



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Tum & 2 others v Towett & 5 others (Environment & Land Case
501 of 2017) [2022] KEELC 13790 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 501 OF 2017
CG MBOGO, J
OCTOBER 25, 2022**

BETWEEN

**PAUL CHERUIYOT TUM 1ST PLAINTIFF
PRISCILLA CHEPKEMOI TEMUGE 2ND PLAINTIFF
STANLEY KIPKORIR LANGAT 3RD PLAINTIFF**

AND

**ANNA CHERONO TOWETT 1ST DEFENDANT
RICHARD KIPRONO KOECH 2ND DEFENDANT
SAMSON KIPAS KOINI 3RD DEFENDANT
DISTRICT LAND REGISTRAR, NAROK 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT
JOSEAH KIPKIRUI MUTAI 6TH DEFENDANT**

RULING

1. The plaintiffs filed a plaint dated October 12, 2011, an amended plaint dated March 8, 2016 and a further amended plaint dated February 7, 2018. In the further amended plaint, the plaintiffs are seeking the following orders: -
 - a. An order of cancellation of all transactions including mutation and transfer of resultant titles affecting LR. No Cis Mara/Ilmotiok/4521.
 - b. An order of mutation of LR No Cis Mara/Ilmotiok/4521 into five (5) portions and transfer of the resultant titles in favour of the plaintiffs and the 1st and 2nd defendants in accordance with purchase price contributions.



- c. Costs of the suit plus interest.
2. In the further amended plaint, the plaintiffs stated that the 1st plaintiff's father, the 2nd plaintiff's late husband, the 3rd plaintiff and the 1st and 2nd defendants formed a group and contributed money amounting to Kshs. 392,000/= for purchase of land in Narok North between the year 1984 and 1990. That the group consisting of five members approached the 3rd defendant who agreed to sell to them the parcel of land known as LR No Cis Mara/Ilmotiok/462 measuring approximately 22.97 hectares and that in the year 1986, the 3rd defendant caused the mutation and subdivision of the parcel of land into five portions known as LR No Cis Mara/Ilmotiok/874,875,876,877 and 878 for purposes of facilitating settlement and eventual transfer in their favour.
 3. The plaintiffs further stated that sometime in the year 2008, the 3rd defendant without their knowledge and consent and in collusion with the 1st, 2nd and 4th defendants fraudulently caused the subdivided portions to form parcel of land known as LR No Cis Mara/Ilmotiok/4521 which was subdivided on 18th November, 2008 to create LR No Cis Mara/ Ilmotiok/ 4546 ,4547, 4548, 4549, 4550 and 4551 which parcel were registered in the names of the plaintiffs and the 1st,2nd and 6th defendant who was not a member or contributor to the purchase of the initial parcel of land LR No Cis Mara/Ilmotiok/462.
 4. The plaintiffs particularized fraud as follows: -
 - a. Effecting transfer of land without the requisite execution of transfer documents by the transferees, or
 - b. Forging transfer documents in the names of the plaintiffs and processing title deeds in their names without their knowledge or consent.
 - c. Processing, issuing and obtaining title deeds indicating acreage which is at variance with the acreage on the ground.
 - d. Transferring to the plaintiffs less land than their financial contributions while the 1st and 2nd defendants acquired more land than their financial contribution.
 - e. Excising a portion of land now known as LR No Cis Mara/Ilmotiok/4551 and transferring it to the 6th defendant for unknown consideration and converting the proceeds thereof to their own use.
 5. The plaintiffs therefore claim cancellation of all transactions including mutation and transfer of LR No Cis Mara/Ilmotiok/ 4521 and a further claim of mutation of the said LR No Cis Mara/Ilmotiok/4521 to five portions.
 6. The 1st and 2nd defendants filed a statement of defence dated December 7, 2011. The 1st and 2nd defendants stated that the plaintiffs' relatives never participated in the search and negotiations of the purchase of the suit property. Further that they were not aware of any subdivision and that the subdivision and transfer was the mandate of the 3rd defendant who was the absolute registered proprietor of Cis Mara/Ilmotiok/462. The 1st and 2nd defendants further stated that the plaintiffs signed the transfer forms voluntarily and there were no forgeries and the acreage each individual got corresponded with their financial contribution. Further that the claim sought by the plaintiffs should not be allowed as it would revert back to the 3rd defendant who has already utilized the purchase price.
 7. The 3rd defendant filed a statement of defence of even date. The 3rd defendant stated that the plaintiffs' never approached him or negotiated for purchase of Cis Mara/Ilmotiok/462 and that the division and transfer was his mandate as the absolute registered proprietor and therefore there was no collusion with



