



REPUBLIC OF KENYA



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**Muiruri v Njagu & 14 others (Environment and Land Appeal
E028 of 2023) [2025] KEELC 3552 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3552 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E028 OF 2023**

JM ONYANGO, J

APRIL 30, 2025

BETWEEN

PETER NG'ANG'A MUIRURI APPELLANT

AND

MARY WANGUI NJAGU 1ST RESPONDENT

WINNIE WARUINU KURUMBU 2ND RESPONDENT

PETER HIKA MAINA 3RD RESPONDENT

LEAH WATIRI MAINA 4TH RESPONDENT

MARY WANJIRU MURAYA 5TH RESPONDENT

TERESIA WANJIKU KIRAGU 6TH RESPONDENT

DAVID NDUNG'U NG'ANG'A 7TH RESPONDENT

FAITH NJERU MWANGI 8TH RESPONDENT

AGNES MUTHONI MIRIITHI 9TH RESPONDENT

CAROLINE WAMUYU MOILO 10TH RESPONDENT

AGNES WANGARI RUGURU 11TH RESPONDENT

BETH WANGARI MWAURA 12TH RESPONDENT

NANCY NJOKI NDUNGU 13TH RESPONDENT

ANGELA NONGO MUTURI 14TH RESPONDENT

**ELIUD KIARIE NJENGA T/A PINK PROPERTIES DEVELOPERS 15TH
RESPONDENT**



(Being an appeal from the judgment and decree of the Senior Principal Magistrate's court at Ruiru by Hon. J.A Agonda, Senior Resident Magistrate delivered on 15th August 2023 in Ruiru PMELC No. 100 of 2020.)

JUDGMENT

1. The 1st to 14th Respondents were the Plaintiffs in Ruiru SPMELC Case No. 100 of 2020 where they sued the 15th Respondent and the Appellant. In their Plaint filed on 1st September 2020 and amended twice with the Further Amendment on 20th January 2023, the 1st -14th Respondents claimed that they had entered into various sale agreements with the 15th Respondent on diverse dates between 21st April 2011 and 7th June 2017 in respect of the parcels of land known as plot numbers 1,6,7,12,13, 15,24,25,26,27,29,30,31,32,35 and 36 excised from land parcel number Ruiru East/Juja East Block 2/254 (hereinafter referred to as the suit property) The 1-14th Respondents further claimed that they paid the agreed purchase price in full and they were issued with receipts and plot certificates for their respective plots.
2. It was their case that the 15th Respondent represented to them that he had purchased the suit property from the Appellant who was the registered owner thereof and since the 15th Respondent had paid the full purchase price, the Appellant had authorized him to sub-divide the suit property and sell the various portions thereof to the 1st-14th Respondents.
3. However, when the 1st – 14th Respondents visited the suit property on 20th July 2020 they found that it was being sub-divided and sold to third parties. They later conducted an official search and discovered that the Appellant had been re-issued with the title deed in respect of the suit property yet the 15th Respondent had the original title deed at the time he entered into the sale agreements with the 1st- 14th Respondents.
4. The 1st- 14th Respondents therefore claimed that the Appellant and 15th Respondent had conspired and colluded to deprive them of the use, possession and ownership of their respective plots by purporting to sell them to third parties. They claimed that they were entitled to the said plots and that the purported sale of their plots to third parties was null and void.
5. They prayed for a permanent injunction to restrain the Appellant and 15th Respondents from interfering with the suit property, an eviction order against the 15th Respondent and general damages. In the alternative, they prayed for compensation for loss of property at the current market value of their respective plots in the sum of Kshs. 4,780,000 together with interest and costs.
6. The Appellant filed his Amended Defence in which he denied the 1st-14th Respondents claims. In particular, he denied having entered into sale agreements with any of the Respondents or authorizing the 15th Respondent to sub-divide and sell the alleged sub-divisions of the suit property to the 1st -14th Respondents as no consent of the Land Control Board had been obtained. He alleged that the 15th Respondent had fraudulently and surreptitiously sold the alleged plots to the 1st-14th Respondents without his knowledge or acquiescence. He itemized the particulars of fraud.
7. He stated that if the 1st -14th Respondents visited the suit property without his authorization, the same amounted to trespass and if they carried out any official searches on the title to the suit property, the same was unwarranted and unjustified.



