



**Menelik House Limited v Mbugua & another (Environment & Land Case
458 of 2017) [2025] KEELC 3417 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 458 OF 2017**

JG KEMEI, J

APRIL 29, 2025

BETWEEN

MENELIK HOUSE LIMITED PLAINTIFF

AND

JOHN MBUGUA 1ST DEFENDANT

FRANCIS ODUMBE OSODO 2ND DEFENDANT

JUDGMENT

1. This suit was filed in 2017. On 29/9/21 the Plaintiff was amended with the leave of the court granted on 21/9/21.
2. The Plaintiff avers that it is the registered owner of the suit land namely L R No 1/580 Nairobi having purchased the same at the consideration of Kshs 4.5 Million pursuant to a sale agreement dated the 14/5/2003 and the eventual conveyance in its favour registered on 17/2/2009 from Sellah Awino Osodo, the administratrix of the estate of Jerry Shapan Osodo, the previous owner.
3. It is the case of the Plaintiff that despite being the registered owner of the suit land, the 1st Defendant through the law firm of Gichamba & Co Advocates wrote to its tenants vide a letter dated the 2/6/2017 directing them to cease paying rent to the Plaintiff and remit it to the said law firm. Further that the 1st Defendant through the firm of Jeddy Management wrote to the Plaintiff notifying it that it is in rent arrears and that it had terminated its tenancy agreement effective from 31/12/2020.
4. The Plaintiff avers that it stands to suffer irreparable harm unless the Defendants are stopped from interfering with the suit land.
5. Consequently, the Plaintiff sought the following orders jointly and severally against the defendants;
 - a. An order of a permanent injunction restraining the defendants jointly and severally either by themselves their servants employees agents and or other persons working under their



instructions from selling transferring alienating disposing entering trespassing interfering and or dealing with the suit land being L R No 1/580 along Ngong Road, Nairobi.

- b. A declaration the plaintiff is the legal owner of the suit land
 - c. Cost of the suit
6. The 1st Defendant denied the claim of the Plaintiff in its entirety vide his defence and counterclaim amended on 18/1/22 and 19/5/22 respectively.
 7. He contended that he is the beneficial owner of the suit land having purchased it from the 2nd Defendant and his late mother namely Sellah Awino Osodo, both being the legal administrators of the estate of the late Jerry Shapan Osodo, (who was their father and husband respectively) vide the agreement of sale dated 3/9/2020, 20/9/2012 and an addendum dated 26/3/2016 at the consideration of Kshs 15 Million.
 8. He refuted that the Plaintiff is the owner of the suit land. He contends that the alleged ownership by the Plaintiff was procured illegally since at the time of the alleged acquisition, the suit land was charged to a bank by the deceased owner and no evidence of discharge has been adduced. That the suit land was therefore in the circumstances unavailable for sale and transfer to the Plaintiff. He stated that the Plaintiff did not pay the alleged consideration at all.
 9. He admitted that he directed the tenants to cease paying rent to the Plaintiff since he is the legal owner of the property and therefore entitled to the rights, interest and benefits as a land owner including the rent. That the Plaintiff is therefore a trespasser on his land having acquired it fraudulently.
 10. In his counterclaim he averred that on completion date (31/5/2011), the 2nd Defendant failed to avail the completion documents as his mother Sellah Osodo had passed away necessitating the signing of further agreements to capture their various undertakings including an undertaking that in the event the transaction fell through the 2nd Defendant would transfer to the 1st Defendant an alternative property namely LR No 1/726. That on 15/2/2013 the 2nd Defendant executed a conveyance over the suit land in favour of the 1st Defendant but was unable to avail the title to the property on the pretext that it was held by the bank as security for a loan. That upon the 2nd Defendant taking possession of the suit land he learnt that the Plaintiff was in possession and its ownership status was confirmed by a title search he obtained from the land's office shortly thereafter.
 11. It therefore became clearer to him that the 2nd Defendant sold the suit land to him deceitfully and fraudulently having earlier own sold it to the Plaintiff and received monies from him knowing that the land was not available for sale. He particularized fraud and deceit against the 2nd Defendant under para 28 and consequently sought the following orders;
 - a. An order directing the 2nd Defendant to refund him the sum of Kshs 15 Million being the full purchase price for the suit land
 - b. Interest on a above
 - c. Costs of the counterclaim.
 12. The 2nd Defendant filed his statement of defence dated the 20/9/2021 and denied the Plaintiffs claim. He averred that save for himself neither the Plaintiff nor the 1st Defendant has any right to ownership and collection of rent from the premises. He asserted his rights as a beneficial owner of the suit land having inherited it from his late father, Jerry Shapan Osodo. He denied ever selling the land to either the Plaintiff nor the defendant. Further he denied that his mother sold the land to the Plaintiff and asserted that the Plaintiff was a tenant vide the tenancy agreement of 28/9/1999. He denied signing



