



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELCC No. 300 OF 2015

**SAMUEL CHEGE KAMUNGE (suing as the representative of the estate of
Ruth Wanjiru Kamunge (Deceased)PLAINTIFF**

VERSUS

JOSPHAT CHEGE

T/A JOSGEMU SURVEYORS ENTERPRISES1ST DEFENDANT

MARY NJERI MUGO.....2ND DEFENDANT

JAMES WACHIURI WAIGWA.....3RD DEFENDANT

PAUL MWAURA KAMAU.....4TH DEFENDANT

PURITY WANJIRU5TH DEFENDANT

DAVIES KIIRU NDUNGU.....6TH DEFENDANT

JOSEPH MURUGU ENTERPRISES LIMITED7TH DEFENDANT

THE LAND REGISTRAR NAIVASHA8TH DEFENDANT

THE HON. ATTORNEY GENERAL9TH DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced through plaint dated 21st October 2015 and filed in court on 22nd October 2015. The plaint underwent several amendments resting with Further Amended Plaint dated 4th November 2019.

2. It was averred in the said Further Amended Plaint that Ruth Wanjiru Kamunge (deceased) was the registered owner of the parcels of land known as Kijabe/Kijabe Block 1/12620 to 12641, originally Kijabe/Kijabe Block 1/6120. That prior to her demise the deceased retained the services of the 1st defendant to subdivide Kijabe/Kijabe Block 1/6120 into 22 plots. That the 1st defendant fraudulently transferred parcel of land known as Kijabe/Kijabe Block 1/12620 to the 2nd defendant and further that the 1st and 7th defendants fraudulently and in collusion transferred parcels of land known as Kijabe/Kijabe Block 1/12640, 12641 and 12630 to the 6th and 4th defendants respectively. The Plaintiff further averred that the 3rd and 5th defendants unlawfully entered parcels of land known as Kijabe/Kijabe Block 1/12628 and 12631 and commenced construction of dwelling houses thereon.

3. The plaintiff therefore prayed for judgment against the defendants jointly and severally for:

a) An order of injunction restraining the 2nd, 3rd, 4th, 5th & 6th Defendants from entering, constructing, erecting, transferring or in any adverse manner interfering with LR NOs' KIJABE/KIJABE BLOCK 1/12620, 12628, 12630, 12631, 12640 & 12641.

b) An order of injunction restraining the 1st & 7th Defendants from entering, erecting, transferring or in any adverse manner interfering or dealing with LR NOs' KIJABE/KIJABE BLOCK 1/12620 to 12641.

c) *An order directing the Naivasha District Land Registrar the 8th Defendant herein to effect rectification of the Register and cancellation of Title Deeds for LR NOs' KIJABE/KIJABE BLOCK 1/12620, 12630, 12640 & 12641.*

d) *Damages for trespass and orders of removal of any structures constructed on LR NOs' KIJABE/KIJABE BLOCK 1/12628 & 12631 and or any other erected on the disputed (sic) parcels of land.*

e) *Costs of this suit.*

f) *Any other or further relief this court may deem fit to grant.*

4. The 1st to 6th defendants entered appearance on 27th November, 2015.

5. The 2nd defendant filed her Statement of Defence on 14th July 2016. She admitted that the deceased was the registered owner of the parcel of land known as Kijabe/Kijabe Block 1/6120. She denied the allegations of fraud and collusion and further averred that the deceased had signed the transfer document in her favour and that consent to transfer had been obtained before the death of the deceased. She therefore urged the court to dismiss the plaintiff's suit with costs.

6. Pursuant to consent filed on 23rd May 2019 and adopted by the court on the same date, the plaintiff's claim against the 2nd defendant was marked settled with no order as to costs, with a further order by consent that the Land Registrar Naivasha removes all encumbrances that may have been registered by the plaintiff against title number Kijabe/Kijabe Block 1/12620 forthwith.

