



**Mbugua (Suing as the Chairperson of Kimuchu Mageria Self Help Group)  
v Inspector General of Police & 2 others (Environment & Land Case  
563 of 2017) [2022] KEELC 3972 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3972 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 563 OF 2017**

**JG KEMEL, J**

**JULY 28, 2022**

**BETWEEN**

**MARGARET WAITHIRA MBUGUA (SUING AS THE CHAIRPERSON OF  
KIMUCHU MAGERIA SELF HELP GROUP) ..... PLAINTIFF**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> DEFENDANT**

**DEPUTY INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> DEFENDANT**

**KIGANJO LOCATION RANCHING CO LTD ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit against the Defendants vide a Plaint dated 17/5/2017 and prayed for Judgment against the Defendants for;
  - a. That the ownership and registration of the 2<sup>nd</sup> Defendant as proprietor to land Parcel No. Thika Municipality Block 30/3086 be cancelled and same be registered in the names of the Plaintiff herein.
  - b. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants and their agents/employees be evicted from plot Thika Municipality Block 30/3086 to give vacant possession to the Plaintiffs.
  - c. General damages for fraud and mesne profits.
  - d. Costs of the suit
  - e. Any other or further relief that this Court may deem fit to grant.
2. The Plaintiff's claim is that she filed this suit as a Chairperson of Kimuchu Mageria Self-Help Group and with the permission of its members who were shareholders of the 3<sup>rd</sup> Defendant. That



upon balloting and payment of the requisite fees, the Plaintiff was allocated plot number Thika Municipality Block 30/3086 (the suit land) being a sub-division of L.R 11449/1 – Thika Municipality formerly owned by the 3<sup>rd</sup> Defendant. That the Plaintiff therefore was the holder of original ballot and rightful allottee of the suit land which the 3<sup>rd</sup> Defendant fraudulently and irregularly allocated to the 2<sup>nd</sup> Defendant without the Plaintiff's knowledge. Particulars of fraud were levelled against the 3<sup>rd</sup> Defendants as; entertaining the 2<sup>nd</sup> Defendant's bid over the suit land; interfering with the register of ownership in favor of the 2<sup>nd</sup> Defendant and receiving monies from the Plaintiff and thereafter allocating the suit land to the 2<sup>nd</sup> Defendant. The Plaintiff further contended that the 2<sup>nd</sup> Defendant through collusion with the 3<sup>rd</sup> Defendant is now unlawfully registered as the owner of the suit land and has constructed a Police Station called Kimuchu Police Station on the suit land hence the suit.

3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their defence dated 5/3/2019 through the Hon Attorney General and denied the Plaintiff's averment and allegations of fraud and more particularly that the Plaintiff was the owner and allottee of the suit land as alleged. They contended that they were the lawful registered owners and occupiers of the suit land and urged the Court to dismiss the suit with costs.
4. The 3<sup>rd</sup> Defendant filed its statement of defence dated 20/12/2017. It entirely denied the Plaintiff's claim and sought to put the Plaintiff to strict proof thereof.
5. The Plaintiff did not file any reply to the defence.
6. The Plaintiff called three witnesses in support of its case. The Plaintiff, Margaret Waithira Mbugua testified as PW1. She adopted her witness statement dated 11/5/2017 as her evidence in chief and produced the documents in her List of Documents of even date and marked as PEX Nos. 1-5. She further produced a further list of documents dated 27/3/2019 which were marked as PEX No. 6 -10.
7. It was her testimony that the Self-Help Group was registered in 1996. That the land was an open space which upon application from the 3<sup>rd</sup> Defendant, the suit land was allocated to them in 1996. That they sought the land for pig rearing as a group. That she and her members were members of the 3<sup>rd</sup> Defendant Company since 1973. When showed the Register of members of the 3<sup>rd</sup> Defendant, the witness denied that it was the correct register. She stated that according to the register of members of the 3<sup>rd</sup> Defendant the suit land was reserved as an open space.
8. In cross- examination, PW1 was adamant that they were allocated the suit land in 1996 as shown in the ballot card which she conceded as undated. PW1 also admitted that they were not given a share certificate by the 3<sup>rd</sup> Defendant in respect of the suit land. She added that the author of their application letter for the suit land, Mary Wambui forgot to date the letter. On being shown the 1<sup>st</sup> Defendant's ballot card, PW1 dismissed it as not genuine. She admitted that the land was occupied by the 1<sup>st</sup> Defendant in 2013 and that on inquiry from the 3<sup>rd</sup> Defendant she was informed it was the 1<sup>st</sup> Defendant who was in occupation. Asked whether the Plaintiff had any minutes authorizing the application for the land, she stated that the minutes are with her lawyers.
9. On reexamination, she insisted that the Plaintiff was noted in the register as a member of the 3<sup>rd</sup> Defendant. That they sent a demand letter to the 3<sup>rd</sup> Defendant on the 26/8/2014 asking to be reinstated as owners of the suit land.
10. The second witness was Mary Wambui Ngiure, the Plaintiff's former Chairlady. She adopted her statement dated 7/3/2018 as her evidence in chief.
11. In cross-examination, PW2 told the Court that she is the one who wrote the undated application letter on behalf of the Plaintiff though it did not contain any evidence of its receipt by the 3<sup>rd</sup> Defendant.