- any one. Further, that all the transferees signed the transfer forms voluntarily and that the subdivision and sale of Cis Mara/Ilmotiok/4551 to the 6th defendant was within his right.
8. The 4th and 5th defendants filed their statement of defence dated September 23, 2013. The 4th and 5th defendants denied fraud and stated that if at all a transfer and subdivision of the said parcel was done, then the same was done procedurally and with the consent of concerned parties.
 9. The 6th defendant filed a statement of defence dated May 26, 2016 whose contents was similar to that of the 3rd defendant.
 10. The matter proceeded for hearing on October 16, 2019. Paul Cheruiyot Tum (PW1) while adopting his witness statement dated March 8, 2016, testified that the 5 members of the group were Joseph Kipruto Temuge, Jacob Kiptum Togom, Stanely Kipkorir Langat, Richard K. Koech and Paul Towett. He further testified that the group did not have a name and was not registered and that the parcel of land known as LR No Cis Mara/Ilmotiok/462 was registered in the name of the 3rd defendant. He further testified that his late father purchased about 16 acres through a verbal agreement. He testified that the land was transferred to him by the 3rd defendant but that he did not sign any transfer documents. Further, that the 3rd defendant received kshs. 6,000 per acre which amounted to kshs. 392,000 which figure he obtained from the register kept by the members showing how they contributed and which has been in his possession.
 11. PW1 further testified that land parcel Cis Mara/Ilmotiok/4521 is registered in the name of the 3rd defendant and that the 5 sub divisions of parcels 462 was reconsolidated and later sub divided and his late father's name was registered as the owner of land parcel No 4547 which parcel of land is about 6 acres but the title shows 12 acres.
 12. On further cross examination, PW1 testified that his late father purchased the land in 1984 which together with his father, they went and checked and were shown the boundaries He testified that the 3rd defendant was selling 65 acres and his father informed him that they were to share in the ratio of three. Further, that the signature appearing on the consent to the Land Control Board dated August 15, 2018 and the transfer form is not his. He further testified that he did not pay for stamp duty as the title was brought to him.
 13. Further hearing took place on December 2, 2019. Stanley Kipkorir Langat (PW3) while adopting his witness statement dated March 8, 2016 testified that his contribution was for purchase of 12 acres but the ground acreage is 8 acres and has lived on the suit land for long. That despite not having the original title in court, the acres on the ground differs with that indicated in the title. Further that he contributed Kshs. 90,000/- for 12 acres to the 3rd defendant through an agreement sometime in the year 1984 when he visited the land. Further, that they engaged a government surveyor whom they showed the land that was to be divided. He was issued land parcel No 874 which was registered in his name and was later cancelled and issued with a new title Cis Mara/Limotiok/4546.
 14. PW3 further testified that being the treasurer, he recorded all the payments that the members paid and was also custodian of the money and as such the defendants were allocated land over and above their contributions. Further, that the signature on the witness statement is his but then one on the transfer documents is not his.
 15. On further cross examination, PW3 testified that land parcel No 874 was never registered until later in the year 2010 when they were issued with the new title deeds. He further testified that although the group was not registered, the Registrar of Land knew that they had purchased the land which payment was made by the 1st defendant who they gave all the money. He further testified that there was no written sale agreement. On the other hand, the 3rd defendant signed for all the payments that he had



