



REPUBLIC OF KENYA



**Chabari & 3 others v M'anania (Environment & Land Case 38 of 2016)
[2022] KEELC 15255 (KLR) (7 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15255 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 38 OF 2016**

CK YANO, J

DECEMBER 7, 2022

BETWEEN

**SILVANA KARIMI CHABARI 1ST PLAINTIFF
DOMINICA MUTHONI M'IBARI 2ND PLAINTIFF
MAGDALENE MWARI MWAJA 3RD PLAINTIFF
MWAROMO MUGIRA M'MUGAMBI 4TH PLAINTIFF**

AND

FABIAN KITHINJI M'ANANUA DEFENDANT

JUDGMENT

A. Introduction

1. In this case, I am required to write a judgment based on the evidence that was partly taken by L Mbugua J who was seized of the matter before she was transferred. The learned Judge took the evidence of PW 1, PW 2, DW 1, DW 2, DW 3, and DW 4. Pursuant to the provisions of order 18 rule 8(1) of the [Civil Procedure Rules](#), I proceeded with the matter and took the evidence of DW 5 and concluded the matter.

B. The Plaintiffs' Case

2. The plaintiffs commenced this suit by a plaint dated May 30, 2012 and amended on July 27, 2020 on their own behalf and on behalf of the estate of M'Muraa Mangua (Deceased). The plaintiffs aver that prior to his death, the deceased had two pieces of land namely LR Nos Nkuene/Ngonyi/400 and 672.
3. The plaintiffs aver that they were born and brought up on LR No Nkuene/Ngonyi/400 and have continued to use, cultivate and eke a living out of the said land measuring 4.0 Ha until they were driven out from the suit land by the defendants during the pendency of this suit.



4. The plaintiffs aver that in the year 2004, they discovered that the defendant's father had the suit land transferred into his name without the knowledge of the plaintiffs or their father, an act they claim was fraudulent and deceitful. The plaintiffs listed the particulars of fraud and deceit on the part of M'ananua M'Itere (deceased) as transferring parcel No Nkuene Ngonyi/400 without authority, forging the hand of the plaintiffs' father to transfer the land to himself, invading the plaintiffs land without justifiable cause and orchestrating forgeries to have the suit land into his names.
5. The plaintiffs pleaded that in a bid to repossess the said land, they filed Meru Central LDT No 27 of 2004 against the defendant's father and in the award dated August 12, 2004, LR No Nkuene/ Ngonyi/400 was ordered to be returned to the plaintiffs. That the defendant's father was dissatisfied and filed Eastern Province Land Appeals Committee Appeal No 54 of 2004 and on April 3, 2006, the appeal by the defendant's father was dismissed, and the award of the appeals committee read to the parties on May 11, 2005 vide Meru LDT case No 83 of 2004. However a judicial review application quashed the said decision due to the reason that the suit land was registered and therefore the tribunal had no jurisdiction to entertain the claim, hence this suit.
6. The plaintiffs aver that immediately after the said award was read, the defendant and his siblings descended upon the properties belonging to the plaintiffs and destroyed them.
7. The plaintiffs further aver that in the year 1997 the defendant's father fraudulently filed a Succession Cause No 72 of 1997 (M'ananua M'itere v Silvana Karimi Chabari & Dominica Muthoni M'ibari) over the estate of their father purporting to be his son and eyeing LR No Nkuene/Ngonyi/672 and after a full hearing the court awarded the land LR No Nkuene/Ngonyi/672 to the plaintiffs.
8. The plaintiffs aver that LR No Nkuene/Ngonyi/400 is their family and ancestral land and that any passing of the title to the defendant's father was without any consideration, was illegal and fraudulent, adding that the defendant's father is only a bare trustee on behalf of the plaintiffs. The plaintiffs further aver that the defendant's father was not gifted the suit land and that the register of the said land should be rectified and the name of the defendant's father be cancelled and the said land transferred to the plaintiffs.
9. The plaintiffs aver that they discovered that while this suit was pending in court, the defendant herein caused the parcel of land to be registered in his name on August 15, 2014 and it is the plaintiff contention that the said registration was fraudulent and illegal and has occasioned them loss and damage. The plaintiffs have itemized the particulars of fraud and illegalities on the part of the defendant and state that without grant of representation transferring the parcel of land Nkuene/Ngonyi/400 to himself, transferring the suit land to himself to defeat the plaintiffs' claim, transferring title to himself without legitimate papers, obtaining title while the suit is pending in court, and misleading all and sundry to believe that the suit land belongs to him and his family. The plaintiffs have also listed the particulars of loss and damage as loosing Nkuene/Ngonyi/400 at the behest of the defendant and the land being taken away to their detriment and prejudice.
10. The plaintiffs aver that they pressed criminal charges and the defendant was found guilty of altering documents without authority contrary to section 357 (a) of the [Penal Code](#) being transferring of parcel No Nkuene/Ngonyi/400 in Nkubu Criminal Case No 28 of 2015 Republic v Fabian Kithinji M'Ananua.
11. The plaintiffs pray for judgment against the defendant for:
 - a. A declaration that LR No Nkuene/Ngonyi/400 is family and ancestral land of the plaintiffs.



