



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

E.L.C. CASE NO. E002 OF 2020

**EVILINE KARIGU (Suing as the Administratrix of the Estate of
the Late Muriungi M'Chuka alias Miriungu M'Gichuga)...PLAINTIFF**

VERSUS

M'CHABARI KINORO.....DEFENDANT

JUDGEMENT

PLAINTIFF'S CASE

1. The Plaintiff commenced this suit pursuant to a plaint dated 20th November 2020 and filed on 25th November, 2020 seeking for orders that: -
 - a) A declaration that Plot No. Kajuki/Kamutiria/1533 (Adjudication Section) belongs to the Plaintiff and the suit properties L.R NO Kajuki/Kamutiria/815 and Kajuki/Kamutiria/2088 currently registered in the names of the Defendant were fraudulently obtained and therefore illegal, null and void.
 - b) An order cancelling Title Deeds Registration L.R. No. Kajuki/Kamutiria/815 and Kajuki/Kamutiria/2088 currently registered in the names of the Defendant and all entries made in the register and the Chuka Land Registrar be directed and authorized to issue new Title Deeds for the said suit properties in the name of the Plaintiff without any conditions.
 - c) An order compelling the Defendant to demolish and pull down all the structures standing on Plot no. Kajuki/Kamutiria/1533 (Adjudication Section) and in default the Plaintiff to be at liberty to demolish the same at the Defendant's expense and under the supervision of the O.C.S Kathwana Police Station for purposes of maintaining peace and order.
 - d) Costs of the suit and interest thereon.
 - e) Any other or further relief as this Honourable Court may deem fit and just to grant.
2. The plaintiff avers that her late husband was the original proprietor of those properties known as Plot Nos. 815 and 1533 which have since been registered as KAJUKU/KAMUTIRIA/815 and KAJUKU/KAMUTIRIA/2088 respectively (hereinafter referred to as the "SUIT PROPERTIES").
3. The plaintiff avers that during the lifetime of her said late husband the Defendant started laying claim upon the suit properties but by the District Land Adjudication and Settlement Committee's decision delivered on the 31st January,2006 in Adjudication or Arbitration Case No.20 of 2005, and in Adjudication or Arbitration Case No.23 of 2006 respectively, the plaintiff's late husband was declared the owner of the suit properties.
4. The plaintiff avers further that by a further decision dated 15th February,2018 by the Land Adjudication and Settlement Committee's Board, it was decided by the Arbitration Committee or Board that the Defendant had not even given any evidence to qualify for a portion of the suit properties and his objection was dismissed.
5. The plaintiff avers further that by another agreement dated the 18th September,1980, the Defendant agreed to vacate the suit properties even if the plaintiff's husband died before he vacated but this has all been in vain.
6. The plaintiff avers further that when her deceased husband died on the 16th May, 2002, she thought that the defendant would vacate the suit properties as per the decisions of the Arbitration committee and as per the said express agreement but this was also in vain.

7. The plaintiff's avers that in the year 2016, she filed a Succession Cause No.231 of 2016 in the Chief Magistrate Court at Chuka and she inherited all her late husband's properties including KAJUKI/KAMUTIRIA/814 (Adjudication Section) KAJUKI/KAMUTIRIA/2088(Adjudication section), KAJUKI/KAMUTIRIA/1533(Adjudication section) and KAJUKI/KAMUTIRIA/815M(Adjudication section).

8. The plaintiff avers further that upon confirmation of grant in the said Succession Cause on the 10th July 2019, she proceeded to the Land's office to process her Title deeds for the suit properties, but was amazed to discover that they had been registered in the names of the Defendant through fraudulent means.

9. The plaintiff has particularized particulars of fraud against the Defendant as hereunder:-

- a. Presenting false documents to the Lands Registry to the effect that he was the one eligible to be registered as absolute proprietor of the suit properties.
- b. Deceiving the Lands Registrar into believing that he was actually the owner of the suit properties.
- c. Transferring the suit properties into his names without the knowledge or consent of the plaintiff.
- d. Concealing material facts from the Land Registrar regarding the status of the suit properties.
- e. Non- disclosure to the Land Registrar that the dispute over the suit properties had been adjudicated upon by the District Arbitration Committee or Board who found in favour of the plaintiff's deceased husband.
- f. Misrepresenting himself to the Lands office as the bonafide owner of the suit properties.
- g. Processing and obtaining Title deeds for the suit properties which were meant for the plaintiff's husband.
- h. Unlawfully asserting rights of ownership of the suit properties which did not belong to him

10. The plaintiff avers further that the Defendant upon obtaining the said title deeds by fraud as aforesaid, he started putting up and has actually put up permanent structures thereon without the consent of the plaintiff.

