



Abebe & 3 others (Suing as the administrators of the Estate of Denis Oluoch) v Olima & 3 others (Environment & Land Case 364 & 325 of 2017 (Consolidated)) [2025] KEELC 3177 (KLR) (8 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3177 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 364 & 325 OF 2017 (CONSOLIDATED)**

OA ANGOTE, J

APRIL 8, 2025

BETWEEN

GEORGE OKEYO ABEBE 1ST PLAINTIFF

CATHERINE MKANGOMA KAZUNGU 2ND PLAINTIFF

SUING AS THE ADMINISTRATORS OF THE ESTATE OF DENIS OLUOCH

AND

HELLEN ACHIENG OLIMA 1ST DEFENDANT

JOHN KIGOII NDUATI 2ND DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE 325 OF 2017

BETWEEN

HELEN ACHIENG OLIMA 1ST PLAINTIFF

JOHN NDUATI 2ND PLAINTIFF

AND

GEORGE OKEYO ABEBE (ADMINISTRATOR OF THE ESTATE OF DENIS OLUOCH) 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT



JUDGMENT

1. This Judgment is with respect to two consolidated matters. The pleadings of each suit are summarized hereunder.

ELC Case No. 364 of 2017

2. Through a Plaint dated 8th May 2017, the Plaintiffs in ELC No. 364 of 2017 (hereinafter referred to as “the Plaintiffs”), who are the administrators of the Estate of the late Denis Oluoch, sought judgment against the Defendants for:
 - a. An injunction restraining the Defendants by themselves or by their agents and or servants or otherwise howsoever from developing, selling, subdividing and/or interfering with the Land Reference No. 785/716 [the suit property].
 - b. Costs of the suit.
3. The administrators of the Estate of the late Denis Oluoch averred that the deceased was the registered owner of Land Reference No. 785/716 and that the suit land was transferred to him by the 1st Defendant after a successful conclusion of a purchase agreement of the suit property.
4. The Plaintiffs asserted that when they recently visited the suit property, they found that the Defendants were undertaking construction on the property and were alleging that the land was never sold to the deceased and that the Defendants continue to wrongfully trespass on the suit property, and as a result, the estate has suffered loss and damage.

ELC 325 of 2017

5. Hellen Achieng Olima, the Plaintiff in ELC 325 of 2017, who is also the 1st Defendant in ELC 364 of 2017 (hereinafter referred to as “the 1st Defendant”), deponed that she is the legal registered owner of the suit property, known as L.R. No. 7785/716- IR No. 57996 in Runda and that the 2nd Defendant is the Bonafide purchaser of the whole of the suit property. She denied selling the suit premises to Dennis Oluoch.
6. Hellen Olima, the 1st Defendant, averred that in late 2013, she received a letter from the Ministry of Lands dated 2nd July 2013 indicating that there was a transfer being effected on her property; that her advocates responded through a letter dated 3rd December 2013 objecting to the said transfer, but never received any response from the Ministry of Lands to their letter and that on 4th April 2017, she sought and obtained a buyer for the suit property upon which they executed a sale agreement.
7. It is the 1st Defendant’s case vide her Plaint that on searching for her original title, she found that the same was missing, and she reported the loss to the police; that she all the same handed over possession of the suit premises to the buyer in vacant possession and that the 2nd Defendant has since been in possession and occupation of the suit parcel and has heavily invested, developed and improved it.
8. The 1st Defendant asserted that on 10th April 2017, she was informed by the buyer that the Plaintiff went to the suit premises and claimed that the land belonged to his brother, Denis Oluoch; that she perused a copy of the title document in the Plaintiffs’ possession which indicated a transfer to Dennis Oluoch and that the Plaintiffs’ actions are unlawful, illegal and have caused her loss and damages.
9. The 1st Defendant has sought judgment against the Plaintiff as follows:



- a. An order directing the Chief Land Registrar to cancel and or revoke the fraudulent and unlawful entries registering the name of Dennis Oluoch as the registered owner of parcel known as L.R. No. 7785/716 Runda Nairobi.
- b. An order directing the Plaintiff to execute and sign all transfer and ownership documents in favor of John Nduati.
- c. In the alternative, the Deputy Registrar of this court do execute and sign all ownership and transfer documents in favour of John Nduati.
- d. A declaration that the Hellen Olima is the absolute owner of LR No. 7785/716 Runda Nairobi.
- e. A declaration that the Plaintiff is the legal owner of LR No. 7785/716 Runda Nairobi.
- f. A permanent injunction against the Plaintiff, their agents and or servants from trespassing and or interfering in any way whatsoever upon the Plaintiffs Land L.R. No. 7785/716 Runda Nairobi.
- g. Damages.
- h. Costs of the suit.
- i. Any other reliefs deemed just and expedient.