8. He stated that the 15th Respondent fraudulently preyed on the gullibility of the 1st -14th Respondents and fleeced them of their funds without his knowledge or involvement and prayed that their suit be dismissed with costs.
9. The 15th Respondent did not file a defence to the Further amended Defence. However, in his defence to the initial Plaint, he stated that if he entered into the sale agreements with the 1st-14th Respondents to purchase the alleged plots, (which he denied) he did so on the basis of a Memorandum of Understanding he had entered into with the Appellant on or about the 28th March 2011 authorizing him to sub-divide and sell the suit property.
10. In the alternative, he stated that he paid the sale proceeds into the Appellant's Family Bank account and that the Appellant's actions of refusing to transfer the plots to the 1st -14th Respondents and procuring a false title deed when he knew that the original title deed was with Barclays Bank was fraudulent. He prayed that the Plaintiffs' suit be allowed.
11. The suit was set down for hearing and the 1-14th Respondents as well as the Appellant presented their cases. The 15th Respondent did not tender any evidence. After hearing the parties, the trial magistrate entered judgment for the 1st-14th Respondents against the Appellant and the 15th Respondents. It is the said judgment that triggered this appeal.
12. The Appellant raised 24 grounds of appeal as follows:
 - i. That the learned Principal Magistrate misdirected herself on the facts and in evidence in finding the Appellant liable to the 1st-14th Respondents for obligations and liabilities in fraudulent contracts between the 15th Respondent and the 1st-14th Respondents.
 - ii. That the learned Principal Magistrate misdirected herself in law and in fact in finding the Appellant liable to refund the 1st-14th Respondents the purchase price paid by them to the 15th Respondent.
 - iii. That the learned Principal Magistrate misapprehended the legal effect of the fraudulent misrepresentations by the 15th Respondent waving a forged title deed and a forged Agency Agreement on the 1st-14th Respondents and alleging lawful purchase by the 15th Respondent of the Appellant's property title number Ruiru East/Juja East Block 2/254 and alleging the right of the 15th Respondent to sub-divide and sell plots allegedly excised from the Appellants' property title number Ruiru East/Juja East Block 2/254.
 - iv. That the learned Principal Magistrate misdirected herself in law and in fact in finding that it was not in dispute that the 1st-14th Respondents had purchased alleged plots numbers 1,6,12,13,15,24,25,26,27,29,30,31,32,35 and 36 allegedly excised out of the Appellant's property title number Ruiru East/Juja East Block 2/254 without any evidence of lawful subdivision or lawful sale of the Appellant's parcel of land property title number Ruiru East/Juja East Block 2/254 as required by the provisions of section 6 of the *Land Control Act*.
 - v. That the learned Principal Magistrate misdirected herself in law and fact in finding without any or any credible evidence that the 15th Respondent was the agent of the Appellant.
 - vi. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that there was evidence presented on the record of proceedings of the subordinate court pointing to a fraudulent scheme hatched by the 15th Respondent (2nd Defendant) with the connivance of the Appellant (1st Defendant) to dispossess the 1st -14th Respondents of



plots allegedly excised out of the Appellant's property title number Ruiru East/Juja East Block 2/254.