the sale agreement and the transfer and sought to put the Plaintiff to strict proof. In addition, he stated that the Plaintiff did not pay Kshs 4.5 Million on account of the purchase price.

The evidence of the parties.

13. The evidence of the Plaintiff was led by 4 witnesses. Samuel Bogonko Keengwe testified as PW1. He introduced himself as an Advocate of the High Court of Kenya practicing in the name and style of Keengwe & Co Advocates. He adopted the contents of his witness statement dated 22/5/23 in its entirety and added that he was instructed by the 2nd Defendant and his late mother, Sellah Awino Osodo to represent them in the sale of the suit land with the Plaintiff who consented to the transaction. That he also represented them in the petition for succession of the estate of the late Jerry Shapan Osodo. That he drew the sale agreement and the conveyance for the consideration of Kshs 4.5 Million which the Plaintiff paid in full. That he successfully completed the conveyance on behalf of the 2nd Defendant and his mother. That there was no objection from the 2nd Defendant. That all the outgoings including property rates were paid.
14. In cross, he confirmed that he received the written instructions from Sellah Osodo vide the letter dated the 19/4/2004 appearing on page 66 of the Plaintiff's trial bundle. That in the said letter Sellah instructed him to act for her in the transaction, in respect to the sale of her house to the Plaintiff. She also undertook in the said instructions to hand over the original certificate of confirmation of grant to him. Further she also informed him that the balance of the purchase price of Kshs 3.555M was payable by 20/7/2004. He pointed out that the purchase price was paid in installments either through him or directly to Sellah and her son, the 2nd Defendant. That parties continued to pay each other even after the completion date as provided for in the agreement of sale. He indicated that it was not true that the title was being held by a bank at the time of registering the conveyance. That though the conveyance was signed by Sellah, there was no issue as the 2nd Defendant executed a no objection addendum to the conveyance which was duly registered against the title on 18/3/2009. That he lodged the conveyance and the confirmation of grant together at the lands office. He confirmed that the 2nd defendant always accompanied Sellah to his office every time and therefore he cannot feign ignorance of the transaction.
15. PW2- George Oguttu Odumbe testified and relied on his witness statement dated the 19/3/24 in chief. He stated that he is a retired civil servant having worked with the Kenya Revenue Authority. That the 2nd Defendant is his 1st cousin. Further he added that he witnessed the conveyance dated the 17/2/2009. That he received several amounts of monies from the seller on behalf of Sellah and the 2nd Defendant; some being rent (Kshs 26 K for jamhuri house rent) and some being part payment of the purchase price. That he forwarded the monies to Sellah and Francis with acknowledgement.
16. The witness added that when he was called by the Osodo's to Uganda house on 17/2/2000 he found out that a dispute had arisen over the sale of the property. That it is then that he learnt that the buyer was his former colleague one, Prof Maragia who had hitherto been a tenant in the suit premises before. That Prof Maragia was paying rent for the Osodos for the house they occupied in Jamhuru estate and one of the payments being Kshs 26,000/- was in respect to the payment of rent.
17. PW3- Alfred Onsomu testified and relied on his witness statement dated 9/1/22. He stated that he witnessed the collection of cheque dated 23/3/2009 for Kshs 22,000/- by PW2 for onward forwarding to the Osodos. He confirmed that before the transaction Prof Maragia resided in the suit property with his family.
18. PW4- Prof Isaac Maragia introduced himself as a director of the Plaintiff company and duly authorized to testify on its behalf. See Company search on page 121 of the trial bundle. He testified and relied on his witness statement on pages 106-108 of the Plaintiff's trial bundle dated the 1/3/23 in chief. He