7. The 3rd defendant filed his Defence and Counter Claim on 16th May 2019. He denied the allegations in the plaint and averred that on or about 30th October 2006, he bought a parcel of land measuring 50ft x 100 ft being a subdivision of title number Kijabe/Kijabe Block 1/6120 from Ruth Wanjiru Kamunge (deceased) at a consideration of KShs 35,000 and that the deceased allocated to him Plot No. 12628. That he took possession and developed a residential house thereon which he occupied and has since been in occupation. The 3rd Defendant further averred that he was unable to process the title deed for the parcel due to financial constraints and that the parcel remains registered in the name of the deceased. He prayed that the plaintiff's suit be dismissed and that judgment be entered for:

a) *A declaration that the 3rd defendant is the rightful owner of Title Number Kijabe/Kijabe Block 1/12628 and that the Plaintiff be compelled to effect a transfer thereof in his favour.*

b) *Costs.*

8. The 4th defendant filed his statement of defence on 16th May 2019. He averred that by a written agreement entered into in the year 2006, his mother Teresiah Njeri bought a subdivision of Kijabe/Kijabe block 1/6120 from the deceased at a consideration of KShs 30,000 and that on 24th February 2015, he was registered as the proprietor of title Kijabe/Kijabe Block 1/12630 as the nominee of his mother and he was duly issued with a title deed. He further stated that the parcel of land that he was allocated on the ground was Title Number Kijabe/Kijabe Block 1/12629 and he has put up permanent buildings on the said parcel. That the registration of Title Number Kijabe/Kijabe Block 1/12630 instead of Kijabe/Kijabe Block 1/12629 was erroneous and that he has applied for rectification of the register to reflect the correct parcel number. He prayed for dismissal of the plaintiff's suit with costs.

9. The 5th defendant filed her statement of Defence on 16th May 2019 denying the Plaintiff's allegations. She denied the averments in the plaint and urged the court to dismiss the suit with costs.

10. The 6th defendant filed his statement of 10th December 2015. He denied the allegations of fraud and stated that he is an innocent purchaser for valuable consideration. He too prayed that the plaintiff's suit to be dismissed with costs.

11. The plaintiff filed a reply to the 3rd defendant's defence and counter claim on 7th October, 2019. He denied the averments in the counterclaim and urged the court to strike it out and enter judgement as prayed in the plaint.

12. At the hearing, Samuel Chege Kamunge testified as **PW1**. He stated that he lives at Mai Mahiu and that he is a businessman and an administrator of the estate of Ruth Wanjiru Kamunge (deceased), his late mother, having obtained Limited Grant on 31st August 2012 and confirmed grant on 10th February 2016. He stated that the parcel of land known as Kijabe/Kijabe Block 1/6120 belonged to his late mother and that they became aware that the 1st defendant had been instructed by their mother to subdivide the plot into 22 plots. That when they went to make inquiries from the 1st defendant around 2014 or 2015, the 1st defendant refused to talk to them. They later saw the 3rd defendant constructing on Kijabe/Kijabe Block 1/12628 and the 5th defendant constructing on plot Kijabe/Kijabe Block 1/12631.

13. PW1 added that he conducted a search at the Naivasha Land Registry and discovered that transfer had been effected. A demand letter was written to the 3rd and 5th defendants to produce documents showing how they acquired the plots but they did not respond. The transfers were effected after the demise of PW1's mother. The transfers were in favour of Davis Kiiru Ndungu (6th defendant) in respect of plots 12640 on 6th June 2014 and 12641 on 6th June 2014. PW1 further testified that there was another transfer in favour of Paul Mwaura Kamau (4th defendant) on 24th February 2015 in respect of plot 12630. That they demanded the defendants' documents to no avail. That the deceased's original plot was Kijabe/Kijabe Block 1/6120 and that records from Survey showed that registration of subdivision was done. That a mutation dated 17th June 2011 with list of subdivisions from number 12620 to 12633 shows that a surveyor went to the site on 9th April 2011 while PW1's mother was still alive. The subdivisions were registered on 22nd May 2014 in PW1's mother's name.