- That the 3<sup>rd</sup> Defendant approved their application though they were not given any letter; they received a ballot card. PW2 also conceded that the ballot was not dated and that James Kimuhu, the then 3<sup>rd</sup> Defendants Chairman did not sign it. PW2 further stated that the suit land was not surveyed but estimated its size to be 2 acres. PW2 said she did not have any evidence of beacons on the suit land or the Plaintiff's minutes authorizing the application for the suit land. That the ballot was collected by Mary Njeri Ngururu from the 3<sup>rd</sup> Defendant's offices. She denied the 3<sup>rd</sup> Defendant's register of members produced in Court on the basis that the one she had seen was old and large unlike the one produced in Court which according to her was smaller.
12. On the issue of the Plaintiff's certificate of registration, the witness stated that the original certificate got lost and applied and obtained a replacement in 2014. That the Plaintiff's certificate was issued in 1996 and it is the same one they used to open an account which they operated as a group at Murata Farmers Sacco Society Limited. She denied the assertion that the Plaintiff was not registered in 2014.
  13. The last witness was Mary Njeri Ngururu -PW3 who also relied on her witness statement dated 7/3/2018.
  14. The witness stated that she delivered the application letter to the 3<sup>rd</sup> Defendants offices in Nairobi and that after a month she went to the 3<sup>rd</sup> Defendants offices at Thika where upon inquiry the then 3<sup>rd</sup> Defendant's Chairman the late Mr Kimuhu advised her to go and pick the ballot from the 3<sup>rd</sup> Defendant's offices in Nairobi. That on arrival at the Nairobi offices she was given ballot No 3086 and advised to go and see the land and find out if it was satisfactory for their needs. That armed with the map of the area she identified the land which was adequate for their needs. That she relayed the same information to Mr Kimuhu who instructed the vice Chairman a Mr Simon Gikonyo Waweru to enter the names of the Plaintiff in their main register as owners of the suit land. That notwithstanding, she informed the Court that to her surprise the said 3<sup>rd</sup> Defendant went ahead and allocated the land to the 1<sup>st</sup> Defendant.
  15. While being cross examined the witness admitted that the application letter is undated. She conceded that there is no evidence that the same was received by the 3<sup>rd</sup> Defendant as there was no acknowledgement except they were called to collect the ballot which they did. That she received an RIM from the 3<sup>rd</sup> Defendant and that guided them to the land during the inspection which she did in the Company of PW2 and an unnamed surveyor who later died. That they fenced the land but on being asked for evidence of fencing the witness responded that she had none. She stated that according to the ballot in their possession, James Kimuhu was the Secretary contrary to her averment in her witness statement that he was the Chairman.
  16. The witness stated that the land was an open space before it was allocated to them and that they are yet to get a title for the same. She stated that they paid Kshs 1500/- to the 3<sup>rd</sup> Defendant although the 3<sup>rd</sup> Defendant has refuted receipt of the same. That they occupied the land and constructed a small structure which was latter demolished.
  17. With that the Plaintiff closed its case.
  18. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants called Joseph Kamuyu, the Thika Land Registrar. According to register in his custody, he informed the Court that the current owner of the suit land is Kenya Police - Kimuhu Police Station having been so registered on 4/11/2014 while the 3<sup>rd</sup> Defendant is the first proprietor of the suit land. He produced the transfer and green card in the Defendants' favour as D.ex. 1 and 2. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendant acquired the land from the 3<sup>rd</sup> Defendant by way of transfer. That the user for the suit land is public and that the title of the 1<sup>st</sup> Defendant remains in force.