- received. Further, that he was not present when the land was sold to them and has no issues with the 6th defendant save to say that he wanted to remove them from their land. On re-examination, PW3 testified that the initial land parcel number 874 belonged to him and that the parcel of land he occupies does not reflect what is contained in the title deed. In addition, he did not sign any transfer documents.
16. On February 25, 2021, Priscilla Chepkemoi Temuge (PW4) while adopting her witness statement dated 8th March, 2016 testified that her husband was entitled to 18 acres which they both contributed KShs. 129,000/- but she is currently in occupation of 8 acres which is Cis Mara/ Ilmotiok/ 4548. Further that the group was not registered save that there were minutes which were recorded in a book. PW4 further testified that the parcel of land was sold to them by the 3rd defendant who informed her that she is entitled to the acres of land as per her contribution. On further cross examination, PW4 testified that her late husband visited the land prior to the purchase, and her husband paid KShs. 50,000/- and she paid the remainder of the amount. Further, she constructed a house on the land and the 2nd defendant is currently in occupation.
 17. On June 16, 2021, Gabriel Wasike (PW2) testified that he did not participate in the preparation of the report that emanated from his office and that he is not familiar with the signature on the mutation forms. He produced a Registry Index Map (RIM) dated January 22, 1994 and confirmed it is from the survey office.
 18. The matter proceeded for defence hearing on February 23, 2022. The 3rd defendant while adopting his witness statement dated December 7, 2011 testified that in the year 1984, he was approached by people who wanted to purchase his land and each one of them bought land individually. On cross examination, the 3rd defendant testified that he does not know if the purchasers contributed money to purchase land as each one of the purchasers approached him individually. He further testified that those who purchased land from him were represented by the 1st plaintiff and the 1st and 2nd defendant who paid him the full purchase price in cash and thereafter, he transferred the land to them and gave them the title deed. The 3rd defendant further testified that he consolidated the land before subdivision and also sold the remaining parcel of land to the 6th defendant after the group of 5 members had purchased the land. As for the 1st plaintiff, he applied for a title deed after his late father had purchased the land and to the best of his knowledge, he never expressed any displeasure with the acreage. Further that the 3rd plaintiff was a member of the group and who obtained his own title deed. Further, that from the year 1984 until the year 2011, there were no complaints and as such, it is not possible to have his title deed cancelled so that his land can be distributed to the plaintiffs.
 19. The 2nd defendant while adopting his witness statement dated December 7, 2011, testified that they were 5 members who contributed money to purchase land from the 3rd defendant and each one of them contributed whatever money they had and paid the same to the 3rd defendant. In his case, he purchased 10 acres and obtained title to the same. On cross examination, the 2nd defendant testified that he does not know the total acreage of the land that was on sale but in his case, he paid the 3rd defendant KShs. 55,000/- and entered into a sale agreement. Further, that five title deeds were issued and whereas he bought 10 acres, he got only 9 acres. The title deeds that were issued were never consolidated thereafter. He further testified that those who purchased land did not complain about the size of the land that they bought. It is their successors who are now complaining. He further testified that they combined their money and gave it to the 3rd defendant who signed the transfer documents. Further, it was his evidence that the 6th defendant also purchased land from the 3rd defendant.
 20. The 4th defendant while adopting his witness statement dated October 21, 2020 testified that the right procedure was followed in transferring the parcel of land to the purchasers of land and that he is not aware of any criminal charges for fraud having been preferred against his officers. On cross examination,



he testified that he has not seen the consent to allow the sub division of parcel number Cis Mara/ Ilmotiok/462 and that he was not furnished with consent for consolidation because it is not necessary to apply for one during consolidation. He further testified that the titles were properly transferred to the current owners. Parcel number 4546 was transferred to Stanley Korir Langat on May 14, 2009 and parcel number 4551 was transferred to Josiah K. Mutai on November 19, 2008. At the same time, there was further sub division on 873. Further that the process of transfer is initiated by both the seller and the purchaser and he is not aware if the 3rd defendant has complained that his parcel of land was illegally acquired. The title deeds show approximation of the acreage. Parcel No 4551 was properly transferred. Further, that there was no group of persons who presented themselves as purchasers of the land in question. In addition, there was no requirement for consent to consolidate the parcels of land as the 3rd defendant had the mandate to transfer his land.