- vii. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the Appellant in reporting to the Land Registrar the loss of title deed for title number Ruiru East/Juja East Block 2/254, thereby concealed material facts from the Land Registrar and that in reality he had sold his land title number Ruiru East/Juja East Block 2/254 and received Kshs. 5.5 million.
- viii. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the Appellant admitted receipt of Kshs. 5.5million in respect of the Appellant's property title number Ruiru East/Juja East Block 2/254 when in fact the admission was limited to the sale to the 15th Respondent of his mother's adjacent property title number Ruiru East/Juja East Block 2/255 vide the second paragraph of page 8 of the learned Principal Magistrate's judgment.
- ix. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the Appellant sold to the 1st -14th Respondents property title number Ruiru East/Juja East Block 2/254.
- x. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the Appellant sold to the 1st -14th Respondents property title number Ruiru East/Juja East Block 2/254 or that the Appellant received or could have received Kshs. 5.5 million contrary to her own order that a sum of Kshs. 4,950,000 as refundable purchase price to the 1st -14th Respondents (sic).
- xi. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any pleading or evidence that the Appellant colluded with officials at the Land Registry with inside information who helped the Appellant execute fraud upon the 1st-14th Respondents.
- xii. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the Appellant colluded with officials at the Land Registry with inside information or as a result thereof any previous records for the property were removed and/or destroyed and a new register opened and the Appellant thereby issued with a new title deed for the suit property title number Ruiru East/Juja East Block 2/254 on 9th September 2019.
- xiii. That the learned Principal Magistrate misdirected herself in law and in fact and wholly misapprehended facts in the certificates of official search presented to the Honourable court by both the Appellant (sic) and found without any evidence a scam at the Land Registry which she opined succeeded, thanks to the Appellant.
- xiv. That the learned Principal Magistrate misdirected herself on contentions of fact on the 1st-14th Respondents' pleadings and considered matters not germane to any pleadings or documentary evidence produced for examination by the learned Principal Magistrate and reached conclusions that manifestly outraged justice and resulted in a miscarriage of justice.
- xv. That the learned Principal Magistrate misdirected herself in belabouring the principle of indefeasibility of title of the 1st -14th Respondents in property title number Ruiru East/Juja East Block 2/254 without any pleading or oral or documentary evidence it never claimed before the learned Principal Magistrate that any one of the 15 Respondents had at any material time been registered as proprietor of property title number Ruiru East/Juja East Block 2/254 and that



such vested position had on 9th September 2019 been unlawfully undone to the detriment of any of the Respondents.

- xvi. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any pleading with particulars or evidence by the 1st -14th Respondents alleging destruction of a land register by the Appellant altering the registration of the Appellant in replacement of the Respondents or any of them.
 - xvii. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the 1st-14th Respondents undertook due diligence after buying plots numbers 1,6,12,13,15,24,25,26,27,29,30,31,32,35 and 36 and that the said plots were excised out of title number Ruiru East/Juja East Block 2/254.
 - xviii. That the learned Principal Magistrate misdirected herself in law and in fact in finding that the Appellant concealed evidence of the sale of property title number Ruiru East/Juja East Block 2/255.
 - xix. That the learned Principal Magistrate misdirected herself in law and in fact in finding that the Appellant ought to have called the Land Registrar to produce a green card to show the history of property title number Ruiru East/Juja East Block 2/254 whereas that issue was never pleaded by the Respondents and indeed raised from the blues by the learned Principal Magistrate and answered by herself in the judgment.
 - xx. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence that the Land Registrar illegally, unprocedurally or otherwise cancelled entries in the register and that such unproven cancellation was an indictment on the office of the Land registrar as a representative of the Government.
 - xxi. That the learned Principal Magistrate misdirected herself in law and in fact in finding that causes founded on agreements between the 1st -14th Respondents and the 15th Respondent dating way back from 28th March 2011 survived or were actionable in 2020 or are capable of enforcement against the Appellant not privy thereto (sic).
 - xxii. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence on the record of proceedings that the 15th Respondent was the Appellant's agent or that the Appellant breached or was capable of breaching all or any of the agreements he was not privy to.
 - xxiii. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence on record of proceedings that the Appellant received any part of the purchase price for property title number Ruiru East/Juja East Block 2/254.
 - xxiv. That the learned Principal Magistrate misdirected herself in law and in fact in finding without any evidence on record of proceedings demonstrating that the Appellant colluded with officials of the land registry with inside information or as a result thereof any previous records for the property were removed and/or destroyed and a new register opened and the Appellant thereby issued with a new title deed for the suit property title number Ruiru East/Juja East Block 2/254 on 9th September 2019.
13. It is the Appellant's prayer that the appeal be allowed, the judgment of the lower court be set aside and that judgment be entered against the 15th Respondent.