11. The plaintiff avers that as far as she is concerned, she has never sold or transferred the said properties or any portions thereof to the Defendant or any other person and as a result of the Defendant's fraudulent transactions and illegal trespass, the plaintiff has continued to be deprived of her ownership, possession and occupation of the suit properties.

12. The plaintiff's claim against the Defendant is therefore for an order of cancelling all the Title deeds for L.R NO KAJUKU/KAMUTIRIA/815 and KAJUKU/KAMUTIRIA/2088 currently registered in the names of the Defendant and all entries made thereunder and the Chuka Land Registrar be directed and authorized to issue new title deeds for the said suit properties in the names of the Plaintiff without any conditions and a declaration that the suit properties were fraudulently obtained and therefore illegal, null and void.

13. At the hearing, the Plaintiff adopted her written statement dated 20th November, 2020 and further statement dated 19th March, 2021 as her evidence-in-chief. The Plaintiff also produced her list of documents filed on 25th November, 2020 as P. Exhibits 1 to 12 respectively.

14. The Plaintiff testified that she is the widow of MURIUNGI M'CHUKA alias MURIUNGI M'GICHUGA who died in 2000. The Plaintiff stated that she filed succession proceedings and took out letters of Administration in respect to the estate of her deceased husband in Succession Cause No. 231 of 2016 in the Chief Magistrate's Court at Chuka and was issued with a certificate of confirmation of a Grant on 11th July, 2019.

15. The Plaintiff's evidence was that her deceased husband was the original proprietor of the suit properties. That the Defendant has all along been laying claim on some of the said properties, in particular LR. Nos. KAJUKI/KAMUTIRIA/815 and KAJUKI/KAMUTIRIA/2088 even during the lifetime of the deceased. It was the Plaintiff's evidence that her deceased husband had various cases filed and heard by the District Land Adjudication and Settlement Arbitration Committees which ruled in favour of the deceased. That by the decision of the Arbitration Committee delivered on 31st January, 2006 in Committee Case No. 20 of 2005, it was found that Plot No. 815 belonged to the Plaintiff's deceased husband. That the said parcel No. 815 has since been registered as KAJUKI/KAMUTIRIA/815 in the name of the Defendant. The Plaintiff testified that by another decision by the District Land Adjudication and Settlement Officer in Arbitration Case No. 23 of 2006 between the Plaintiff and the Defendant and the objection raised therein, the Defendant's objection was dismissed on 15th February, 2018 because there was no evidence to warrant the award of a portion of plot No. 1533 to the Defendant. The Plaintiff stated that the Defendant did not appeal to the minister within the stipulated period and therefore there is no pending appeal. The Plaintiff contends that the Defendant obtained Title Deeds for the suit properties by fraud and that the Defendant tried to develop the suit properties in order to assert ownership adding that any structures erected thereon are illegal. The Plaintiff asked the court to give her the parcels of land, adding that she had no place to stay. She also prayed to be awarded costs of the suit.

16. The Plaintiff was cross-examined by Mr. Guantai learned counsel for the Defendant and re-examined by Mr. Bwonwonga learned counsel for the Plaintiff. During cross-examination, the Plaintiff stated inter alia, that the land belonged to her deceased husband who had inherited it from his father. The Plaintiff was not sure of the parcel inherited, but thought it was plot No. 814. She stated that she was claiming all parcels because they emanated from one parcel before it was sub-divided. The Plaintiff stated that there were no succession proceedings filed by her deceased husband to inherit the land from his father, but that the adjudication process was used. The Plaintiff further

stated that she was not aware of any dispute between her father-in-law and the Defendant. The Plaintiff stated that she was not aware that there was a pending appeal before the minister over parcel No. 1533. She also stated that she was not aware that one could not file a suit concerning the same parcel of land when an appeal to the minister is pending. The Plaintiff stated that she never saw any documents in her list of documents showing AR objection receipt regarding appeal to the minister over Nos. 945 and 1533. The witness stated that she reported the issue of fraud to the police though she could not remember the OB Number, but in her re-examination, the Plaintiff stated that she never reported.