21. The 6th defendant while adopting his witness statement dated November 13, 2019 testified that he purchased 7 acres of land in the year 2008 from the 3rd defendant and they entered into a sale agreement. That prior to the sale agreement, he conducted a search. After entering into a sale agreement, the transfer forms were executed in the lands office where together with the 3rd defendant they signed a consent on 14th January, 2008 and transfer. He further testified that he later purchased land from the 1st defendant's husband while he was still alive and obtained a title deed for the same and he followed proper procedure in acquiring parcel No 4551. He testified that he paid stamp duty and is satisfied with what he bought.
22. On May 19, 2022, Anna Cherono Towett the 1st defendant while adopting her supplementary witness statement dated February 23, 2022 testified that she was not aware that her husband had entered into a group in order to purchase land but she recalls that her late husband sold his portion of land to the 6th defendant. As far as she can recall, the land which her husband bought was 15 acres and when the surveyors came to confirm the acreage, it was found to be 12 acres. It is this land that her husband sold to the 6th defendant and due process was followed.
23. The plaintiff filed written submissions dated July 27, 2022. The plaintiffs raised four issues for determination which is as outlined below: -
 - i. Whether or not the parties herein were in a binding oral agreement to buy a piece of land.
 - ii. Whether or not the 1st, 2nd and 3rd defendants fraudulently consolidated and divided LR No Cis Mara/Ilmotiok/4521.
 - iii. Whether or not the plaintiffs are entitled to the prayers sought.
 - iv. Who should bear the costs of the suit.
24. On the first issue, the plaintiffs submitted that the genesis of this matter resulted from the agreement the parties had with each other to contribute money for purposes of purchasing land parcel number Cis Mara/Ilmotiok/462 and that although there was no oral agreement, Section 3 of the *Law of Contract Act* cannot interfere with constructive trust that parties created with the facts of this case that there was common intention from all the parties to buy land and nothing prevents parties from relying upon the doctrine of constructive trust created by the facts of the case. The plaintiffs relied on the cases of *Macharia Mwangi Maina & 87 others versus Davidson Mwangi Kagiri* [2014] eKLR and *Yaxley versus Gotts* [2000] Ch. 162 (Yaxley's case).
25. On the second issue, the plaintiffs submitted that it is evident from the surveyor's report that the acreage on the ground is smaller than the acreage in the title deeds. Further, that the 1st, 2nd and 3rd defendants got their titles ready on November 19, 2008 and collected them on November 20, 2008



while the plaintiffs titles were ready on July 30, 2009. The plaintiffs submitted that the consolidation of LR No Cis Mara/Ilmotiok/4521 and its subdivision did not follow the right legal procedure as there was no consent to that effect thus any dealings in land held under absolute ownership without the requisite consent of the owner is illegal ab initio.

26. The plaintiffs further submitted that the transaction that lead to the amalgamation of this parcel of land was marred with fraud on the part of the 1st, 2nd and 3rd defendants for the reason that the subdivision took place back in the year 1983 in respect of the purchasers but later on July 28, 2008 the parcels of land were amalgamated yet the purchasers did not give consent to the amalgamation of the said parcel of land and in addition the plaintiffs also rejected that they signed any transfer documents with the 3rd defendant after subdivision of Cis Mara/Ilmotiok/4521. The plaintiffs further submitted that the 3rd defendant forged the application to subdivide as he did not indicate the names of the purchasers in the letters of consent that he propounded under clause 2 (d) as the 3rd defendant indicated that he is transferring the parcels to himself even though parties had already purchased land. Further, that the documents used to transfer interest to the 6th defendant was forged despite the transfer document being dated November 18, 2008 the parties couldn't tell during cross examination as to where the document was commissioned. The plaintiffs relied on the cases of *Vijay Morjaria versus Nansingh Madhusingh Darbar & Another* [2000] eKLR and *Ratilal Gordhanbhai Patel versus Lalji Makanji* [1957] EA 314-317.
27. On the third and fourth issues, the plaintiffs submitted that the transactions were marred with fraud and this court ought to grant the prayers sought together with costs. The plaintiffs relied on the case of *Mamta Peeush Mahajan (Suing on behalf of the Estate of the Late Peeush Premal Mahajan) versus Yashwant Kumari Mahajan (Sued personally and as executrix of the Estate and Beneficiary of the Estate of the Late Krishan Lal Mahajan)* [2017] eKLR.
28. The 1st, 2nd and 3rd defendants filed written submissions dated August 19, 2022. The 1st, 2nd and 3rd defendants submitted on the following issues: -
 1. Whether there was a joint agreement between the plaintiffs as a group and the 3rd defendant for purchase.
 2. Whether fraud has been proved on the part of the defendant and in particular the 3rd defendant.
 3. Forging transfer documents in the names of the plaintiffs and processing title deeds in their names without their knowledge or consent.
29. On the first issue, the 1st, 2nd and 3rd defendants submitted that the 3rd defendant who is the original owner sold land to the plaintiffs individually and hence dealt with them as they came and it is not logical to purport to purchase land without first ascertaining the acreage and entering into an agreement for sale thereafter. As such there is nothing to show how money exchanged hands. That the purchasers' claims are allegations and it was their duty to keep records which has not been proved.
30. On the second issue, the 1st, 2nd and 3rd defendants submitted that for fraud to be upheld, the plaintiffs must prove that they were entitled to more than what they actually got from the 3rd defendant. Further, that the law is clear that he who alleges must prove. The 1st, 2nd and 3rd defendants submitted that at no point did the plaintiffs produce any transfer document which they claimed was used to transfer land in their name with a forged signature as they allege and the evidence of the 4th defendant is clear that the procedure was followed in acquisition of the titles. Further, that the 4th and 5th defendants supplied to the court all the documents used to effect transfer on the land and not even the application of transfer form was challenged on the basis of fraud. That for the plaintiffs to prove fraud, they must