- b. A declaration that the transfer of LR No Nkuene/Ngonyi/400 to the defendant was illegal, wrongful and fraudulent.
 - c. An order directed to the Land Registrar Meru for rectification of the register of LR No Nkuene/Ngonyi/400 by cancelling the name of Fabian Kithinji M'ananua and registering the plaintiffs as proprietors of the said land and eviction of the defendant.
 - ci) An order of eviction of the defendant, his siblings, agents, servants or any person claiming under the defendant's authority, direction or behest from parcel Nkuene/Ngonyi/400 and the OCS Nkubu Police Station to ensure compliance within 30 days.
 - d. An order of permanent injunction restraining the defendant, his siblings, agents, servants, or any person claiming under the defendant's authority, direction or behest from ever interfering with the plaintiffs' user, occupation and ownership of LR No Nkuene/Ngonyi/400
 - e. Costs and interest of the suit.
12. At the hearing Bishop Daniel Kinoti Mburugu testified as PW 1. He adopted his witness statement dated July 28, 2020 as his evidence in chief and was cross examined and re-examined. He testified that his mother Maria Ntirindi M'Itere is sister to M'Ananua M'Itere, the deceased herein and the original defendant in the case. He stated that he knows the plaintiffs who are children of Muraga Magua alias M'Muraa Mangua (deceased) who died in 1987 and lived at Kianyaga village and owned parcels Nkuene/Ngonyi/400 and Nkuene/Ngonyi/672.
 13. PW 1 gave a history of the two parcels of land which he stated belonged to M'Muraa Mangua. He stated that M'Ananua M'Itere filed a Succession Cause No 72 of 1997 in Meru High Court passing himself off as M'Muraa Mangua's son and got title to Nkuene/Ngonyi/672 and registered it in his name on March 6, 1997. That M'Ananua M'Itere (deceased) had taken advantage of the plaintiffs who are women to steal their father's land.
 14. In his statement, PW 1 stated that in 2006, the plaintiffs got to know the mischief and challenged the issuance of the title in the succession cause and the court found in their favour and cancelled the title while revoking the grant vide a judgment delivered on May 28, 2010 and the land reverted back to the plaintiffs' names and now have title.
 15. PW 1 stated that Muraa Magua, the plaintiffs' father gathered parcel No Nkuene/Ngonyi/400 and got registered as the first registered owner in 1976. That he lived on the land together with the plaintiffs and the wife of M'Mwari his brother who died earlier. That the deceased left the plaintiffs exclusively farming the land and eventually the wife of M'Mwari passed on. That it is then that M'Ananua M'Itere the father to Fabian Kithinji, the defendant herein, descended on the land and began to subdivide the same. That it was at that time in the year 2004 that the plaintiffs realized that the land was in the names of M'Ananu M'Itere.
 16. PW 1 stated that those acts prompted the plaintiffs to file suit in Meru central Land Disputes Tribunal case No 27 of 2004 in which the elders found that Nkuene/Ngonyi/400 had been obtained fraudulently by M'Ananua M'Itere (deceased). That M'Ananua M'Itere filed an appeal to the Eastern Provincial Appeal Committee Appeal No 54 of 2004, but the appeal was dismissed and the elders' award was upheld. That he filed a Judicial Review in the High Court at Meru No 149 of 2006 which was allowed as the elders had no powers to deal with ownership of registered land, hence this suit. That immediately, the defendant's father descended on the suit land, evicted the plaintiffs and started to develop it.