14. PW1 went on to testify that when they went to Land Registry to obtain transfers from these plots, they were not given any. PW1 conducted a search at the Companies Registry which revealed that the 1st defendant was a director of the 7th defendant. He thus wrote demand letters to the defendants. The 3rd defendant had by 30th March 2015 started construction of a permanent house and he did not heed the letter. PW1 also wrote to the 5th defendant on 30th March 2015, who by then had started construction of an iron sheet house but she did not stop the construction. PW1 added that he also wrote a demand letter to the 8th defendant on 24th September 2015 demanding certified copies of transfers and consents but there was no response. That The 4th and 5th defendants obtained their titles irregularly after PW1's mother had passed away and started construction on the land without permission.

15. PW1 added that upon filing this case, an order was issued on 12th May 2016 in connection with plot 12630 restraining the 3rd defendant from constructing on the plot but he continued to completion and occupation of the plot. That the 5th defendant also completed construction then later vacated the house. The 4th defendant constructed permanent rental houses. PW1 further stated that that he is not aware if the 3rd defendant purchased the plot from the deceased, adding that the 3rd defendant only went to construct after the deceased had passed away and that he did not produce any document supporting his title when asked to do so.

16. The Plaintiff's case was closed.

17. The 3rd defendant, James Kamau Waigwa, testified as DW1. He stated that the deceased and him entered into an agreement dated 30th October 2006 through which he purchased a parcel of land measuring 50 feet by 100 feet, to be hived off Kijabe/Kijabe Block 1/6120 for which he paid KShs 35,000 cash. That he took possession of the plot after it was shown to him, constructed a six-room permanent house and moved in with his family. That the plot was registered as title number Kijabe/Kijabe Block 1/12628 in the name of the deceased. He urged the court to order that a title be issued to him. He stated that he did not receive any demand letter and that he had finished construction by the time the court issued the order.

18. The 4th defendant, Paul Mwaura Kamau, testified as DW2. He stated that the deceased sold a plot to his mother late Teresia Njeri Kamau at a purchase price of KShs 30,000 through an undated sale agreement written on a diary page. That upon purchasing the plot, his mother constructed a permanent house, a latrine and a tank on it. That no title had not been issued by the time his mother passed away. That title was later issued in his name since he is the eldest and that the plot number is now Kijabe/Kijabe Block 1/12630. That he paid KShs 32,500 to the 7th defendant 17th February 2015 and that he obtained the title deed in liaison with the 7th defendant. That when he went to the 7th defendant to get title, he did not carry any document. He only gave them money and the title was issued to him, after Ruth W. Kamunge's demise. That he did not attend the Land Control Board and that his mother purchased plot number 12629 but he was given title for 12630. He added that he has constructed on plot number 12629.

19. The 5th defendant, Purity Wanjiru, testified as DW3. She stated that she does not know the plaintiff and that she does not own plot number Kijabe/Kijabe Block 1/12631.

20. The 6th defendant, Davies Kiiru Ndungu, testified as DW4. He stated that he bought parcels numbers Kijabe/Kijabe Block 1/12640 and Kijabe/Kijabe Block 1/12641 through sale agreement dated 31st May 2014 from Mr. John Migiwi Kimemia who was the registered owner. That the purchase price was KShs 600,000 which he paid fully and that he is an innocent purchaser without notice of any fraud or mistake. That he visited the plots severally before buying them and that he did not know at that time that the plots belonged to a deceased person. That his titles were issued six days after the sale agreement. That he did not attend the land control board.

21. The 3rd to 6th defendants' case was closed.

22. The 8th and 9th defendants opted to close their cases without offering any evidence.

23. The 1st and 7th defendant's cases were closed upon application by counsel for the plaintiff since the said defendants had not participated in the matter despite service.

