on 18/6/2001. The issues are as follows:-
1. Whether the Plaintiff herein is the personal legal Representative and/or Administratrix of the Estate of the deceased - William Jadevera Mudembei.
 2. Whether one - William Jadevera Mudembei (now deceased) was and had been the original owner and allottee of land parcel No. Kakamega/Mabusi/14 from the 2nd Defendant herein after referred as Settlement Fund Trustees.



3. Whether the Defendant No. 2 was chargee over the said parcel of land Kakamega/Mabusi/14 having given a loan to the deceased - William Jadevera Mudembei.
 4. Whether the said William Jadevera Mudembei continued to repay the loan.
 5. Whether the said William Jadevera Mudembei sold his interest of the said land parcel to one Charles O. Machungo at a consideration of Kshs. 80,000/=
 6. Whether the said Charles O. Machungo through his servants and agents went into occupation of the said parcel of land and tilling it with the knowledge and permission of the deceased and his wife hereinafter called Plaintiff.
 7. Whether the 1st Defendant illegally and unlawfully entered the said parcel of land and started to disturb and evict the agents and servants of the Plaintiff and the said Charles O. Machungo.
 8. Whether the 1st Defendant fraudulently and without having any regard for the owners and the occupiers of the said parcel Kakamega/Mabusi/14 got himself registered as proprietor of the said parcel of land.
 9. Whether the two Defendants are guilty of fraud in getting the Defendant No. 1 to be registered as proprietor of the land Parcel NO. Kakamega/Mabusi/14 on 25/3/1998 for a consideration of Kshs 5,400/=
 10. Who will be condemned to pay the costs of this suit.
35. On the first issue, I have already said hereinabove that when this suit was filed, it is only the 1st Plaintiff who was named. The 2nd Defendant was brought in as a second Plaintiff through amendment of the plaint done on 1/2/2005. The Plaintiffs produced grant of letters of administration in respect of the Estate of the Deceased as Plaintiff exhibit 2. The grant was issued on 21/2/2000. The two Plaintiffs are therefore personal legal representatives of the Estate of the Deceased.
36. On the 2nd issue, there is evidence that on 30/8/1966 the Deceased paid Kshs 1240/= as deposit for working capital in exchange for allocation of plot 14 at Mabusi Settlement Scheme. On the same date, the Deceased signed a certificate of acceptance of allocation of plot 14. A photocopy of the entire file of the SFT duly certified by the court Deputy Registrar was produced as Defence exhibit 1. The original file was released to the witness of the 2nd Defendant who produced it on orders of the court. The Plaintiffs also produced the letter of allotment as plaintiff exhibit 3. These are the first documents in the file held by Settlement Fund Trustee. It is therefore clear that the Deceased was the original allottee of the suit property.
37. On the third issue, there is evidence that the Deceased was given a loan of Kshs 6,000/=. He paid the 10% deposit required and continued to repay the loan until he died. There was a charge in favour of the Settlement Fund Trustee. This charge was discharged in favour of the 1st Defendant in unclear circumstances as would emerge hereunder. The discharge was given to the 1st defendant who paid Kshs. 30,000/= on 28/1/1998. It is therefore clear that the 2nd Defendant was a chargee of the suit property.
38. On the fourth issue, there is evidence that the Deceased made payments towards repayment of the loan. He paid Kshs 2,000/= on 6/5/1976. Again on 21/4/1978 he paid Kshs 2000/=. After his death, a demand notice dated 31/7/1989 was addressed to the Deceased through Box 3 Soy. As this was not the address of the Deceased who had already died, the payment was not made. Another demand notice was made for Kshs 25,574/= on 16/10/2000. As at the time of this demand, the 1st Plaintiff had already made payment of Kshs 20,500/= on 17/9/1997. There was no further payment made as the Plaintiffs and Charles Machungo who had purchased the suit property from the Deceased had



discovered that the 1st Defendant had obtained title over the suit property on 25/3/1998. This is when Charles Machungo filed Eldoret HCCC No. 78 of 1998. This suit was later dismissed on 8/7/2015 for want of prosecution. This is also how the present suit was filed. It is therefore clear that the Deceased continued repaying the loan owed to Settlement Fund Trustee until discovery of the illegal registration of the 1st Defendant.