17. PW2 was Gervasio Mugao Mate who testified that he knew the Plaintiff and her deceased husband. He adopted his witness statement dated 20th November, 2020 as his evidence-in-chief. He testified that he was aware that the Plaintiff filed Succession Cause No. 231 of 2016 in the Chief Magistrate's Court at Chuka and was issued with a certificate of confirmation of Grant on 11th July, 2019. It was the evidence of PW2 that the Plaintiff's late husband was the original proprietor of the parcels of land known as Plot Nos. 814, 815, 1533 and 2088 which plots have since been registered as KAJUKI/KAMUTIRIA/814 (Adjudication Section), KAJUKI/KAMUTIRIA/815(Adjudication Section), KAJUKI/KAMUTIRIA/1533(Adjudication Section) and KAJUKI/KAMUTIRIA/2088 (Adjudication Section) as shown in the certificate of Grant dated 11th July, 2019. The witness repeated the averments made by the Plaintiff with regard to the claim the Defendant has all along had over the suit properties, including the decisions made in committee case No. 20 of 2005 and Arbitration Case No. 23 of 2016, all decided against the Defendant, adding that he used to attend most of the Arbitration proceedings. PW2 was also cross-examined by Mr. Guantai and re-examined by Mr. Bwonwonga.

18. PW3 was Paulo Muthengi Stanley Kiria. He also adopted his witness statement dated 25th November, 2020 which reads exactly like that of PW2. PW3 was also cross-examined and re-examined. PW3 confirmed that the Defendant was his uncle while the Plaintiff was his sister-in-law, her late husband being his step-brother. They therefore belong to the same family. He confirmed that the list of beneficiaries in the confirmation of Grant, all the suit properties went to the Plaintiff even though the deceased had two wives, the Plaintiff with 2 children, and the first wife who had five children. That the grant does not show any other beneficiary including the children of the deceased. The Plaintiff then closed her case.

DEFENDANT'S CASE

19. The Defendant entered appearance on **14th December, 2020** and filed a statement of defence on **2nd February, 2021** in which he denied the Plaintiff's claim. The Defendant averred that he has always been the owner of the suit lands and that the same have never been owned by the Plaintiff's husband. The Defendant further averred that the adjudication committee never made any decision in favour of the Plaintiff but rather confirmed that the Defendant owned the suit properties. The Defendant denied that he illegally and fraudulently acquired the suit properties, adding that he acquired the same fairly and legally. The Defendant contended that if the Plaintiff was not satisfied with the decision of the committee (which allocated him the land) then she ought to have appealed to the minister, adding that the Plaintiff has conveniently failed to disclose to the court of existing appeals to the minister. It was the Defendant's contention that the Land Registrar is bound by the decision of the Adjudication Committee which gave the land to the Defendant. The Defendant averred that there is a pending minister's Appeal that is awaiting a decision between the parties over the suit properties herein. The Defendant urged the court to have the entire suit struck out with costs.

20. At the hearing, the Defendant testified as DW1 and adopted his statement dated **25th February, 2021** and filed in court on **1st March, 2021** as his evidence-in-chief. He also produced the documents filed on **8th March, 2021** as D-Exhibits 1 to 8.

21. The Defendant's evidence was that he was the registered owner of the land parcel known as KAJUKI/KAMUTIRIA/815 and KAJUKI KAMUTIRIA/2088 which he stated he inherited from his late father, and that the same were allocated to him by the KAJUKI/KAMUTIRIA Land Adjudication Committee in an open and transparent process witnessed by the Plaintiff and several other villagers of Kirimankari village. The Defendant stated that he was the only known owner of the said parcels of land and that the Plaintiff is an administratrix of the estate of her deceased husband, Muriungi M'Gichuga who is the Defendant's neighbour and who inherited part of his father's land. His evidence was that he lived with the deceased's father without any dispute until in or around 1992 when he passed away.

22. The defendant's evidence was that the Plaintiff who is the administratrix of the estate of Muriungi M'Chuka alias Muriungi M'Gichuga (deceased) is the widow of the deceased who was born while the suit parcels had been developed by the Defendant and are under his continuous use.