17. That the plaintiffs filed ELC Case No 22 of 2012 and obtained orders of injunction against one John Muthuri, his family members and agents from working and dealing with LR No Nkuene/Ngonyi/400 on October 18, 2013. That John Muthuri M'Ananua is since deceased having died on January 18, 2016 and was the legal representative of the estate of his father, the original defendant.
18. It is further stated that as the plaintiffs were pursuing the case in the Environment and Land Court, they got wind of a succession cause that had been filed by John Muthuri M'Ananua in High Court No 615 of 2010 and filed an objection before confirmation of grant and that the cause is still pending determination. That as the case was pending before court, the defendant herein, Fabian Kithinji fraudulently transferred the suit land No Nkuene/Ngonyi/400 from his deceased father to himself.
19. PW 1 further stated that the defendant and his family have continued to cultivate and develop the land despite existing court orders. That the plaintiffs pressed criminal charges against the defendant in Nkubu criminal case No. 28 of 2015 where he was found guilty and sentenced to a fine of Kshs 100,000/= or 3 years imprisonment for the offence of making a document being transfer of parcel No Nkuene/Ngonyi/400 in his name without authority contrary to section 357 (a) of the Penal Code.
20. When PW 1 was cross examined by Mr Thangicia, learned counsel for the defendant, he stated inter alia that he knew the history of the family. That parcel No 400 was originally in the name of M'Iriga Mambua and that his first wife, mother of Silvana Karimi, the 1st plaintiff was not alive. He stated that he was born in 1953 and he knew M'Iriga Mambua from 1967 when he was aged 13 years and that his mother Maria Tirindi hailed and was a sister to M'Ananua M'Itere and used to visit his grandmother called Karai M'Itere and that her mother told him parcel No. 400 belonged to M'Iriga.
21. PW 1 stated that when he knew M'Iragu in 1967, he had two children namely: Silvana Karimi, the 1st plaintiff and Prisca M'Nairobi. That M'Iragu was also staying with 3 daughters of his brother known as M'Mwari and the children of M'Mwari were Mwaromo Mugita (the 4th plaintiff) Dominica Muthoni (2nd plaintiff and Madalina Mwari. That Mwari died and left his children with M'Iriga and that they used to find M'Iragu on that land with mother of Mwaromo Madalina and were told that that was wife to his brother and those children were his brother's children. That the mother of Mwaromo was staying on that land No 400 and a house was built for her there. That M'Aramo M'Itere is a brother of PW 1's Mother (Maria Tirindi) so he is his uncle. That Karai had 3 children namely, Maria Tirindi, M'ananua M'Itere and Teresia Mwari.
22. PW 1 stated that M'Iragu Mambua was being given work of digging holes to plant coffee at the land of M'Araru M'Itere at Igokine and that when he finished the job, he did not see him marrying. That he never saw Karai and M'Iragu staying together. That M'Iragu died around 1997 when he was not staying with any wife, and was buried by the defendant's mother on parcel No 215 and not parcel No 400 or 672.
23. PW 1 was also re-examined by Mr. Mwanzia, Learned counsel for the plaintiffs. He stated inter alia, that the defendant entered land parcel No 400 when this case was ongoing.
24. PW 2 was Silvana Karimi Chabari, the 1st plaintiff who adopted her witness statements filed as her evidence in chief. She also produced the documents in the plaintiffs' bundle as P exhibit 1 – 16 respectively and was cross examined and re-examined. Her statements basically reiterated the averments contained in the amended plaint. PW 2 stated that she was the first child of Muthoni and Miraga while the second child is called Nkuene Prisca who was a young child when their mother died. That Karai Jema, mother of M'ananua used to come and bring them food and assist them in farming and had her own children, M'ananua, Tirindi and Mwari.