- added that the suit land is owned by the Plaintiff Company as shown by the title search on page 42-43 of the trial bundle. On page 123 -126 a copy of the title is further evidence of the Plaintiff's ownership of the suit property. That the title was recently converted into NBI /BLOCK19/612.
19. He added that Keengwe and Co Advocates prepared both the agreement for sale dated the 14/5/2003 and the conveyance dated 17/2/2009 which he pointed out to the court. That the documents were executed by Sellah Osodo and her son, Francis Osodo executed a no objection note to denote his consent to the transaction. He stated that the administrators of the estate of Jerry Osodo were Sellah and Francis according to the confirmation of grant on record dated the 19/11/2003. He detailed the payments made towards the purchase price, land rent, house rents appearing on pages 46-54 of the trial bundle and confirmed that he paid the purchase price in full
 20. In cross examination, the witness stated that he entered into a tenancy agreement with the Osodos on 28/9/1999 and shortly thereafter purchased the suit property in 2003. He stated that at some point the Osodos sued him for rent arrears but the court ruled that the Plaintiff was an owner and not a tenant. That the suit was misconceived as the tenancy had converted to the purchase of the land. He admitted that some of the payments were made through PW2 on behalf of the Osodos. In addition, he also paid Kshs 70,000/- on behalf of the Osodos to their account at Savings & Loans to redeem the suit property from the impending auction. Upon payment of the bank dues, the property was discharged by Sellah. He stated that the letter dated the 11/8/2004 was from the bank and acted as a discharge of charge. That he was given the original title on completion of the payment of the purchase price.
 21. The witness stated that he was shocked to receive a letter in 2017 from the 1st Defendant requiring the tenants to pay the rent to him. That the 2nd Defendant was behind the said interference.
 22. That he was summoned by the DCI to record a statement in response to a complaint lodged by the 2nd Defendant over the acquisition of the suit land. That he has never been charged with any offence. That on presenting his ownership documents the police were satisfied that the transaction was above board.
 23. With that the Plaintiff closed its case.
 24. The 1st Defendant's case was led two witnesses. DW1- John Mbugua Nduba relied on his witness statement dated the 19/5/2022 in chief. He produced documents marked as DEX1-18.
 25. He stated that the Osodos were his customers at his butchery and that he learnt from them that they were selling the property at Kshs 17M which he purchased at Kshs 15M.
 26. He stated that he purchased the land from Sellah and Francis in 2010 at the consideration of Kshs 15 Million which he paid in full with acknowledgement from the 2nd Defendant. That Francis signed the conveyance in 2014 and caused the rectification of the grant to include him as a beneficiary on account of being a purchaser for value. That Francis informed him that the title was held by the bank for loan facilities that the estate was servicing. That he paid rates for the property awaiting the transfer of the land to his name. That he was not given possession because the plaintiff who was Francis's tenant was refusing to vacate the property leading to Francis unsuccessfully filing a suit to evict him. That in 2017 the Plaintiff filed the instant suit claiming ownership of the property. That he conducted a search and to his shock he confirmed that the Plaintiff indeed was the registered owner, a position that the 2nd Defendant failed to disclose. He stated that Francis informed him that he never entered into any agreement with the Plaintiff; never consented to the sale and that the Plaintiff never paid any consideration for the purchase and that the plaintiff was a tenant who defaulted in rent payments
 27. In cross he stated that the search carried out by his lawyer showed that the property belonged to the late Jerry Osodo. That the agreement on page 6-7 of the trial bundle was between Sellah, Francis and