23. The Defendant denied the Plaintiff's averment that the District Land Adjudication and Settlement Committee's decision of 31.01.2006 in Case No. 20 of 2005 declared her deceased husband as owner of the suit properties. It was the Defendant's evidence that the decision of the committee was that part of the Defendant's land be allocated to the Plaintiff, but that the Defendant objected to the excision of parcel No. KAJUKI/KAMUTIRIA/815, and that a decision was reached that the extinguished parcel be returned to the Defendant, giving rise to parcel No. Kajuki/Kamutiria/2088 which is now registered in the Defendant's name. The Defendant added that parcel No. KAJUKI/KAMUTIRIA/1533 is subject to the minister's Appeal which is yet to be decided. The Defendant stated that the Plaintiff could not have filed succession cause No. 231 of 2016 over parcels Nos. 815 and 2088 which by then had been registered in the Defendant's name and title deeds issued. That the cause could also not be on parcel No. KAJUKI/KAMUTIRIA/1533 which is still under dispute. The Defendant denied any allegations of fraud in the manner the suit parcels were registered in his names.

24. The Defendant was cross-examined by Mr. Bwonwonga and re-examined by Mr. Guantai. He stated that he had no dispute with the Plaintiff's deceased husband during his lifetime, adding that it is the Plaintiff who started the dispute after the demise of the deceased. He stated that there was no case pending when he got titles to the suit properties. He denied filing an appeal, though he was shown receipts for Plot Nos. 945 and 1533. He stated that he made an appeal over one portion of Plot No. 815 and that Plot No. 1533 is the subject to the minister's Appeal which is yet to be decided, adding that he did not have title to the said Plot No. 1533. The Defendant could not explain the reasons for the difference in the two receipts (D.Exh.1) which were issued on 25.7.2011 and 20.4.2018.

25. DW2 was AUGUSTINE MUGAMBI MUGAOH, a son to the Defendant. He adopted his witness statement dated 25th February,

2021 and filed on 1st March, 2021 as his evidence-in-chief. He admitted that he signed the Appeal objection on behalf of his father who is illiterate and who gave him verbal authority, and that he attended all the proceedings in Case No. 20 of 2005. He was also cross-examined and re-examined. He stated that there was no dispute between his father and the Plaintiff's late husband. He denied knowledge of cause No. 20 of 2005. His evidence was that the dispute herein started in the year 2005, about five years after the demise of the Plaintiff's husband. He faulted the Plaintiff for including parcels which were not in the name of her deceased husband in the Succession Cause, and which parcels the Defendant had title deeds. He stated that parcel No. 1533 is still subject of Appeal to the minister.

26. DW3 was KIRIA NJERU, a neighbour to the parties in this case. He also adopted his witness statement dated 25th February, 2021 and filed on 1st March, 2021 as his evidence-in-chief. He stated that there was no land dispute between the Plaintiff's late husband and the Defendant or his father, adding that the dispute began after the demise of the Plaintiff's late husband. His evidence was that the suit properties belonged to the Defendant, having been allocated the same during adjudication.

27. DW4 was FRANCIS GITONGA NYAMU who is also a neighbour to both the Plaintiff and the Defendant. He also adopted his witness statement dated 25th February, 2021 as his evidence-in-chief. He stated that there was no dispute over land between the Plaintiff's deceased husband and the Defendant, even during adjudication process.

SUBMISSIONS

28. The Plaintiff's advocate filed their written submissions dated 12th January, 2022. It was submitted that since the Defendant did not sign his written statement and did not give any authority to his son, DW2 to sign any document on his behalf, the evidence of DW1 and DW2 should be expunged, and that the Plaintiff's evidence will remain uncontested and her claim unchallenged.

29. The Plaintiff's counsel further submitted that the decisions of the District Land Adjudication and Settlement Committees in cases No. 20 of 2005 and 23 of 2006 over plot No. 815 and Plot No. 1533 respectively were in favour of the Plaintiff. That since there is no competent appeal against the committee's decisions, the same remains valid order and the Plaintiff should be declared the rightful proprietor of the suit properties. It is the Plaintiff's submissions that the Defendant obtained titles to the two properties, Plot No. KAJUKI/KAMUTIRIA/815 and 1533 through fraud. That the Defendant should have waited till the determination of the appeals before processing titles, and that the court should accordingly cancel those titles. That the two payment receipts for appeals to the minister are for Plot Nos. 945 and 1533, and therefore there is no evidence that the Defendant lodged appeal against Plot No. 815. It was submitted that the decision by the District Adjudication and Settlement Committee still stands in case No. 20 of 2005, and that the issue that the suit properties were subdivided should not be entertained for lack of evidence. Further, the Plaintiff submitted that the Defendant could not have proceeded to subdivide the land in view of the said decisions and the appeals.