25. PW 2 stated that when they were young their father also stayed on the suit land with two women, Mother of the other plaintiffs and was called Nchooro wife of M'Mwari. That her father told her M'Mwari was her father but did not introduce other siblings. That the 2nd to 4th plaintiffs are children of M'Mwari while Prisca Nchooro is a sister to PW 2 who stays at her own home. That the suit land belongs to M'uraa and M'Mwari and that M'Mwari is the one who gave his brothers the whole land.
26. PW 2 stated that their mother did not marry again after the death of her father. That Mwari had built on the suit land and when he died he was buried on the land. That Muthoni, her mother was also buried on the suit land. That when her father died, he was buried at Jema's place, though they did not attend the burial as they were not told about it. PW 2 denied that her father married Jema, adding that they had no children and denied that Teres is a child of their father.

C. The Defendant's Case

27. The defendant filed a defence dated October 13, 2020 and denied the plaintiffs' claim. The defendant avers that the plaintiffs have never lived, taken possession, occupied or eked a living from parcel Nkuene/Ngonyi/400 adding that it is only the defendant and his family who have lived on the land since 1970s. It is the defendant's contention that the plaintiff's corrupted their way through tribunals to get an award in their favour but the award was quashed by the court. It is the defendant's case that his deceased grandfather willfully and voluntarily transferred the suit land to the defendant's deceased father and therefore the plaintiffs are not entitled to the reliefs sought. The defendant denied the particulars of fraud and illegalities levelled against him and stated that the plaintiffs have no locus standi to make such a claim because they are not the legal representatives of the defendant's deceased father who was the registered owner of the land. That the plaintiffs are strangers and imposters and busybodies who are intermeddling with the defendant's family land.
28. The defendant pleaded that this court has no jurisdiction to hear the suit as the same is res judicata, that the plaintiffs have no locus standi and that the claim is time barred contrary to the provisions of the *Limitation of Actions Act* and urged the court to dismiss the plaintiff's suit with costs.
29. DW 1 was Cyprian Mbwiri M'Mburugu who adopted his statement dated October 13, 2020 as his evidence in chief and was cross examined and re-examined. It was his testimony that the deceased gave the suit land to the defendant's father. He stated that he was not present when M'Miragua and M'ananua transferred the land, but was present when M'Murage said he wanted to give the land to M'ananua. His evidence was that M'ananua slaughtered for M'iraga in his presence and Jane was also present. That the plaintiffs' family were not present and if they wanted land, they should have asked M'iraga.
30. Prisca Nkuene M'Nairobi testified as DW 2 and adopted her statement dated September 12, 2012 as her evidence in chief and was cross examined and re-examined. DW 2 stated that she is a sister to the 1st plaintiff while M'ananua M'itere was their step brother. She testified that she refused the land because the same had been given to M'ananu M'itere. That when the 1st plaintiff approached her and requested her to gang up with her against their step brother's children so as to get the land, she refused because their father M'Muraga Mangua had given it to M'ananua M'Itere in the year 1975 in a ceremony held in their home in their presence and elders.
31. DW 3 was Francis Muthuri M'Ituamwari who adopted his statement dated September 12, 2012 as his evidence in chief and was cross examined and re-examined. He testified that in the year 1975, the late M'Maraga Mangua invited him in his capacity as the sub area to attend a Meru Traditional event in which he gave his land parcel No Nkuene/Ngonyi/400 to his step son M'ananua M'Itere and that those in attendance included the late Daudi M'tuaruchiu, late Chabari M'riungu, Late M'riungu M'Ikiao,