himself. That the 2nd agreement in 2012 was between him and Francis as at that time Sellah had died. That in 2014 he was substituted as a beneficiary in the grant in place of Sellah. He stated that the Judiciary vide its letter issued on 5/3/24 confirmed that the grant of 4/11/2014 was a forgery and that it did not originate from the court. He stated that he did not participate in the alleged succession that led to the issuance of the said grant as Francis procured the grant and handed it over to him.

28. In an apparent contradiction to his testimony and pleadings the witness stated that the transaction was not concluded because he did not pay the full purchase price.
29. DW2 – Hiroshi Omondi Apida adopted his witness statement dated the 19/5/22 in chief and stated that both Francis and DW1 are known to him. That he witnessed the agreement between Francis and DW1. That even before the sale, it was common knowledge that Prof Maragia was occupying the property as a tenant.
30. With that the 1st Defendant closed his case.
31. The 2nd Defendant did not attend the hearing despite evidence of service. The record shows that when the matter came up for hearing on 21/1/25 he was represented by Dr Miyawa Advocate who held Counsel Dr Okumu's brief. Dr Miyawa successfully applied for an adjournment on the ground that Dr Okumu who was in conduct of the matter was out of town. The court set a new hearing date for the 30/1/25 when at the call over Dr Okumu sought for an adjournment on the ground that Dr Miyawa who had conduct of the matter was away and that he was not ready for the hearing. The court rightly declined the adjournment and fixed the hearing at 11.50 am on the material date. At the designated time for hearing neither Dr Okumu, Dr Miyawa nor the 2nd Defendant made a show in court. The hearing proceeded in their absence.

The submissions.

32. The Plaintiff and the 1st Defendant filed written submissions on 13/2/25 and 28/2/25 respectively. I have read and considered the submissions which now form part of the record.

Analysis and Determination.

33. It is commonly acknowledged that the suit land was originally owned by Jerry Saphan Osodo who died on 10/5/1990. Upon his death his estate was succeeded and his wife Sellah Awino and son Michael were appointed administrators of the estate. According to the record Michael passed away at some point necessitating the rectification of grant to bring in Francis as a co administrator with his mother. See consent order of 2004 recorded in court leading to the confirmation of grant on 19/11/2003 where the suit land was distributed to Sellah and Francis to hold jointly in trust for themselves and Rose Odhiambo. By all standards Jerry's estate inherited some prime properties in the City , one of them being the suit land. It was alluded on record that Sellah Osodo passed away on 16/5/2011.
34. It is not in dispute that DW1 was a tenant in the premises as shown by the tenancy agreement of 1999. It is also not in dispute that DW1 is a director and shareholder of the Plaintiff company.
35. Both the Plaintiffs and the 1st Defendants (by counterclaim) case against the 2nd Defendant are undefended.
36. Arising from the above I find the issues for determination are;
 - a. Whether the 1st Defendant has proven fraud on the part of the Plaintiff; if in the negative whether the Plaintiff is the legal proprietor of the suit land
 - b. Whether the 1st Defendant is a bonafide purchaser for value without notice