24. Parties were ordered to file and exchange written submissions.

25. It was argued in submissions filed on behalf of the plaintiff that title deeds for suit lands Kijabe/Kijabe Block 1/12630, 12640 and 12641 were registered on 6th June 2014 and 24th February 2015 respectively while the deceased died on 13th October 2011, clearly showing that she couldn't have executed transfer in favour of the two defendants. Further, that all transactions affecting agricultural land are controlled transactions governed by Section 6 of the Land Control Act and consents from the Land Control Board were required in respect of the transfers. That since the proprietor was deceased, it follows that the 4th and 6th defendants did not obtain any consent and the only plausible explanation would be that the three transfers were procured using fake consent documents obtained through fraudulent means. Reliance was placed on the cases of **Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] eKLR** and **Samuel Odhiambo Oludhe & 2 others v Jubilee Jumbo Hardware Limited & another [2018] eKLR**.

26. On the issue as to whether there were fraudulent transfers by the 1st, 4th, 6th, 7th and 8th defendants of Kijabe/Kijabe Block 1/12630, 12640 and 12641 to the 4th and 6th defendants, it was argued that the said registrations were made 3 and 4 years after the demise of the registered owner. That the 4th defendant also testified that he paid the 1st defendant a sum of KShs 32,500 on 17th May 2015 in order to effect transfer and registration of title deed while the 1st and 7th defendants were not registered owners of the suit property. Thus, the only way they procured title was through fraud. That no transfer document or Land Control Board consent was produced in court either by the 4th, 6th or 8th defendants to show who executed the legal transfer document. That the conduct of the 8th defendant who chose not to lead any evidence is a clear indication of attempts to collude and conceal documents to hide material facts which can be construed as fraud. To emphasize those points, plaintiff's counsel relied on **Arthi Highway Developers Limited v West End Butchery Limited & 6 others**

[2015] eKLR and argued that fraud has been proved in regard to transfers of Kijabe/Kijabe Block 1/12630, 12640 and 12641. Accordingly, the court was urged to impeach those titles.

27. On the question of whether the 6th defendant is a bona fide purchaser for value without notice, the plaintiff submitted that the 6th defendant purchased the parcels without further inquiries or investigations of ownership and that the transaction only took 6 days from the date of the sale agreement to the date of issue of title deed. That no document of transfer, Land Control Board consent or certificate of official search was exhibited thus he cannot be regarded as a purchaser for value without notice. That in case the said John Migwi Kimemia transferred LR NO KIJABE/KIJABE BLOCK 1/12640 & 12641 to the 6th Defendant then what was his transferable interest. Relying on **Arthi Highway Developers Limited v West End Butchery Limited & 6 others** (supra), it was argued that the principle of the bona fide purchaser for value without notice cannot be applied where there is an established fraud.

28. On issue of whether the 3rd defendant is entitled to transfer of LR No Kijabe/Kijabe Block 1/12628 in his favour, the plaintiff submitted that no evidence of purchase of the said parcel had been tendered save for the piece of paper termed as a sale agreement which does not state the subject parcel of land being sold or claimed. That the agreement is dated 30th October 2006 and is therefore time barred under **section 7 of the Limitation of Actions Act**. That this being a claim on contract, limitation period is 6 years. The plaintiff thus prayed for the counter claim to be dismissed with costs and that judgement be entered for the plaintiff as prayed for.

29. The 3rd to 5th defendants filed their submission on 27th May 2021. When submitting for the 3rd defendant, counsel relied on **section 3(3) of the Law of Contract Act** stating that the home-made agreement dated 30th October 2006 satisfies the conditions for a valid contract for disposition of land. That the 3rd defendant was shown the plot by the deceased and he took possession and later developed a residential house where he lives with his family. Counsel submitted that the Plaintiff should be ordered to transfer title number Kijabe/Kijabe Block 1/12628 to the 3rd defendant and that in default, the Deputy Registrar of this court should sign the transfer of land forms for the reason that this court should not issue an order in vain.

30. Regarding whether the 3rd defendant's claim is time barred, counsel for the 3rd defendant argued that the defence of limitation of action was never raised in the defence to the counter claim and neither was it raised in evidence and that it is being raised for the first time in the written submissions. Relying on **Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others** [2014] eKLR and **Central Bank of Kenya v Giro Commercial Bank Limited & 3 others** [2021] eKLR, it was argued that parties are bound by their pleadings. The court was urged to dismiss the case against the 3rd defendant and allow his counter claim.