Hearing and Evidence

10. The Plaintiffs presented three witnesses in support of their case. PW1, Catherine Kazungu, averred that Dennis Oluoch was her late husband and she was appointed as one of the administrators of the Estate. She adopted her statement dated 5th November 2018 as her evidence in chief. She also relied on her documents filed on 3rd October 2022.
11. In her statement, PW1 testified that Denis Oluoch purchased the suit property and before his demise, they used to visit the premises together with their son; that they also gave authority to one of the neighbors to plant napier grass for his cattle and that it was a surprise that Hellen Olima started reclaiming back the land stating that Denis did not purchase the land from her.
12. It was the evidence of PW1 that they later went to the suit property and found that the beacons had been destroyed, building materials had been placed on the site and work was in progress.
13. PW1 testified that she has the sale agreement between Hellen and her late husband dated 12th June 2003, with respect to LR No. 7785/716, and that the agreement is signed and witnessed. It was her testimony that she is also in possession of the transfer for LR No. 7785/716, which was signed by Dennis Oluoch and Hellen dated 16th December, and the photos of Hellen Achieng and her late husband.
14. PW1 also produced in evidence the application for registration of the land; the stamp duty assessment by KRA, the receipt from the City Council, the statutory declaration, a copy of the title issued on 14th February 2013 as well as a copy of the passports of Hellen and the ID of Dennis Oluoch.
15. In cross-examination, she testified that she did not have any evidence of the payment of Kshs. 1.6 million. She stated that the agreement was done by Ochieng Omollo & Co. Advocates, who was their family lawyer and that she was not aware that Ochieng Omollo had denied preparing the agreement.



16. She stated that she presented the transfer to the Registrar for registration and it was received on 30th December 2009; that Dennis died on 15th May 2004 and that he signed the transfer and that the PIN Number of Hellen indicated in the documents which were submitted by Hellen and those submitted by the administrators of the Estate of Dennis Oluoch is different.
17. PW1 testified that the transfer dated 16th December 2009 indicated that it was signed by Catherine Kazungu, and that she appeared before an advocate as a transferee; that the payments were made by her brother-in-law, on behalf of the deceased in 2009; that Wanjiru Joseph was the second owner of the land before it was transferred to Dennis and that the name Wanjiru Joseph appeared when they were paying rates with respect to the suit property.
18. She stated that the transfer was effected in 2015, nine years after the sale agreement was signed on 8th June 2003 and that the passport annexed to the deceased's documents expired on 18th January 2000, which is what they used to effect the transfer in 2013.
19. PW1 testified that they received a letter dated 2nd July 2013 which was in response to their application for registration; that through the letter, they were informed that the deed filed was unavailable and the transfer could accordingly not be effected and that the Plaintiffs had the original title deed with them and that the file was later reconstructed.
20. PW2, George Okeyo Abebe, testified that he is one of the administrators of the deceased's estate; that he participated in the registration of the land; that Dennis Oluoch was his brother and had told him that he had bought the suit property from Hellen Olima; that upon the deceased's demise, Hellen Olima came to them and asked for the documents with respect to the transaction and that they refused to give her the documents to her having sold the land in 2004.
21. In his statement, he indicated that the administrators of the estate visited the plot in May 2017 and found that the beacons had been destroyed and construction materials had been deposited on the suit property. It was his evidence that he later learnt that Hellen Olima had purported to sell the suit land to John Nduati and that they had suffered loss and damage as their crops of coffee, maize and beans had been damaged, and the demarcated beacons removed.
22. PW2 testified that they looked for the deed file at the lands office but it was missing; that when he complained to the Registrar, he was advised to look for Ms. Olima; that Olima requested them to allow her to sell the land so they could share the proceeds in the ratio of 70:30 and that the agreement was signed and dated by Dennis and Hellen but the transfer was blank.
23. During cross-examination, PW2 testified that the transfer was already done except the insertion of dates; that he is the one who inserted the dates of 16th December 2009; that the transfer documents can be presented for registration even after one dies; that the grant was confirmed on 12th June 2008 and that he paid the stamp duty.
24. PW3, Eric Ochieng, stated that he is an advocate of the High Court; that the signature in the agreement attesting the signing by the parties is his; that it was Hellen Ochieng who was selling the land to Dennis Oluoch; that both parties were known to him before that and he was related to the late Okeyo while Ms Olima was in third year when he was in first year.
25. He asserted that the deceased signed the agreement in his presence and Ms. Olima was not available immediately to come to his office; that he sent the court assistant to Ms. Olima, who signed the agreement and it was brought back to him, with other documents and that he received the original title and transfer documents.