- c. What orders should the court grant?
- d. Who bears the costs of the suit
37. It is the Plaintiffs case that it is the registered proprietor of the suit land having acquired it through purchase in 2003 at a consideration of Kshs 4.5 Million from the estate of Jerry Osodo.
38. On the other hand, the 1st Defendants case is that he is equally a beneficial owner of the suit land having purchased it majorly from the 2nd Defendant in 2010 at a consideration of Kshs 15 Million which he paid in full to Francis Osodo.
39. Property rights in Kenya are protected under Art 40 of *the Constitution*. The only exception is found under Art 40 (6) where protection does not extent to any property that has been found to have been unlawfully.
40. The statutory framework under sections 24 and 25 of the LRA set out the rights interests and privileges to be enjoyed by a proprietor of a parcel of land acquired legally. Of relevance to the instant suit is section 26 of the LRA which stipulates the manner in which a title may be impugned.
41. Section 26 of the *Land Registration Act* therefore provides two instances where a title can be challenged. The first is on the ground of fraud and/or misrepresentation to which the person is proved to be privy to and/or a party and secondly where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme
42. It is now settled law 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. At page 427 in Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition quoting with approval the cases of Wallingford v Mutual Society [1880] 5 App. Cas.685 at 697, 701, 709, Garden Neptune v Occident [1989] 1 Lloyd's Rep. 305, 308, Lawrence v Lord Norreys [1880] 15 App. Cas. 210 at 221 and Davy v Garrett [1878] 7 ch.D. 473 at 489 it is stated that: -
- “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. 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). 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 (I). “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”.
43. As regards standard of proof in respect to a charge of fraud, the law is quite clear. In R.G. Patel v Lalji Makanji[1957] EA 314 the former Court of Appeal for Eastern Africa stated thus:
- “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 mere balance of probabilities is required.”



44. In the case of *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, 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 distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

45. It is also trite that he who asserts must prove. The burden of proving fraud rests on the shoulders of the 1st and 2nd Defendant, a burden that must be successfully discharged if their claim must succeed.

46. The starting point in answer to the first issue is to examine documentary evidence on record along with the evidence of the parties.

47. It is the 1st Defendant's case that the Plaintiff acquired the land through fraud and illegality. That he was informed by Francis that; the Osodos never executed the sale agreement and the conveyance to the Plaintiff; no consideration was paid; the title was not available as at the time of the sale it having been charged to the bank; no discharge was exhibited; the plaintiff was but a mere tenant who upon default had turned to a trespasser in the suit land;

48. The 1st Defendant has raised a charge of fraud, deceit and misrepresentation on the part of Francis in purporting to sell the land and receiving monies well aware that the land was not available for sale the same having been transferred to the Plaintiff earlier.

49. Unchallenged evidence was led by PW1 that Sellah instructed him to prepare a sale agreement dated the 14/5/2003 for the sale of the suit land to the Plaintiff at the purchase price of Kshs 4.5 Million. Evidently, the agreement is in writing, contains the description of the property subject of sale, the consideration and the terms of the parties. It is duly executed by Sellah as a representative of the administrators of the estate as well as the directors of the Plaintiff. To this extent I find that the agreement of sale complies with the provisions of Section 3(3) of the *Law of contract Act* which stipulates that contracts for the disposition of an interest in land must be in writing, signed by all parties, and the signatures must be witnessed. The purpose of this requirement is to provide a more reliable record of the agreement, ensuring its enforceability and preventing disputes”.

50. On the question of consideration, the court has perused the record and evidently payments were made variously by the plaintiff to both Sellah and Francis as shown on pages 46-88 of the trial bundles. The payments were for rent for the residence of the osodos, rent payments to the City Council then and the purchase price. This evidence was corroborated by PW1 -PW4. In the absence of any evidence to the contrary the court is satisfied that the purchase price of Kshs 4.5 Million was paid in full.

51. Was the property charged? it has been claimed that the suit land was charged to a bank and therefore unavailable for sale. PW4 led evidence and informed the court that he paid the sum of Kshs 70,000/- to redeem the property from the jaws of the auctioneer. A letter dated the 11/8/2004 from Waruhiu Gathuru & Co Advocates alludes to the fact that the bank was aware that the suit land was being sold to the Plaintiff. PW1 led unchallenged evidence that the suit property was discharged by the bank.