31. In regard to the case against the 4th defendant, it was argued that the burden of proving fraud was not discharged and the court was urged to dismiss the plaintiff's case against the 4th defendant with costs.

32. Regarding the 5th defendant, it was submitted that it is the 5th defendant denied being the registered owner of title number Kijabe/Kijabe Block 1/12631 or illegally entering in to it. Consequently, it was argued that the plaintiff has not proved his case against the 5th defendant and that the case should be dismissed with costs.

33. In submitting on how the general damages for trespass against the 3rd, 4th and 5th defendants should be met in the event the court is persuaded to grant them, it was argued that the land involved measure 50ft x 100ft and that there has been no demolition or destruction of the land. That the parcel is in the rural area of Mahi-Mahiu and the value of the parcel as at the year 2006 when it was bought was between KShs 30,000 to KShs 35,000 and that the structures put up on the land are iron sheet houses. That considering the humble status of the defendants who are casual laborers and a farmer, nominal damages of KShs 5000 would be fair and reasonable.

34. The Honourable Attorney General filed written submissions on behalf of the 8th defendant on 11th May 2021, raising two issues for determination: whether the 8th defendant committed any fraud in respect to the suit properties and whether the plaintiff is entitled to the reliefs sought. Regarding the first issue, it was submitted while relying inter alia on **Arthi Highway Developers Limited v West End Butchery Limited & 6 others** (supra) that no evidence tendered in court to demonstrate that the 8th defendant together with the other defendants conspired to perpetuate fraud. That the 8th defendant issued title deeds in favour of the defendants on the strength that the documents presented were proper and that therefore, the plaintiff had failed to establish fraud against the 8th defendant to the required standard and should not be awarded costs.

35. I have carefully considered the parties' pleadings, evidence and submissions. The following issues arise for determination: Whether the deceased transferred the suit properties, whether transfers of Kijabe/Kijabe Block 1/12640, 12641 and 12630 to the 6th and 4th defendants were fraudulent, whether the 6th defendant is a bona fide purchaser for value without notice, whether the 3rd defendant is entitled to transfer of LR No Kijabe/Kijabe/Block 1/12628 and whether the reliefs sought should issue.

36. On the first issue, as to whether the deceased transferred the suit properties, it is clear that Ruth Wanjiru Kamunge (deceased) was the registered owner of Kijabe/Kijabe Block 1/6120, having been so registered on 20th May 2003, as is indeed confirmed by the certified copy of the register that was produced. As confirmed by the copy of certificate of death that was produced, the deceased died on 13th October 2011 at Mai Mahiu. Although the plaintiff testified that he obtained confirmed grant of letters of administration in respect of the deceased's estate on 10th February 2016, I note that what he produced in evidence was a copy of grant of letters of administration intestate in respect of the deceased's estate issued to him on 10th February 2016 in High Court Succession Cause No. 166 of 2015 (Naivasha). I have not been shown any certificate of confirmation of grant. Nevertheless, the plaintiff has demonstrated the requisite capacity to file and prosecute this suit. As to his status regarding distribution of the estate or the suit properties herein, that is a matter for the relevant court with jurisdiction under the **Law of Succession Act**.

37. It is the plaintiff's case that prior to her demise, the deceased retained the services of the 1st defendant to subdivide Kijabe/Kijabe Block

1/6120 into 22 plots. Although the plaintiff testified that the 1st defendant Josephat Chege Muguru is a director of the 7th defendant, I note that in the letter dated 19th November 2015, from the Registrar of Companies, it is stated that one “Josphat Nyamu Muguru” was one of the directors of the company. It has however not been shown that Josephat Chege Muguru and Josphat Nyamu Muguru are one and the same person. That said, the 1st defendant neither defended the suit nor testified.