26. PW3 averred that he wrote the letter dated 8th June 2005 two years after the death of Mr. Okeyo; that Ms. Olima raised the issue of the transaction claiming that there was no sale and requested her documents back; that he then wrote the letter to Mr. Okeyo's father explaining what had transpired; that in the letter, he indicated that Ms. Olima did not sign the agreement in his presence but he believed she had signed the agreement and that the purchase price was not paid in his presence.
27. In cross-examination, he stated that he prepared the transfer dated 16th December 2009 but he did not witness the signatures and that he handed over the original title to the deceased.
28. DW1, Hellen Olima, relied on her statement dated 27th June 2018 and her bundle of documents dated 27th June 2018 and 6th October 2022 which she produced as DEXB1 and 2 respectively. She testified that she was never paid Kshs. 1.6 million and denied that the signature in the agreement was hers.
29. DW1 also denied signing the transfer of 16th December 2009, and stated that the PIN number indicated is not hers. She produced in evidence a copy of her PIN which is A001662667B which was issued to her in 1995. It was her evidence that the PIN in the transfer is A00552256X, which she stated was not her PIN and that the photo in the transfer was not her photo.
30. DW1 stated that the transfer was effected on 14th February 2013; that she later received the letter dated 2nd July 2013 on the lost deed file and her availability to sign the deed of indemnity and that her lawyers duly responded to the letter informing the Commissioner of Lands not to effect the transfer as it was done without her consent.
31. DW1 denied giving Mr. Ochieng Advocate the title documents. She stated that the title documents were kept by her later husband who was a close friend of Dennis Okumu. She contended that Dennis must have obtained the title from her later husband as they shared an office. She stated that in 2017, she got a prospective buyer for the land and after looking for the title and finding it missing, she reported the loss to the police.

Submissions

32. The Plaintiff's Counsel submitted that the legal instrument produced as evidence of the sale of the suit property is the sale agreement executed by the parties and that the Advocate who prepared the agreement testified that the purchaser executed the agreement before him and the vendor subsequently executed the agreement.
33. The Plaintiff's Counsel further submitted that the transfer was also executed by Hellen Achieng Olima and Denis Oluoch Okeyo. He urged that what would render void the two documents is if the two documents were achieved by fraud and that the Defendant did not raise an allegation of fraud in her pleadings.
34. Further, it was submitted, the Defendant's claim that she came to learn about the transfer on 9th May 2017 is false because she was informed of the sale of the property in 2005 vide the letter dated 8th June 2005 by Ochieng Omollo Advocate.
35. They contended that while the Defendant has raised issue relating to her signature and expired passport, these are not grounds to nullify the sale of the property and that the Defendant is on a fishing expedition to fault the sale and transfer on any ground.
36. It was submitted that the 1st Defendant ought to have brought evidence on the forgery of her signature; that her explanation on how her photograph and passport left her possession are not satisfactory.



37. Counsel relied on the cases of *Fanikiwa Limited & 3 Others vs Sirikwa Squatters Group & 17 Others* [2023] KESC 105 (KLR) and *Vivo Energy Kenya Ltd vs Maloba Petrol Station Ltd* [2015] eKLR which held that fraud must be specifically pleaded and proved and that the onus of proof in cases of fraud is higher than in an ordinary case.
38. Counsel for the 1st Defendant submitted that Denis Oluoch Okeyo died on 15th May 2004 and could not have had the transfer effected into his name on 14th February 2013 and that the transfer could not be effected on 14th February 2013 because the letter dated 5th June 2013 shows that the deed file was missing at that time.
39. Counsel submitted that the purported transfer effected on 14th February 2012 was illegal, unprocedural and fraudulent. They relied on Article 27(1)(2) and Article 40 of *the Constitution* of Kenya as well as Section 26(1) of the *Land Registration Act* and Section 107(1) of the *Evidence Act*.
40. Counsel contended that the 1st Defendant denied ever receiving the consideration of Kshs. 1.6 million and argued that the Plaintiff did not produce any payment document to confirm that indeed the 1st Defendant received the said consideration.
41. The 1st Defendant's Counsel submitted that the Plaintiff's title was obtained fraudulently and should be revoked. Counsel also relied on the cases of *Charles Karatha Were & 2 others vs Administrators of the Estate of John Wallace Mathare (Deceased) & 5 Others* [2013] eKLR, *Dr. Joseph Arap Ngok vs Justice Maiyo Ole Keiwua & 5 others* Civil Appeal No. Nairobi 60 of 1997, *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, *Wambui vs Mwangi & 3 others* [2021] eKLR and *Elijah Nyang'wara vs Stephen Mungai Njuguna & Another* [2013] eKLR.