52. It was the case of the 1st Defendant that the Osodos did not execute the sale agreement and the conveyance. The conveyance of 17/2/2009 was duly executed by the Osodos. Francis executed a no objection note which was witnessed by among others PW2. The said documents states as follows;

“No objection Note



I, Francis Odumbe Osodo of National Identity Card No.12925858 and P. O. Box 4247-00200, Nairobi do hereby consent to my mother Sella Awino Osodo to convey or dispose of our family property known as LR.No.1/580 to Menelik House Ltd.

That I give consent as a co-Administrator with my mother Sella Awino Osodo and further as a co-beneficiary, co-owner of the said property.

In witness, I affix my signature as herein below.

Dated At Nairobi This 17th Day Of February, 2009.

Signed By: Francis Odumbe Osodo”

53. It is trite that a signature is challenged by calling forensic hand writing expert to testify to the correctness/truthfulness or otherwise of the signature. In this case neither the 1st defendant nor the 2nd defendant led evidence to proof that the signatures on the two documents do not belong to Sellah and Francis. In the absence of any evidence to the contrary this ground is rejected.
54. On the question of tenancy, evidence was led by the PW4 that he entered into a three year tenancy in 1999 which terminated upon the purchase of the land. No evidence was led by the Defendants to refute this position. In any event the sum of monies paid by the Plaintiff could not be said to be rent given that rent was Kshs 40,000/- per month. The evidence tendered strongly point to a purchase price and not a rent payment.
55. In answer to issue No 1 the court is satisfied that the Plaintiff acquired the land lawfully. The issue is answered in the negative.
56. I have analysed the documents presented by the 1st Defendant. The 1st Defendant adduced a sale agreement dated the 3/9/2010 allegedly executed by Sellah and Francis. As alluded before Sellah died on 16/5/2011. The agreement dated the 20/9/2012 and the addendum of 26/3/2016 are executed by Francis alone. DW1 stated that Francis included him as a beneficiary in the grant, which grant the Judiciary has confirmed is a forgery vide its letter dated the 5/3/2024.
57. It is evident that by 2010 the suit land was not available for sale the same having been sold to the Plaintiff in 2003.
58. Was the 1st Defendant a bonafide purchaser for value without notice? I do not think so. Had the 1st Defendant carried out a search he would have found out that the land was not available. The court is not persuaded that the 1st Defendant paid colossal sums of monies for the land without carrying out due diligence. The 1st Defendant has admitted to having been conned by the 2nd Defendant and therefore he cannot be heard to seek the protection of a bonafides purchaser for value. The 1st Defendant is the author of his own misfortune and his recourse perhaps is to pursue Francis for the appropriate remedies. Further my reading of the terms of the sale agreement shows that Francis knew that the suit land had been sold to the Plaintiff and that perhaps explains why he promised the 1st defendant an alternative land instead.

Who bears the costs of the suit?

59. Although costs of an action or proceeding are at the discretion of the court, the general principle is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap.21). As such, the successful litigant should ordinarily be awarded costs unless, for good reason, the court directs otherwise. The Plaintiff has succeeded in its claims and I see no reason to deny it costs.



Final orders for disposal.

60. In the end the Plaintiff case succeeds against the defendants and I allow it as follows;

- a. An order of a permanent injunction be and is hereby issued restraining the defendants jointly and severally either by himself his servants employees agents and or other persons working under his instructions from selling transferring alienating disposing entering trespassing interfering and or dealing with the suit land being L R No 1/580 along Ngong Road, Nairobi.
- b. A declaration be and is hereby made that the plaintiff is the legal owner of the suit land
- c. The Counterclaim of the 1st Defendant is without merit. It is dismissed
- d. Cost of the suit and the Counterclaim shall be met by the 1st Defendant

61. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF APRIL, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Mr. Ojienda for the Plaintiff

Ms. Kiage for the 1st Defendant.

NA for the 2nd Defendant

CA – Ms. Yvette