39. On the fifth issue, there is evidence that the Deceased entered into a sale agreement with Charles Machungo on 17/3/1979. The sale agreement was handwritten by A. M. Nyairo Advocate. A previous sale agreement between the Deceased and one Kibutit Arap Yego was rescinded after he received a refund of Kshs 50,000/= which he had paid. The sale agreement was produced as exhibit 7. The rescinded agreement between the Deceased and Kibutit Arap Yego was produced as exhibit 8.
40. Mr. Charles Machungo was issued with a receipt for payment of Kshs 80,000/= Plaintiff exhibit 12. He was also issued a receipt for Kshs 3,000/= which was to be used to clear Settlement Fund Trustee loan – plaintiff exhibit 13 and another receipt for Kshs 1000/= being legal fees –Plaintiff's exhibit 14. The plaintiff's acknowledge that they are aware of the sale by the Deceased to Charles Machungo. I therefore find that there was sale of the suit property to Charles Machungo who paid Kshs. 80,000/=.
41. On the sixth issue, there is evidence from PW3 Charles Machungo that when he bought the suit property, he was residing in Nairobi. He entrusted his sister Peninah Nyanduko Makori and her husband Makori Nyachae to take care of the suit property. The said Makori Nyachae was on the suit property and this is why the 1st Defendant's lawyer wrote a letter addressed to Makori Nyachae who was in occupation of the suit property. This letter was handed over to Charles Machungo's lawyer who responded through letter dated 24/5/1998.
42. The 1st Defendant wrote a letter dated 15/5/1998 in which he sought the intervention of Director of Land Adjudication to assist him remove a squatter who was on the suit property. The said squatter was Makori Nyachae who was taking care of the suit property on behalf of Charles Machungo. PW 4 Penina Nyanduko Makori testified on how the 1st Defendants came and evicted them from the suit land. It is therefore clear that Mr. Charles Machungo took possession of the suit property through his relatives. Machungo's possession was with the express permission of the Deceased who expressly granted Mr. Machungo possession which was captured in the agreement of 17/3/1979. The Plaintiff's knew that Mr. Machungo was in occupation until his agents were unlawfully evicted by the 1st Defendant.
43. On the seventh issue, there are serious doubts whether the 1st Defendants purchased the suit property at Kshs. 200,000/= from the Deceased. To begin with the 1st Defendant had no written sale agreement with the Deceased. In the proceedings leading to the judgment of the High Court which was set aside, the 1st Defendant had testified that he had no written agreement with the Deceased. In the proceedings before this court on a fresh trial, he claimed that he had a sale agreement which got lost together with his certificates. It is clear that the 1st Defendant lied under oath.
44. There is no evidence on how he paid the alleged Kshs. 200,000/=. He was never issued with any acknowledgement of the said payment. The application for Land Control Board consent was never dated. The deceased is said to have thumbprinted the same yet in all other documents, the Deceased who was a teacher signed. The explanation that he insisted that the Deceased thumbprints as he was aware that the Deceased was involved in multiple sales does not have any weight. When the Deceased decided to rescind the agreement between him and Kibutit Arap Yego, he refunded his 50,000/=.
45. The letter by one Joel M. Spira which the 1st Defendant seems to be relying on to claim that the Deceased was known to sell the land to multiple persons has no weight. The letter clearly shows that