Analysis and Determination

42. This court has given careful consideration to the pleadings and evidence presented by the Plaintiff and the 1st Defendant. The issues for this court's determination are as follows:
 - a. Whether the Plaintiff lawfully acquired title to the suit property.
 - b. The orders which this court should issue.
43. The dispute before this court concerns the ownership of the suit property, which is LR No. 7785/716, located in Runda, Nairobi. It is admitted that the registered proprietor of the land was the 1st Defendant, Hellen Olima. The primary issue herein is whether the 1st Defendant conveyed the suit property to the late Dennis Oluoch Okeyo.
44. It is asserted by the Plaintiffs, being the administrators of the estate of Dennis Oluoch Okeyo, that the 1st Defendant did indeed transfer the suit property to the deceased for a consideration of Kshs. 1.6 million. They have adduced a copy of a sale agreement dated 8th June 2003 purportedly executed by Helen Olima and Dennis Oluoch as well as a transfer dated 16th December 2009. The suit property was subsequently registered in the late Dennis Oluoch on 14th February 2013.
45. The 1st Defendant has opposed the registration of the suit property in favor of Dennis Oluoch, which she avers was effected fraudulently by the administrators of the deceased's estate. She denies ever receiving the purchase price, signing the sale agreement and the transfer. She has contended that the PIN attributed to her name is not in fact hers. The 1st Defendant asserts that she has lawfully sold the suit property to John Nduati.



46. The 1st Defendant has challenged the registration of title in favour of Dennis Oluoch on grounds of fraud. The law buttressing this suit is found under Section 26(1) of the [Land Registration Act](#) which prescribes that:-

“ 1)The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

47. It is trite that allegations of fraud must not only be pleaded but must also be proved. Courts have also established that claims of fraud must be proved to a degree higher than that in normal civil suits, which is on a balance of probability. As the Court of Appeal in *Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others* [2015] KECA 816 (KLR) aptly stated, whether there was fraud is a matter of evidence

48. In *Bullen & Leake & Jacobs, Precedent of Pleadings* 13th Edition at page 427, it was stated as follows regarding fraud:

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

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

49. The burden of proof to establish that there was fraud in the registration of the suit property in the name of Dennis Oluoch lay squarely upon the 1st Defendant. This is in accordance with Section 107 of the [Evidence Act](#).

50. The 1st Defendant has challenged her signature in the sale agreement. She however did not adduce any expert evidence to establish that the signature in the sale agreement and the transfer was not hers at all. However, while the Plaintiffs adduced the testimony of PW3, the advocate who drew up the agreement and attested the signatures of the parties admitted that the 1st Defendant did not execute the agreement in his presence.