38. The mutation dated 9th April 2011 and presented for registration on 17th June 2011 as well as the certified copy of the register show that Kijabe/Kijabe Block 1/6120 was subdivided into Kijabe/Kijabe Block 1/1260 to 12641 and that the said register was closed on 22nd May 2014 upon the subdivisions. Although they have insisted that they validly acquired the parcels in dispute, the defendants have not produced any transfer signed by the deceased. As at 6th June 2014 when the 6th defendant was registered as proprietor of Kijabe/Kijabe Block 1/12640 and Kijabe/Kijabe Block 1/12641 and 24th February 2015 when the 4th defendant was registered as proprietor of Kijabe/Kijabe Block 1/630, the deceased had been dead for at least two and a half years. In the absence of any evidence to the contrary, I have no hesitation in finding, as I now do, that the deceased did not transfer Kijabe/Kijabe Block 1/12640, Kijabe/Kijabe Block 1/12641 and Kijabe/Kijabe Block 1/630 to the defendants.

39. The plaintiff contends that transfer of Kijabe/Kijabe Block 1/12640, Kijabe/Kijabe Block 1/12641 and Kijabe/Kijabe Block 1/630 to the 4th and 6th defendants was procured fraudulently and in collusion. Fraud is a serious allegation that has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. See **Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR** and **John Mbogua Getao v Simon Parkoyiet Mokare & 4 others [2017] eKLR**.

40. The law is very specific on how transfer of registered land should be done. **Section 37 (2) of the Land Registration Act** provides that a transfer shall be completed by filing the instrument of transfer followed by registration of the transferee as proprietor of the land. Even prior to its presentation at the registry, the law takes a keen interest on how a transfer is prepared. **Section 44 of the Land Registration Act** provides that every instrument shall be executed by each of the parties consenting to it and that the transferee shall in addition to executing the instrument attach copies his identity card or passport, Personal Identification Number certificate, passport size photographs, among other documents. In other words, for a transfer to be valid it has to be shown that the registered proprietor of land has fully authorised it both through signature and availing his supporting documents.

41. The 4th and 6th defendants as the parties claiming title to Kijabe/Kijabe Block 1/12640, Kijabe/Kijabe Block 1/12641 and Kijabe/Kijabe Block 1/630 through transfer have a distinct obligation to demonstrate that they obtained valid transfers and titles. As the Court of Appeal stated in the case of **Munyu Maina vs. Hiram Gathiha Maina [2013] eKLR**:

We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.

42. The 4th and 6th defendants have failed to demonstrate their root of title. I find that the plaintiff has demonstrated that transfers of Kijabe/Kijabe Block 1/12640, 12641 and 12630 to the 6th and 4th defendants were fraudulent.

43. The 6th defendant has claimed that he is an innocent purchaser for value. In the case of **Samuel Kamere v Lands Registrar, Kajjado [2015] eKLR** the Court of Appeal stated that:

Since the appellant's title is under challenge, in order to be considered a bonafide purchaser for value, he must prove that he had acquired a valid and legal title, secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration for the purchase of the suit property.

44. The 6th defendant admitted that he purchased the parcel without further enquiries or investigations of ownership and thus did not conduct due diligence. The duration between 31st May 2014 which is the date of his sale agreement and 6th June 2014 which is the date of issuance of his title deeds is 6 days, an unusually short period which does not give room for exercise of due diligence. The 6th defendant did not produce any transfer or consent of the Land Control Board to support the alleged title of the person who sold the parcels to him. I have already held above that transfers of Kijabe/Kijabe Block 1/12640 and 12641 and 12630 to the 6th defendant was fraudulent. In view of the foregoing, I find that the 6th defendant is not a bona fide purchaser for value without notice.

45. On whether the 3rd defendant is entitled to transfer of LR No Kijabe/Kijabe/Block 1/12628, the evidence tendered by the 3rd defendant on purchase is a hand written document off a diary page. **Section 3(3) of the Law of Contract Act** read together with **Section 38 of the Land Act, 2012** require that contracts for disposition of interests in land to be in writing, signed by all parties thereto and such signature be attested to by a witness present when the contract was being signed. The agreement dated 30th October 2006 does not fall short of these requirements in addition to the essential ingredients of a valid contract. The agreement however looks incomplete since it does not describe the actual property sold and makes no reference whatsoever to Kijabe/Kijabe/Block 1/6120. The 3rd defendant admitted that the size stated in the sale agreement is three times the size he now claims. He had an opportunity to call witnesses to support his claim but he failed to do so. In sum, the 3rd defendant has not demonstrated that he is entitled to transfer of LR No Kijabe/Kijabe/Block 1/12628. His counterclaim therefore fails.