- Spira was trying to undermine the ownership of the Deceased for his own benefit. There is no evidence that the said Spira had any genuine intention to purchase the suit land. His was only undermining the Deceased by claiming that the Deceased had failed to keep the suit property in good condition.
46. The transfer is dated 13/7/1982. As at the time of signing this transfer, the Deceased had long died on 25/4/1982. The explanation that the 1st Defendant and the Deceased signed undated transfer is not true in view of the manner in which the alleged transaction was carried out. I am aware that there is nothing unusual with signing an undated transfer but in the circumstances of this case, it is doubtful that the Deceased signed an undated transfer.
 47. The amount of consideration in the application for consent of the Land Control Board was indicated as being Kshs 200,000/=. However, in the green card, the consideration is shown as 5,400/=. This is strange. Those who processed title in favour of the 1st Defendant ought to have queried this anomaly. The only possible explanation is that there was collusion between the Settlement Fund Trust officials with the 1st Defendant who wanted to defraud the government of stamp duty.
 48. Dw2 Evans Misati Orumi testified that once loan to Settlement Fund Trust is cleared, a discharge is given to the original allottee. In the instant case, the discharge was given to the 1st Defendant who had paid Kshs 30,000/= on 28/1/1998. There was no sale agreement or informal transfer of the allotment letter which would have been the basis of giving a discharge to the 1st Defendant.
 49. The 1st Defendant was given a discharge on 28/1/1998. Despite this discharge, the Settlement Fund Trust continued to issue demand notices to the Deceased. On 16/10/2000, a demand of Kshs 25,574/= was made. Again on 7/10/2003, another demand of Kshs 31,991 was made. If the discharge had been issued on 28/1/1998, there is no way demands would still be made to the Deceased and the same being sent to various addresses.
 50. There was no written agreement between the 1st Defendant and the Deceased. This was contrary to section 3(3) of the *Law of Contract Act* which has been quoted hereinabove. This therefore rendered the alleged transaction between the Deceased and 1st Defendant null and void and it could not therefore confer any interest in the 1st Defendant. It was the height of dishonesty when the 1st Defendant claimed in these proceedings that he had an agreement which got lost while in the previous proceedings, he had stated that the agreement was oral.
 51. The 1st Defendant's title was under challenge. It was incumbent for him to show that the process leading to its acquisition was legal and proper. As has been demonstrated hereinabove, the process of obtaining title was illegal. There was clearly a scheme to have the 1st Defendant registered as owner of the suit property. This scheme involved Settlement Fund Trust officials as can be seen from the casual manner in which they issued discharge and continued to write demand notices to the Deceased.
 52. The 1st Defendant was less than candid. In the previous proceedings, he stated that he did not take possession for 16 years as he was out of the country most of the times. In the present proceedings, he stated that he was unable to take possession because there were squatters. It is inconceivable that a person can buy land and not take possession for 16 years. The 1st Defendant was emboldened to take possession after he had obtained title to the suit property through a corrupt scheme. I observed the demeanor of the 1st Defendant whom I found to be evasive and I made this part of the proceedings. The 1st Defendant did not acquire a good title which would have been the basis of him going to the suit property to evict Charles Machungo and his agents. He therefore illegally and unlawfully entered the suit property and unlawfully evicted Machungo and his agents.



53. I will deal with issue eight and nine together. It was alleged by the Plaintiffs that the 1st Defendant obtained title fraudulently and that the 2nd Defendant failed to take care of the interest of the personal representatives of the Deceased and that its officials transferred the suit property without adequate enquiries from the original allottee.
54. Some of the allegations against the 1st Defendant are that he forged documents which he used to transfer the suit property to himself. It was alleged that he acted fraudulently. The law is clear that fraud must be pleaded and strictly proved. In the case of *Vijay Morjaria (Supra)*, it was stated as follows:-
- “It is well established that fraud must be specifically pleaded and that particulars of the alleged fraud must be stated on the face of the pleadings. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that those acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
55. The forged documents were said to be the transfer documents and the application for consent of the Land Control Board. There was no forensic evidence from a document examiner to show that the signatures on the transfer or the thumbprint impression on the application for consent of Land Control Board were forgeries. The fact that PW1 denounced the signatures and thumbprint has no weight as she had no expertise to determine whether the signature or thumbprint was not that of the Deceased. The fact that the consideration in green card which was shown as 5,400/= is not a sign or evidence of fraud. This could have been at best a way of defrauding the government of stamp duty.
56. Despite the fact that the Plaintiffs have failed to prove fraud, there is overwhelming evidence that the process leading to the acquisition of title was illegal. The Settlement Fund Trust officials were complicit in this scheme. It cannot be taken that they were incompetent by failing to see that a discharge had been issued on 28/1/1998 yet in 2000 and 2003, they were sending demand notices to the Deceased. They were part of the corrupt scheme and cannot run away by simply saying that the registration was based on documents submitted to them.

Disposition;

57. From the above analysis, I find that the Plaintiffs have proved their case on a balance of probabilities. I enter judgement in their favour against the Defendants jointly and severally as follows: -
- a. A declaration that the registration of LR. No. Kakamega/Mabusi/14 in the name of the 1st Defendant is illegal, null and void.
 - b. An order is made cancelling title in respect of LR. No. Kakamega/Mabusi/14 which is in the name of the 1st defendant.
 - c. An order that the Plaintiffs be registered as owners of LR. No. Kakamega/Mabusi/14.
 - d. An order of eviction of the 1st Defendant and his agents or servants from LR. No. Kakamega/Mabusi/14.
 - e. A permanent injunction restraining the 1st Defendant his servants or agents from occupying, staying in or in any way interfering with LR. No. Kakamega/Mabusi/14.
 - f. The Defendants shall jointly and severally pay the costs of this suit to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF OCTOBER, 2023.

E. O. OBAGA



JUDGE