51. That being so, and considering the importance that is attached to the role of the person witnessing the attestation of a sale agreement, it is the finding of this court that the Plaintiff failed to adduce evidence to show that the 1st Defendant actually signed the sale agreement.
52. The 1st Defendant's second argument is that the PIN No. A00552256X indicated in the transfer is not in fact her PIN. A conflicting PIN is also indicated in the Stamp Duty Declaration Assessment & Pay-In-Slip which the Plaintiffs admitted that they used in having the property transferred.
53. The 1st Defendant in her bundle of documents adduced a PIN Certificate generated from the Kenya Revenue Authority system which shows that her PIN is A001662667B. The Plaintiffs have not impeached the validity of this PIN Certificate. This court is accordingly persuaded that PIN No. A001662667B is in fact the 1st Defendant's PIN while the other two PINs attributed to the 1st Defendant are forgeries.
54. There is then the issue of the registration of the transfer. The 1st Defendant submitted that Denis Oluoch Okeyo died on 15th May 2004 and could not have had the transfer effected into his name on 14th February 2013.
55. The Plaintiffs' evidence in this respect is that the transfer was prepared at the same time as the sale agreement by PW3, the advocate from the firm of Ochieng Omollo & Co. Advocates, who was related to the deceased. PW1, Catherine Kazungu testified that she presented the transfer to the Registrar for registration and that it was received on 30th December 2009.
56. She averred that Dennis died on 15th May 2004 and that he signed the transfer before he died. PW2, George Okeyo, testified that the transfer was signed but was not dated on the day it was signed. He admitted that he inserted the dates of 16th December 2009 much later. He argued that the transfer documents can be presented even after one dies, which was after the grant was confirmed on 12th June 2008.
57. It is not dispute that Denis Oluoch Okeyo died on 15th May 2004. The Plaintiffs, Catherine Kazungu and Goerge Okeyo, were issued with a confirmed grant by the court in High Court Succession Cause No. 7 of 2007 on 12th June 2008. Notably, in the issued grant, there was no mention of the suit property.
58. There is then an amended confirmed grant issued on 21st July 2017, which included the suit property as part of the estate of the deceased. This Amended confirmed grant was, however, issued after the institution of this suit, and was consequently in breach of the common law principle of lis pendens.
59. Black's Law Dictionary 9th edition, defines lis pendens as the jurisdictional, power or control acquired by a court over property while a legal action is pending. In the case of Cieni Plains Company Limited & 2 others vs Ecobank Kenya Limited [2017] eKLR, Onguto J, stated as follows:

“The doctrine of lis pendens often expressed in the maxim pendente lite nihil in novature (during litigation nothing should be changed): see Blacks' Law Dictionary 9th Ed, was until May, 2012 part of our statute law. With regard to real property, section 52 of the now repealed Indian Transfer of Property Act 1882 provided that during the pendency in any court having authority in Kenya of any suit in which the right to immovable property was directly and specifically in question, the immovable property was not to be transferred or dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order that would be ultimately made , except with the authority of the court and on terms.”



60. The inclusion of the suit property as part of the deceased's estate despite the pendency of this suit contesting the validity of the interest of Dennis Oluoch was therefore irregular and an abuse of court process.
61. Going back to the registration of the transfer, this court is guided by the provisions of Section 83(b) of the *Law of Succession Act*, which provides that one of the duties of the personal representatives of the deceased is to bring in all the free property of the deceased.
62. The inclusion of the suit property in the initial confirmed grant would have gone along way to show that indeed the deceased had purchased the suit property before his demise.
63. Further, the Plaintiffs have not adduced any evidence to support the allegation that the purchase price was paid by the deceased, or acknowledgment of the purchase price by the 1st Defendant. The failure to prove payment of consideration is a glaring discrepancy for which the Plaintiffs have not accorded a reason or any attention.
64. On the basis of the foregoing, this court is satisfied that the 1st Defendant has established that the transfer of the suit property in the name of the deceased, who is being represented by the Plaintiffs was done fraudulently and unlawfully.
65. While the 1st Defendant claimed for damages, she did not elaborate the basis for this claim nor did she illustrate the nature of the loss she suffered. With respect to general damages, a claimant would be expected to demonstrate that they have suffered harm as a result of the conduct of the other party.
66. The court would then undertake an assessment and make an award in exercise of its discretionary jurisdiction. In the absence of these particulars, this court finds itself unable to undertake such assessment.
67. For those reasons, the court dismisses the Plaintiffs' suit with costs and allows the prayers as sought by the 1st Defendant on the following terms:
 - a. An order be and is hereby issued directing the Chief Land Registrar to cancel and or revoke the fraudulent and unlawful entries registering the name of Dennis Olouch as the registered owner of parcel of known as L.R. No. 7785/716 Runda Nairobi.
 - b. A declaration be and is hereby issued that Hellen Olima is the absolute owner of LR No. 7785/716 Runda Nairobi.
 - c. A permanent injunction be and is hereby issued restraining the Plaintiffs, their agents and or servants from trespassing and or interfering in any way whatsoever upon the Defendants' L.R. No. 7785/716 Runda Nairobi.
 - d. Costs of the suit and the counter claim to be borne by the Plaintiffs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 8TH DAY OF APRIL, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Omino for Plaintiff

Mr. Muoki for 2nd Defendant

Mr. Ochenda for 1st Defendant



Court Assistant: Tracy