46. On whether the 3rd and 5th defendants are trespassers, 3rd defendant stated in his testimony that he took possession of the plot which was registered as Kijabe/Kijabe Block 1/12628 and constructed a six-room permanent house which he is occupying with his family. He is not the registered proprietor of the plot and he has not demonstrated any authority to enter and remain on it. Regarding the 5th defendant, I am not persuaded that she occupied or claimed plot number Kijabe/Kijabe Block 1/12631 beyond being on it to supervise construction.

47. Is the plaintiff entitled to the reliefs sought? In view of my findings above, the injunctions which are sought at prayers (a) and (b) of the plaint are merited.

48. Regarding the prayer for cancellation of titles, under **Section 26 of the Land Registration Act**, a title can be nullified on the ground of fraud or misrepresentation to which the registered proprietor is proved to be a party or if it is shown that it was acquired illegally, unprocedurally or through a corrupt scheme. I held above that transfers of Kijabe/Kijabe Block 1/12640, 12641 and 12630 to the 6th and 4th defendants were fraudulent. The plaintiff is entitled to an order for cancellation of those titles. Pursuant to the consent filed on 23rd May 2019 and adopted by the court on the same date, the plaintiff's claim against the 2nd defendant in so far as title number Kijabe/Kijabe Block 1/12620 is concerned was marked settled.

49. As to damages for trespass, I am only inclined to award such damages against the 3rd defendant who remained on Kijabe/Kijabe Block 1/12628 despite not being a registered proprietor thereof. I am not persuaded that I should award damages against the 4th defendant since he had a title, albeit on which has since been found to be defective. As to the quantum of damages, taking into account the circumstances of the case, the purchase prices said to have been involved and the parties' respective submissions, I consider KShs 50,000 to be appropriate.

50. Since he is the author of the entire fiasco, the 1st defendant will bear costs of the suit.

51. In view of the foregoing, I make the following orders:

a) The 3rd defendant's counterclaim is dismissed.

b) An injunction is hereby issued restraining the 3rd, 4th, 5th and 6th defendants from entering, constructing, erecting, transferring or in any adverse manner interfering with LR numbers Kijabe/Kijabe Block 1/12628, 12630, 12631, 12640 and 12641.

c) An order of injunction is hereby issued restraining the 1st and 7th defendants from entering, erecting, transferring or in any adverse manner interfering or dealing with LR numbers Kijabe/Kijabe Block 1/12621 to 12641.

d) The 4th and 6th defendants' titles in respect of LR numbers Kijabe/Kijabe Block 1/12640, 12641 and 12630 are hereby cancelled.

e) An order is hereby issued directing the Naivasha District Land Registrar who is the 8th defendant herein to effect rectification of the register and cancellation of the 4th and 6th defendants' titles in respect of LR numbers Kijabe/Kijabe Block 1/12640, 12641 and 12630.

f) Judgment is entered in favour of the estate of Ruth Wanjiru Kamunge (deceased) against the 3rd defendant for KShs 50,000 (fifty thousand) being damages for trespass.

g) The 3rd defendant is hereby ordered to remove any structures which he has constructed on LR number Kijabe/Kijabe Block 1/12628 within 90 (ninety) days from delivery of this judgment. In default, the plaintiff shall be at liberty to remove those structures.

h) The estate of Ruth Wanjiru Kamunge (deceased) shall have costs of the suit, which costs shall be borne by the 1st defendant.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF APRIL 2022.

D. O. OHUNGO

JUDGE

Delivered through electronic mail in the presence of:

Court Assistant: E. Juma