14. The appeal was canvassed through written submissions and the Appellants and 1st-14th Respondents filed their submissions which I have read and considered.
15. This being a first appeal, my role is to conduct a careful reappraisal of the evidence and issues presented before the trial court, to sift through the record with a discerning eye, and to reach my own considered conclusions. Yet, my role is circumscribed; it is not my place to embark upon fresh inquiries, venture beyond the record or to entertain matters that were neither raised nor contemplated in the trial court.
16. In *Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2EA 212* the court stated as follows:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
17. The gist of the suit filed by the 1st to 14th Respondents in the lower court was that the 15th Respondent acting under the authority of the Appellant entered into agreements with the 1st-14th Respondent for plots excised from the Appellant’s land title number Ruiru East/Juja East Block 2/254 after which the Appellant failed to transfer the said plots and instead sold them to third parties. It will therefore be necessary to determine the following issues:
 - i. Who is the lawful owner of land title number Ruiru East/Juja East Block 2/254?
 - ii. Whether the 15th Respondent was the agent of the Appellant.
 - iii. Whether there are valid sale agreements in respect of plots excised from the suit property between the 15th Respondent and the 1st-14th Respondents.
 - iv. Whether the 1st -14th Respondents proved fraud, collusion or conspiracy against the Appellant and 15th Respondent.
 - v. Whether the Appellant should be held liable for the acts of the 15th Respondent.
 - vi. Whether the judgment of the lower court should be set aside or varied.
18. It is not in dispute that the suit property is registered in the name of the Appellant. The Appellant produced a copy of the initial title deed issued to him in 1995 as well as the duplicate title re-issued on 9th September 2019. However, what is intriguing is that the 1st-14th Respondents claimed that at the time they entered into the sale agreements with the 15th Respondent, he had had an original title deed for the suit property issued on 16th November 1989. It is doubtful whether this was a genuine title. Suffice is to say that the issue of ownership of land title number Ruiru East/Juja East Block 2/254 is not contested.
19. I will now move on to determine the question as to whether the 15th Respondent was the agent of the Appellant. In her witness statement dated 1st September 2020 which mirrors the witness statements of the 2nd-14th Respondents, Mary Wangui Njagu, the 1st Respondent who testified as PW1 stated that the 15th Respondent had represented to her that he had purchased and fully paid the Appellant who was the registered owner of land parcel number Ruiru East/Juja East Block 2/254 the agreed consideration for the whole parcel of land and therefore the 15th Respondent was at liberty to sub-divide and sell to her the respective parcel as per the sale agreement dated 15th September 2016.



20. If indeed the 15th Respondent was the agent of the Appellant, did he have to purchase the suit property in order to sell it on behalf of the Appellant? The answer is in the negative.
21. As part of her evidence in court, the 1st Respondent produced a Memorandum of Understanding dated 28th March 2011 between the 15th Respondent and the Appellant in respect of land title number Ruiru East/Juja East Block 2/254. She testified that the Appellant had stated that he had not given the 15th Respondent any Memorandum of Understanding. He claimed that his signature had been forged by the 15th Respondent.
22. On his part, the Appellant produced a Memorandum of Understanding dated 28th March 2011 between himself and the 15th Respondent in respect of land title number Ruiru East/Juja East Block 2/255 in which he authorized the 15th Respondent Trading as Pink Properties to sell land parcel number Ruiru East/Juja East Block 2/255 which had been sub-divided into 40 plots measuring 40 ft by 80ft.
23. It was agreed that the 15th Respondent would deposit the sum of Kshs. 5,100,000 into the Appellant's account at Family Finance Bank within 90 days. He clarified that the said parcel of land was registered in the name of his mother who was aged 95 years and he was transacting on her behalf.
24. The Appellant denied that he had entered into a similar Memorandum of understanding with the 15th Respondent in respect of parcel number Ruiru East/Juja East Block 2/254. He called Martin Osekina Papa (DW2) a Forensic Document Examiner who testified that he was issued with documents containing the Appellant's known signature together with the Memorandum of Understanding dated 28th March 2011 (Exhibit A1).
25. After comparing the signatures, he concluded that the signature in the Memorandum of Understanding purportedly signed by the Appellant did not share similarities, characteristics, patterns and styles with that of the Appellant. (See page 471 of the Record of Appeal). He produced the Forensic Report dated 8th March 2022 as an exhibit.
26. . Although in cross-examination DW2 stated that he was not given the Memorandum of Understanding for examination, it is clear from page 4 of the Forensic Report that the first document among the documents presented to him which are tabulated as "Exhibits and Identification Markings" is the Memorandum of Understanding – Authority to sell Ruiru East/Juja East Block 2/254 between Peter Ng'ang'a Muiruri and Pink Properties (Eliud Kiarie Njenga) dated 28th March 2011.
27. As correctly submitted by learned counsel for the Appellant, oral evidence cannot supersede or contradict documentary evidence. In the case of *Twiga Chemicals Industries Limited v Alan Stephen Reynolds* (2014) eKLR the court held as follows:

“Parole evidence rule, it is generally not permissible to adduce extrinsic evidence, whether oral or written, either to show the intention or to contradict, vary or add to the terms of the document including implied terms”
28. Additionally, In the estate of Charles Ndegwa Kiragu Deceased (2016) eKLR, the court observed that:

“In the case of *Jane Wambui v Stephen Mutembi and Another* the court observed as follows:
“Under section 67 of the *Evidence Act*, documents must be produced by primary evidence except in cases set out in section 68 of the Act where secondary evidence may be given of the existence, condition or content of a document. The definition



of primary evidence means the document itself produced for the inspection of the court.