19. He further stated that the 3<sup>rd</sup> Defendant gave the land to Muthaiga Residents vide a letter dated the 7/8/2013.
20. DW1 could not expound on how the 1<sup>st</sup> Defendant acquired the suit land but stated that a private individual can donate land for public use. DW1 could not tell if there was public participation in the instant transfer. He stated that though Government land is registered under the National Treasury on behalf of the government, the suit land is registered in the name of the 1<sup>st</sup> Defendant. That the said registration is not irregular and that the same can be amended by the Land Registrar with the powers vested in him under the Act.
21. The 3<sup>rd</sup> Defendant on its part called Henry Githuku Githongo as DW2 who adopted his statement dated 19/6/2020 and produced the documents in the List of Documents dated 20/12/2017 as D.ex. 4-6. DW3 also produced further documents as contained in the List of Documents dated 19/6/2020 as Dex. 7-8.
22. He testified that the suit land was an open space allocated to a Police Station and he personally signed the letter dated 7/8/13 allocating the land to Muthaiga Police Post and the transfer marked as D.ex No 3 was in support of the allocation. That the ballot card was dated 24/7/2013, D.ex 7 and denied signing the Plaintiff's ballot card. He denied issuing the ballot card in the name of the Plaintiff and further stated that the ballot was not signed nor dated as it should have been. He exhibited ballot DEX NO 7 which was signed and dated and insisted that that was the format the ballot took; it had to be signed and dated by the Company. He informed the Court that there was no other register other than what he had produced in Court.
23. In cross-examination, DW3 was categorical that he was one of the original members of the 3<sup>rd</sup> Defendant having been allocated parcel 1488 in 1999. He however did not adduce any evidence to that end. In addition he stated that the larger parcel of the land owners by the 3<sup>rd</sup> Defendant was subdivided in 1974 and balloting started later. He added that the register that he has produced was generated from the original register of 1974. DW3 admitted not producing the original 1974 register. He also denied any knowledge of the Plaintiff's demand for him to produce the original register in Court but was ardent that the Plaintiff was not allocated the suit land. He also denied the Plaintiff's receipts of payment of membership to the 3<sup>rd</sup> Defendant. He admitted that Joseph Kimuhu was the secretary of the 3<sup>rd</sup> Defendant. With respect to the claim of the Plaintiff, he informed the Court that he was not aware of the application by the Plaintiff for the land despite being a member of the board of the 3<sup>rd</sup> Defendant who attended the meetings regularly. Further he confirmed that he signed the letter dated the 7/8/2013 allocating the land to the 1<sup>st</sup> Defendant. He also confirmed that the transfer was executed in favour of the 1<sup>st</sup> Defendant. With respect to the receipt for Kshs 1500/- the witness informed the Court that the same did not emanate from the Company. That he had no knowledge of any meeting that allocated the land to the Plaintiff and added that in any event Mr Joseph Kimuhu had no powers to allocate the suit land to the Plaintiffs if indeed he did so.
24. Joseph Kamau Kiberenge DW3, informed the Court that he is currently a board member of the 3<sup>rd</sup> Defendant. He adopted his witness statement dated 20/12/2017 as his evidence in chief.
25. He testified that he is a member of the 3<sup>rd</sup> Defendant having inherited his late father's share in the Company in 2005. He could not tell the Company's affairs prior to 2005 including the impugned 1974 original register. That the suit land was allocated to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in 2013.
26. With that the 3<sup>rd</sup> Defendant closed its case and directions were taken for parties to file their final submissions.