prove the acreage each was to get from the 3rd defendant and why they were comfortable with the act of combining the plots arising from the subdivision. That there was no memorandum showing the acreage they were purchasing or the price per acre and as such they were not diligent in their dealing in the purchase of the land. They further submitted that none of the transfer forms appears in the plaintiffs' documents in support of the allegation of fraud and that in the absence of forgery, this suit was an afterthought and an intention to get more than what they had bargained and purchased. The 1st, 2nd and 3rd defendants relied on the cases of *Kinyanjui Kamau versus George Kamau* [2015] eKLR and *Esther Njiru & Another versus Leonard Gatei* [2014] eKLR.

31. The 4th and 5th defendants filed written submissions dated August 3, 2022. The 4th and 5th defendants raised two issues for determination as follows: -
 - i. Whether there was fraud on the part of the 4th defendant.
 - ii. Whether the plaintiffs are entitled to the orders sought.
32. On the first issue, the 4th and 5th defendants submitted that no evidence has been produced before the honourable court to demonstrate that indeed a report was made in respect to the alleged forgery of documents and no criminal case was ever instituted as against the 4th defendant. Further, that he who alleges must prove and the plaintiffs are under an obligation to prove fraud on the part of the 4th defendant and mere allegations do not suffice. The 4th and 5th defendants relied on the cases of *Kuria Kiarie & 2 others versus Sammy Magera* [2018] eKLR, *Ndolo versus Ndolo* [2008] KLR (G& F)742, *Gudka versus Dodhia*, Civil Appeal No 21 of 1980 and *R.G. Patel versus Lalji Makanji* (1957) EA 314-317.
33. On the second issue, the 4th and 5th defendants submitted that the plaintiffs have failed to prove any particulars of fraud as alleged as the 4th defendant executed his mandate in good faith and in line with his statutory duties. They relied on the case of *Mutiria Karumbai Macaw versus James Njagi Makembo & 3 others* [2018] eKLR.
34. The 6th defendant did not file written submissions.
35. I have analysed and considered the pleadings and the written submissions filed by the parties except the 6th defendant. The issues for determination are as follows: -
 1. Whether the plaintiffs have proved the allegations of fraud.
 2. Whether the plaintiffs are entitled to the orders sought.
36. It is trite law that fraud is a serious allegation that can lead to cancellation of a title. Section 26 (1) of the *Land Registration Act* states that a certificate of title can be challenged on the ground of fraud or misrepresentation to which the person is proved to be party to. The Court of Appeal of Uganda held in *Katende – vs - Haridas and Company Limited* (2008) EA 173 that “for a party to plead fraud in registration of land a party must first prove fraud was attributed to the transferee. It must attribute either directly or by necessary implications that is, the transferee must be guilty of some fraudulent act or must have known such act by someone else and taken advantage of such act. Fraud can be participatory that is, the party participates in the fraudulent dealings. Fraud can also be imputed on a person, that is, when he or she was aware of the fraud and condoned it, or benefited from it or used it to deprive another person of his rights. All those people who actually participate in the fraudulent transactions and who had knowledge of it are privy and had notice of fraud.”
37. The plaintiffs must specifically plead fraud and prove it, since it's a question of evidence as stated in Section 109 of the *Evidence Act*. In *R. G Patel – Vs - Lalji Makanji* (1957) EA 314 it was stated: -



“Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

38. In this case, the evidence placed before this court is that the 3rd defendant was the registered owner of property known as Cis Mara/Ilmotiok/462 and sold the said land to the plaintiffs and the 1st and 2nd defendants. As can be deduced from the testimony of the plaintiffs and the 1st, 2nd defendants, is that they formed a group to purchase land from the 3rd defendant in the year 1984. From the documents produced by PW4, Cis Mara/Ilmotiok/ 462 was subdivided into four portions namely 874, 876, 877 and 878 and which the 3rd defendant had titles to the said properties issued to him on 1st July, 1986. Vide a mutation form dated June 3, 2008, the 3rd plaintiff caused the amalgamation of land parcel number 874, 876, 877 and 878 to form a new plot known as Cis Mara/Ilmotiok/4521. It is this property now known as Cis Mara/Ilmotiok/4521 that was further subdivided and birthed Cis Mara/Ilmotiok/ 4546, 4557, 4558, 4549, 4550 and which 4551 was then transferred to the plaintiffs, 1st, 2nd and 6th defendants.
39. However, there seems to be a missing link in the plaintiffs’ evidence. The plaintiffs claim that the initial property known as Cis Mara/Ilmotiok/462 was to be subdivided into 5 portions and each one acquired their respective portions. They further claim that the purchase price per acre was KShs. 6,000/= . None of the plaintiffs has produced evidence to show records or even minutes of the computation of the amounts contributed. The plaintiffs further could not explain whether survey was done to show the acreage. The plaintiffs did not produce title deeds to the parcels which they own despite admitting that they are in their possession. In addition, the plaintiffs have all remained silent on the portion of land known as Cis Mara/Ilmotiok/875 which was a subdivision of Cis Mara/Ilmotiok/462. The plaintiffs did not provide evidence to show that the signatures were forged. I believe they should have called an expert to shed light on whether the signatures were forged or otherwise.
40. Land transactions especially where land is acquired through purchase involves two parties: the seller and the purchaser. The risk in the property as is the norm passes on to the buyer and in my view, the buyer ought to exercise due diligence and caution when buying land. In this case, the purchasers ought to have moved with speed and have the land transferred to them as soon as they paid the full purchase price. They did not.
41. The term fraud in *Black’s Law Dictionary* is termed as follows;
- “Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.
42. In the case of *Evans Otieno Nyakwana vs Cleophas Bwana Ongaro* [2015] eKLR Majanja J held, *inter alia*, that;
- “In this case, it is the Respondent who filed the defence and counterclaim and alleged that the document relied upon by the Plaintiff was a forgery. It was therefore incumbent upon him to prove this fact by marshalling the necessary evidence to support his case. The burden



of proof to prove fraud lay upon the Respondent. As regards the standard of proof, I would do no better than quote *Central Bank of Kenya Ltd vs Trust Bank Ltd and 4 Others* Nai Civil Appeal No 215 of 1996 (UR) where the Court of Appeal, in considering the standard of proof required where fraud is alleged, stated that;

“The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary civil case”.

43. In my humble opinion, the allegations of fraud must be proved through cogent evidence whose degree of proof must be higher than the ordinary proof of balance of probabilities. In this case, I find that the allegations of fraud alleged by the plaintiffs have not been proved. Fraud being a serious allegation calls for investigation. The plaintiffs did not report fraud with the relevant agencies.
44. Arising from the above, I find that the further amended plaint dated February 7, 2018 lacks merit. The same is dismissed. I am of the view that in order to foster trust between the parties herein and more particularly the plaintiffs and the 1st, 2nd, 3rd to 6th defendants, each party should bear their own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 25TH DAY OF OCTOBER, 2022.

HON. MBOGO C.G.

JUDGE

25/10/2022.