Section 67 of the Evidence Act provides that documents must be proved by primary evidence except in the cases hereinafter mentioned. Section 67 is the basis of what is called the best evidence rule, which provides that documents must be proved by the best evidence. The allowance of secondary evidence is a consensual concession by the law to allow the second best. The optimum will be the document itself, or whatever would comprise the primary evidence. It is rarely the case that secondary evidence will be allowed where a party could have produced the original”.

29. In the instant case, the finding by the trial magistrate that the Memorandum of understanding was not presented to the Document examiner, based on DW2’s evidence in cross-examination was with due respect, erroneous.
30. Equally erroneous was the conclusion that the 15th Respondent was the agent of the Appellant as the Memorandum of Understanding which purported to authorize the 15th Respondent to sell the plots excised from the suit property was not signed by the Appellant as his signature was forged. The said Memorandum of Understanding was therefore not valid.
31. The third issue for determination concerns the validity of the sale agreements between the 1st-14th Respondents and the 15th Respondent. PW1 who testified on her own behalf and on behalf of the 2nd to 14th Respondents produced the sale agreements entered between themselves and the 15th Respondent for their respective plots ostensibly excised from parcel number 254.
32. Section 3(3) of the Law of Contract Act provides that:-
 - “ 3) 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
 - (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, nor shall anything in it affect the creation of a resulting, implied or constructive trust.”
33. The agreements entered into between the 1st -14th Respondents and the 15th Respondents meet the criteria set out in section 3(3) of the Law of contract Act as they are in writing, they are signed by both parties and witnessed by 2 witnesses. However, the issue that arose in the lower court was whether the said contracts which were for the sale of agricultural land were capable of conferring any interest in land in the absence of the consent of Land Control Board. It is noteworthy that PW1 conceded that they did not obtain the consent of the Land Control Board as the 15th Respondent was not the registered owner of the land.



34. It is common ground that the suit property herein is agricultural land to which the provisions of Section 6 of the *Land Control Act* apply. The said section provides as follows:
6. Transactions affecting agricultural land;
 - (1) Each of the following transactions that is to say—
 - (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
 - (b) ...is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.
35. Under section 7 of the *Land Control Act*, consideration paid for a transaction which becomes void is recoverable as a debt subject to section 22 of the Act. The contracts between the 1st-14th Respondents were therefore rendered void when 2nd defendant failed to obtain the consent of the Land Control Board. However, this does not preclude the 1st to 14th Respondents from recovering the consideration paid under the said contracts.
36. The fourth issue is whether the 1st-14th Respondents proved fraud, collusion or connivance against the Appellant and 15th Respondent. It is trite law that allegations of fraud must be pleaded and strictly proved. In the case of *Koinange & 13 Others V. Charles Karuga Koinange* 1986 KLR at page 23 Justice Amin citing the case of *Ratilal Patel Makanji (1957) EA 314* observed as follows:
- “When fraud is alleged by the plaintiffs, the onus is on the plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a balance of probabilities is required”
37. Furthermore in the case of *Vijay Morjaria .v. Nansingh Madhusingh Darbar& another* [2000]eKLR (Civil Appeal No. 106 of 2000) Tunoi JA (as he then was) stated as follows:-
- “...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.”
38. This decision was upheld by the Court of Appeal in Nairobi in the case of *Kinyanjui Kamau .v. George Kamau Njoroge* [2015] eKLR(Civil Appeal No 132 of 2005)where it was stated that;
- to succeed in the claim for fraud, the appellant needed to not only plead and particularize it, but also lay a basis by way of evidence, upon which the court would make a finding.
39. The Court of Appeal in the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR in considering the issue of fraud observed as follows:-
- “It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt.



One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427:

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

The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrence V Lord Norreys (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (Davy V Garrett (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice”.