27. On behalf of the Plaintiff, the firm of Jesse Kariuki & Co. Advocates filed submissions dated 12/1/2022. The Plaintiff reiterated the averments in her plaint and submitted that upon conducting an official search on the suit land title deed, they discovered that a title deed had been issued in favor of the 2<sup>nd</sup> Defendant. That during the hearing, it emerged that the 2<sup>nd</sup> Defendant did not apply for a plot; the 2<sup>nd</sup> Defendant lacks capacity to hold land on behalf of the Government of Kenya; the plot was said to have been allocated to Muthaiga Residents Group who never applied for it that in any event the allocation was made to Muthaiga Residents Community Police Post, a fundamentally different allottee from Muthaiga Residents Group; the 3<sup>rd</sup> Defendant refused to avail the original register of its members despite a consent order made on 25/3/2019; the transfer forms adduced by the Land Registrar were incomplete and that the suit land having been already allocated to the Plaintiff, was therefore not available for allocation.
28. The Plaintiff relied on Section 120 of the *Evidence Act* and pointed out that the 3<sup>rd</sup> Defendant is estopped from denying the averment that the Plaintiff's name appears in the register that it declined to produce in Court. Reliance was placed on the case of *R vs City Council of Nairobi & 3 others* [2014] eKLR that once an allotment letter has been issued, such land is no longer available for allotment and urged the Court to allow the suit as prayed.
29. In opposition, Senior State Counsel Mwhiki Ndundu on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed submissions dated 21/4/2022 while the firm of Mwhia & Mutai & Co. Advocates filed the 3<sup>rd</sup> Respondent's submissions dated 23/2/2022.
30. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that they filed a balloting card No. 3086 issued to Muthaiga public purposes on 24/7/2013 which was produced by DW2 who also confirmed authoring the letter dated 7/8/2013. That it is not in dispute that they were allocated the suit land though they did not ballot for it since balloting was not necessary. That this was because the land was being surrendered for public purposes under the relevant laws at the material time notably Regulation 11 of the Development and Use of Land (Planning) Regulations of 1961.
31. That the Land Registrar testified that the registration of the 2<sup>nd</sup> Defendant as proprietor of the suit land instead of the Permanent Secretary Ministry of Treasury was irregular does not void the entire transaction ab initio. That the error can be corrected under Section 79 of the *Land Registration Act* which provides for Land Registrars' power to rectify a register as well as this Court's power to order for rectification under Section 80 *Land Registration Act*. They were incessant that the root of their challenged title had been sufficiently explained as held by the Court of Appeal in the case of *Munyu Maina vs Hiram Gathiba Maina* Nyeri CA No. 239 of 2009.
32. The 3<sup>rd</sup> Defendant rehashed the testimony adduced in Court and urged that the Plaintiff failed to prove their shareholding in the 3<sup>rd</sup> Defendant's Company. That the suit land was properly alienated for public use according to the applicable laws. It impugned the undated Plaintiff's ballot card adduced in Court and noted that in any event the said James Kimuchu could not have balloted for the Plaintiff's Company that was non-existent until 2014. The Court was urged to protect the 3<sup>rd</sup> Defendant title as provided under Section 26 *Land Registration Act* and ultimately dismiss the Plaintiff's suit with costs.
33. The main issues for determination in my view are; has the Plaintiff proven its ownership of the suit land? What orders should be made? Who bears the costs of the suit?
34. It is trite that he who alleges must prove. The standard of proof herein is on balance of probabilities. The Plaintiff contends that at all material times it was the original holder of the suit land having been subdivided from L.R 11449/1 formerly owned by the 3<sup>rd</sup> Defendant. Nevertheless, that the 3<sup>rd</sup> Defendant fraudulently and without the Plaintiff's knowledge allocated the suit land to the 2<sup>nd</sup>



Defendant prompting the filing of this suit. In support of its case, the Plaintiff inter alia adduced copies of its certificate of registration and list of membership Pex.1 & 2 and copies of the members' ballot card no. 30386 and RIM area map as P.ex. 3 & 4 respectively.