30. The Plaintiff's submitted that she was issued with a certificate of confirmation of grant dated 11th July, 2019 following succession cause No. 231 of 2016 which was fully gazetted and objections invited, but the Defendant failed and or ignored to lodge any. That the certificate of confirmation of grant confirms that the Plaintiff is the proprietor of the two properties.

31. It is the Plaintiff's submission that she has proved her case on a balance of probabilities and is therefore entitled to the reliefs sought in the Plaintiff. The Plaintiff's counsel cited the provisions of sections 25(1), 26(1) (b) and 35(3) of the Land Registration Act No. 3 of 2012 and relied on the ELC Case No. 244 of 2017 between ZACHARIA WAMBUGU GATHIMU AND DAVID WANGARI MAINA, High Court at Nyahururu, wherein the court stated that the law is extremely protective of title but the protection can be removed and title impeached when the same is obtained by fraud or misrepresentation to which the person must be proved to be a party, and where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The Plaintiff urged the court to grant her all the prayers sought in her plaint.

32. In his submissions filed on 26th January, 2022, the Defendant submitted that he is the legitimate owner of the suit properties which are in fact registered in his name. The Defendant's counsel cited the provisions of section 24(a) of the Land Registration Act. It was further submitted that the Defendant inherited the said suit properties from his father and that the said properties border the land of the Plaintiff's deceased husband who had also inherited it from his father. The Defendant further submitted that having inherited the suit properties, and the same having been duly allocated to him by the Land Adjudication Committee, he proceeded and legitimately obtained the title deeds on the same from the Land Registry.

33. The Defendant submitted further that the District Land Adjudication and Settlement Committee in Adjudication Case No 23 of 2006 allocated L.R. No. KAJUKI/KAMUTIRIA/815 to the Defendant which decision the Plaintiff did not appeal against. It is further submitted that the said committee decided that part of the land of the Defendant be allocated to the Plaintiff which led to the existence of L.R. No. KAJUKI/KAMUTIRIA/2088 which was to be the Defendant's and which the Defendant proceeded and registered in his name. That L.R. No. KAJUKI/KAMUTIRIA/1533 which was to be for the Plaintiff's deceased husband, but the Defendant appealed to recover the same in Adjudication Case No. 23 of 2006 and Ministerial Appeal dated 20.4.2018. The Defendant contends that there was no fraud or misrepresentation in obtaining the title deeds to the suit properties in his name. That the Plaintiff's allegations of fraud are false, noting that no report was made to the police and the Defendant has not been charged with any criminal offence to date.

34. The Defendant submitted that he has been in occupation and has developed the suit properties even before the deceased was born. It is the Defendant's submissions that he is the legitimate owner of the suit properties as evidenced by the title deeds he holds and urged the court to find so. The Defendant's counsel cited the provision of section 26 of the Land Registration Act and section 27(1) of the Civil Procedure Act and urged the court to dismiss the Plaintiff's claim with costs to the Defendant. Counsel for the Defendant relied on the case of **Republic vs Rosemary Wairimu Munene, Ex-parte Applicant –vs- Ihururu Dairy Farmers Co-operative Society Ltd, Judicial Review Application No. 6 of 2014; Halsbury's Laws of England 4th Edition (Re-issue); Jennifer Nyambura Kamau v Humprey Mbaka Nandi (2013) eKLR; Vijay Morjaria v Nansingh Madhusingh Darbar & another (2000) eKLR; Rg Patel –vs- Makanji (1957) EA 314; Arthi Highway Developers Limited –v- West End Butchery Limited & 6 Others (2015) eKLR, and Mary Mukami Mbachia –vs- Land Registrar Thika & 7 Others (2021) eKLR.**

ANALYSIS AND DETERMINATION

35. I have considered the pleadings, the evidence tendered and the submissions made. The court finds that the issues for determination are as follows:

- i. Whether the Defendant acquired title to the suit properties by fraudulent means.
- ii. Whether the Plaintiff is entitled to the prayers sought.
- iii. Who is to bear the costs of the suit?

36. The Plaintiff has averred in the plaint that her deceased husband was the original proprietor of the suit properties having been declared owner by the District Land Adjudication and Settlement Committee's decision delivered on 31st January, 2006 in Adjudication or Arbitration Case No. 20 of 2005, and case No. 23 of 2006. It is the Plaintiff's case that the defendant acquired titles to the suit premises by fraudulent means. Among the relief and prayer sought by the plaintiff in her plaint is cancellation of title deeds in the name of the Defendant as proprietor of the suit properties.