40. In the instant case, although the 1st-14th Respondents deliberately avoided the use of the word fraud in their Plaint, they pleaded that the Appellant and 15th Respondents had “unlawfully and illegally conspired and colluded to deprive the Plaintiffs (the 1st-14th Respondents) of the use, possession and ownership of their respective plots.
41. In Black’s Law Dictionary 9th Edition at page 351 Conspiracy is defined as follows;

“An agreement by two or more persons to commit an unlawful act coupled with an intent to achieve the agreements motive, and (in most cases), action or conduct that furthers the agreement; a combination for unlawful purpose.

The agreement may be proved in the usual way or by proving circumstances which the jury may presume it. Proof of the existence of a conspiracy is generally a matter of inference deduced from certain criminal acts of the parties accused, done in principle of an apparent criminal purpose in common between them.”
42. Order 2 Rule 4 of the Civil Procedure Rules requires that particulars of illegality and misrepresentation be specifically pleaded. In the case of Piche v Big C First Nation 1994 Canlii 5005 (SK QB) Genein J stated that conspiracy must be pleaded with clarity.
43. The 1st-14th Respondents merely pleaded that the 15th Respondent and Appellant unlawfully colluded and conspired to deprive them of their property but failed to provide particulars of such collusion and conspiracy. They also failed to adduce sufficient evidence to prove the alleged conspiracy and collusion. I am therefore of the humble view that the trial Magistrate fell into error when she made a finding that the 2nd defendant (15th Respondent) with the connivance of the 1st Defendant (Appellant) hatched a fraudulent scheme to dispossess the Plaintiffs of the resultant plots excised from the suit property.
44. Additionally, she accused the Appellant of concealing material facts from the Land Registrar when he knew that he had sold the suit property to the Plaintiffs and colluded with an (unnamed) official of the land registry who removed and destroyed the previous records and a new register was opened where the Appellant was issued with a second title deed for the suit property on 9th September 2019. These findings were not supported by the evidence on record.



45. On whether the Appellant should be held responsible for the acts of the 15th Respondent, I have already held that the Memorandum of Understanding which the 15th Respondent relied on to claim that he was the agent of the Appellant was not valid. Although the trial magistrate made a finding that the Appellant had admitted that he received the purchase price for the suit property, it is clear from the Appellant's evidence at page 467 and 468 of the Record of Appeal that the payment he was referring to was in respect of land parcel number 255 and not land parcel number 254 which is the suit property herein.
46. The Appellant was clearly not privy to the sale agreements between the 1st -14th Respondents and the 15th Respondent. The doctrine of privity of contract was discussed in the case of *Agricultural Finance Corporation v Lengetia Limited* (1985) eKLR where the court citing Halsbury's Laws of England 3rd Edition Volume 8 Paragraph 110 stated as follows:
- “As a general rule a contract affects only the parties to it and cannot be enforced by or against a person who is not a party even if the contract is made for his benefit and purports to give him the right to sue or make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such a near relationship to the party from whom the consideration proceeds that he may be considered to be party to the consideration does not entitle him to sue upon the contract”.
47. Consequently, owing to the absence of privity of contract, the Appellant cannot be held liable for the obligations of the 15th Respondent under the contracts between the 15th Respondent and the 1st -14th Respondents.
48. In view of the foregoing, the conclusion by the trial magistrate that the 1st-14th Respondents had proved their case against the Appellant did not flow from the evidence on record as PW1 testified that they had all along dealt with the 2nd Defendant (15th Respondent) who purported to be acting on behalf of the Appellant.
49. The upshot is that the appeal has merit and I allow it, set aside the judgment of the trial court and substitute it with the following orders:
- a. The 1st - 14th Respondents' case against the Appellant is dismissed.
 - b. Judgment is entered for the 1st-14th Respondents against the 15th Respondent in the following terms:
 - c. The 15th Respondent shall refund the 1st-14th Respondents the purchase price in the sum of Kshs.4,950,000/= together with interest at court rates from the date of this judgment until payment in full.
 - d. The 15th Respondent shall bear the costs of this appeal as well as the case in the lower court.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL 2025.

.....

J. M ONYANGO

JUDGE

In the presence of:

1. Mr F. N Wamalwa for the Appellant



2. Mr Ngure for the 1st – 14th Respondent

Court Assistant: Hinga