35. At the heart of this case, is the proprietorship of the land based on an undated ballot card, P.ex. 3. The front part of the card shows that the card is in respect of L.R. 11449/1, belongs to Kimuchu Mageria Self Help Group and bears the 3<sup>rd</sup> Defendant's stamp. The back side of the card shows that balloting confirmation was done by James Kimuhu, Secretary. A copy of the suit land green card was also produced as Pex.5 alongside the proof of the Society's registration, books of account at Murata Sacco, undated letter of application of the plot to the 3<sup>rd</sup> Defendant and receipt issued thereof on 4/11/1999. Pex.5 shows that the 3<sup>rd</sup> Defendant was the first registered owner of the suit land on 4/11/2014 and on the same day transferred to 2<sup>nd</sup> Defendant. PW1 in her own evidence admitted that they were not given a share certificate of the suit land. PW1 could not explain why the ballot card was undated but defended it as genuine.
36. According to PW2, there was no survey done in respect of the suit land and there are no minutes authorizing the application for the suit land. On the averment that the Plaintiff was a member of the 3<sup>rd</sup> Defendant the same was not proven because the register tendered by the 3<sup>rd</sup> Defendant was disputed by the Plaintiff. The Plaintiff did not tender any share certificate in its favour or a copy of the 1974 register to rebut the 3<sup>rd</sup> Defendant's evidence that the register they produced in Court was a replica of the 1974 one.
37. The effect of registration and rights of a title holder are well captured under Sections 24, 25 and 26 [Land Registration Act](#) that;

“24. Interest conferred by registration Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject— (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and (b) to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register. (2) Nothing in this Section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.



26. Certificate of title to be held as conclusive evidence of proprietorship

- (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.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

38. It is not in dispute that the 2<sup>nd</sup> Defendant is the registered owner of the suit land as seen by the register produced in Court. The Land Registrar affirmed the position of the land register as such. That being the case the law is clear that impeachment of a title is through grounds of fraud or misrepresentation, illegality unprocedurality and through a corrupt scheme.
39. The 3<sup>rd</sup> Defendant led evidence that the land was reserved as an open space. The same is shown as an open space in the map produced by the 3<sup>rd</sup> Defendants. Vide the letter dated the 7/8/2013 the 3<sup>rd</sup> Defendant wrote to the Chairman Muthaiga Residents Community informing them that the land has been allocated to residents as public purpose plot and the community could use the same as a security base or any other public purpose. I have perused the register produced in evidence by the 3<sup>rd</sup> Defendant and it shows that the suit land was reserved for Muthaiga Resident’s Community Police Post. The register produced by the Land Registrar shows that the land was registered on the 4/11/2014 in the name of the 3<sup>rd</sup> Defendant and on the same date registered in the name of the 2<sup>nd</sup> Defendant - Kimuchu Police Post of post office Box 146 Thika and a title deed issued on even date. The transfers in support of the transaction were also produced in Court.
40. There was no evidence led by the Plaintiff to impugn the title of the 2<sup>nd</sup> Defendant at all or to show that it had been allocated the land prior to 2013. The Plaintiff relied on two documents in support of its averments of ownership of the land; the undated letter addressed to the 3<sup>rd</sup> Defendant requesting for land for purposes of running a pig rearing project. There is no evidence that this letter was received or acknowledged by the 3<sup>rd</sup> Defendant. This was admitted by PW1 and PW2. From the record the 3<sup>rd</sup> Defendant has refuted receiving this letter. From the letter it is not clear at what period the Plaintiffs applied for the land. The Plaintiff’s claim that they applied for the land in 1996 is therefore unsupported in evidence.
41. The second document relied by the Plaintiff in its ownership quest is the receipt dated the 4/11/1999. The evidence led by the 3<sup>rd</sup> Defendant was that the receipt did not emanate from them. I have carefully perused the receipt and I find the following; that the receipt is for Kshs. 2,826/50 in words but in writing it is indicated the sum of Kshs twenty six thousand and fifty cents. The amount in words and