37. In her evidence, the Plaintiff testified that her late husband Muriungi M'Chuka (deceased) died in the year 2000. The Plaintiff has stated that she has brought this suit in her capacity as the Administratrix of the estate of her deceased husband, the late Muriungi M'Chuka alias Muriungi M'Gichuga. In paragraph 2 of her written statement dated 20th November, 2020 and which the Plaintiff adopted as her evidence-in-chief, the Plaintiff has stated that she filed a succession cause No. 231 of 2016 in the Chief Magistrate Court at Chuka and was issued with a certificate of confirmation of Grant on 11th July, 2019.

38. Whereas it is clear from the evidence that the Plaintiff's late husband died in the year 2000, it is also clear that the Plaintiff had not taken out letters of administration to the deceased's estate before the year 2016. The Plaintiff is however, heavily relying on decisions made in Adjudication or Arbitration Case No. 20 of 2005 and Case No. 23 of 2006. It is clear from the material and evidence on record that the Plaintiff's deceased husband died in the year 2000. It follows therefore that the deceased could not have filed the said Arbitration Case No. 20 of 2005 and Case No. 23 of 2006 since he was already deceased. Further, even if the Plaintiff filed those cases on behalf of her deceased husband, she was not yet an administrator and thus did not have the capacity to sue on behalf of her husband's estate. This is so because the Plaintiff filed the Succession Cause No. 231 of 2016 in the year 2016 while the cases were filed in 2005 and 2006.

39. In *Isaya Masira Momanyi –v- Daniel Omwoyo & anor [2017] eKLR*, it was stated as follows:

“It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued grant of letters of administration has capacity to represent the estate of a deceased person.”

40. I associate myself with the above findings. Without the letters of administration, the Plaintiff though wife of the deceased could not have sued in arbitration or Adjudication Case No. 20 of 2005 and Case No. 23 of 2006. The Plaintiff cannot therefore rely on the said decisions to convince this court that there were decisions previously made in favour of the deceased.

41. The Plaintiff has stated that the Defendant fraudulently acquired titles to the suit properties and prayed to court to cancel the titles. To succeed in claiming fraud, the Plaintiff not only need to plead but also particularize it by laying out water tight evidence upon which the court would make such finding. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in case of *Kuria Kiarie & 2 Others –vs- Sammy Magera [2018] eKLR where it was held:*

“The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA (as he then was) states 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.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules. As regards the standard of proof, this court in the case of *Kinyanjui Kamau –vs George Kamau [2015] eKLR* expressed itself as follows;-

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo –vs- Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

42. The Plaintiff is challenging titles to the suit properties and claim that the properties were declared to belong to the deceased as per the decisions Adjudication Case Nos. 20 of 2005 and 23 of 2006. The Plaintiff has not called the Adjudication and Settlement Officer to support her case and tender evidence before court on how those decisions were arrived at in favour of the Plaintiff's deceased husband yet the deceased is said to have died way back in the year 2000. It is also not clear who filed those cases. Certainly, it could not have been the

deceased, because by then he was already dead. And if it was filed by the Plaintiff, it is doubtful whether she had the legal capacity to do so as she only obtained letters of administration after the year 2016 upon filing Succession Cause No. 231 of 2016.

43. The certificate of titles in the name of the Defendant are to be taken by court as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner as per section 26 of the Land Registration Act. Title documents are prepared and issued by the Land Registrar. In the absence of contrary documents from the office of the Land Registrar, the court has no reason to find the title documents to be fraudulent. The Plaintiff, in my view, has failed to prove the alleged fraud against the defendant. In this case, the Plaintiff has not tendered sufficient evidence that prove the particulars of fraud against the Defendant to the satisfaction of the court.

44. Having considered and reviewed all the evidence and material placed before the court, I find and hold that the Plaintiff has not proved her case against the Defendant on a balance of probabilities. Accordingly, the Plaintiff's suit is dismissed with costs to the Defendant.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 16TH DAY FEBRUARY, 2022 IN THE PRESENCE OF:

C/A: ANN

MRS. OTIENO H/B FOR GUANTAI FOR DEFENDANT

N/A FOR BWONWONGA FOR PLAINTIFF BUT PLAINTIFF PRESENT IN PERSON

C. K. YANO,

JUDGE.