figures is at variance. The said amount is also at variance with the evidence of the Plaintiff that it paid Kshs 1,500/- for the plot. The purpose of the payment is not clear. It reads a provisional payment for undisclosed nature. The receipt is not on the letterhead of the 3<sup>rd</sup> Defendant. The Court is unable to make a finding that the receipt is for payment of the plot especially that the plot number is not disclosed.

42. The 3<sup>rd</sup> document relied by the Plaintiff is the undated application letter and the ballot. This ballot has been denied by the 3<sup>rd</sup> Defendant as genuine and issued by it. On the contrary the Plaintiff insist that they applied for the land and was given a ballot in return for the plot. The 3<sup>rd</sup> Defendant has presented sample ballots issued by it which on the face are dated and signed by the Company. To the contrary the Plaintiff's ballot is undated and unsigned by the 3<sup>rd</sup> Defendant. If the signing and dating of the ballot is taken to be the practice of the 3<sup>rd</sup> Defendant, then the ballot of the Plaintiff was at variance. It was the Plaintiff's case that they applied for the plot and was issued with a ballot to mean that the Plaintiffs did not ballot for the land at all. Evidence was led by all witnesses in unison that the land was subdivided in 1974 and thereafter members were allowed to ballot for the plots. Therefore the mode of acquisition by the Plaintiff was different so much so that if the acquisition was through ballot, the Plaintiff's admission that it did not ballot and the question is how they ended up being given a ballot before balloting. The Plaintiff did not discharge the burden of proof in that regard.
43. It is the practice and procedure in land buying companies that the members purchase shares, make payments for the shares and other ancillary purposes, are registered as members in the membership register, the land is subdivided and members then ballot for the plots, issued with ballots, allottees are shown the land, some occupy and develop the land, clearance certificates and land control consent to transfer and executed transfers by the land buying Company. These documents are then submitted to the Land Registrar for registration of the title. In this case the Plaintiff has not produced any share certificates to prove that they were members of the 3<sup>rd</sup> Defendant. Neither has it proven that it received any of the above documents from the 3<sup>rd</sup> party. It is clear from the membership register presented by the 3<sup>rd</sup> Defendant that the land was reserved for a Police Station and on the map it is reserved for public purpose. The 3<sup>rd</sup> Defendant being the original owner of the land had the right to issue the land to the 2<sup>nd</sup> Defendant for public purposes as it did.
44. The threshold for proving fraud is beyond above a balance of probabilities but below beyond reasonable doubt. The law is clear as buttressed in the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA. (as he then was) observed;

“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. In this case the Plaintiff's case is anchored on fraud. Fraud cannot be inferred by the Court. It must be pleaded and proved in evidence to the required standard which is above the standard of proving ordinary civil cases. I find that the Plaintiff failed to discharge the burden of proof.
46. It was incumbent on the Plaintiff to lay evidence before the Court in support of its averments as to the ownership of the land. The totality of the evidence adduced together with the burden of proof bestowed upon the Plaintiff to prove her case, I opine that there is no sufficient evidence to demonstrate that the Plaintiff owned the suit land.



47. In the end the Plaintiff's case has not been proven. It is dismissed with costs in favour of the Defendants.

48. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 28<sup>TH</sup> DAY OF JULY 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

**Jessee Kariuki for the Plaintiff**

**1<sup>st</sup> and 2<sup>nd</sup> Defendant – Absent**

**Ms. Wangai for 3<sup>rd</sup> Defendant**

**Court Assistant – Phyllis Mwangi**