- Mr. Mwendwa Kathandika, and Mr Murungi Mwamba, together with the deceased's daughters, Prisca Nkuene, Teresia Mwari and Silvana Karimi. That the said M'Ananu M'Itere was using the said land even then and continued using it thereafter.
32. DW 3 stated that M'Muraga Mangua was by then living with M'Ananua's Mother (Jema) as husband and wife on the land that M'Ananua had inherited from his biological father, M'Itere and that even upon his death, M'Muraga Mangua was buried on the said land. He denied that the land was transferred fraudulently.
 33. M'Wamba M'Magiri testified as Dw 4 and adopted his witness statement dated October 13, 2020 as his evidence in chief and was cross examined and re-examined. In a nutshell, his evidence is that after the demise of his second wife, the deceased cohabited with M'anania alias Tarasio Mugambi M'anania, the defendant's father and lived with the said family and was buried by M'anania. That traditionally, the deceased asked that M'anania slaughters for him so that he would inherit him and which was done and he was given the suit land.
 34. Fabian Kithinji M'Anania, the defendant testified as DW 5 and adopted his statement dated October 13, 2020 as his evidence in chief and produced the further list of documents as D exhibits 1 – 3 and was cross examined and re-examined. He stated that the father of M'Muraga is called Mangua while M'mwari's father was known as Karumba, that Mangua's father was known as Karumba and on the other hand M'mwari's father was Kabunya and clarified that these two individuals were not related by blood. He also denied that the plaintiffs were sisters, stating that Silvana and Prisca Nkuene and Teresia Mware are sisters and children of M'Muraga Mungua, while Dominica, Magdalene and Mwaromo are children of M'Mwari. DW 5 stated that he belonged to the family M'Muraga.
 35. The defendant stated that the wife of M'Muraga by the name Nduru died, M'Muraga was left with two children Prisca and Silvana while they were very young. That when his grandfather died, he left a widow by the name Jema Karai with two children. That when Nduru died, M'Muraga came with the two young children left by Nduru and brought them to the home of Karai Jema. That the two, Jema Karai and M'Muraga Mungua got married and lived together as husband and wife and sired a child by the name Teresia M'Mwari. He stated that he belongs to that family because he is the son of M'anania M'Itere who is the child of Jema Karai. That M'Muaraga and M'Itere are related and M'anania M'Itere who is son of Karumba.
 36. DW 5 denied testifying in Succession Cause No 72 of 1997 because he was not given a chance to do so. He pointed out that Prisca who is a sister to the 1st plaintiff refused to join the plaintiffs case because she feared a curse since their father had distributed the land. He stated that when M'Muraga died, he was buried in his father's land where they were living with his wife Jema Karai, and that the plaintiffs never objected to the burial.
 37. The defendant stated that he did not know about the succession matters, and paid someone at lands office who caused the transfer into his name. That he was arrested and charged for transferring land illegally without the right procedure. That he transferred the land from his father to his name and none in his family complained adding that the plaintiffs have no right to follow on his father's land. He repeated the averments by other witnesses that his father called village elders and carried out a big ceremony in which he slaughtered animals for the land to be inherited by him in accordance with Kimeru custom. That the plaintiffs have only complained after the death of his father.
 38. The defendant confirmed that there is a judgment in Succession Cause No 72 of 1997 in which the 1st and 2nd plaintiffs herein were said to have proved their case, and the grant in respect of land parcel 672 confirmed in their names. That he did not appeal. He further confirmed that the tribunal awarded parcel No 400 to the plaintiffs herein. He further confirmed that he had a Criminal Case No 28 of



2015 at Nkubu Law Courtin which he was convicted and sentenced. The defendant denied that his father acquired the land fraudulently and denied taking the land forcefully.

D. Submissions

39. Upon the close of the case, the parties through their respective advocates requested for time to file their written submissions. The plaintiffs filed submissions on October 5, 2022 through the firm of M/s Muia Mwanzia & Co advocates while the defendant filed his on October 24, 2022 through the firm of M/s Thangicia M David and Co Advocates. The court has carefully considered the said submissions as well as the authorities relied on.

E. Analysis and Determination

40. From the pleadings filed, the evidence tendered during the trial and the submissions made, the main issues for determination in my view are:-
- i. Whether the registration of M'Ananua M'Itere (deceased) as registered proprietor and the subsequent transfer of the suit property LR No Nkuene/Ngonyi/400 was lawful and regular or was it illegal and fraudulent.
 - ii. Whether the plaintiffs are entitled to the reliefs sought in the amended plaint.
41. This court will consider the two issues simultaneously as the latter issue is dependent on the determination of the first issue. The plaintiffs' case is that in the year 2004, they discovered that the defendant's father M'Ananua M'Itere (deceased) had transferred the suit land to himself without their knowledge or that of their deceased father M'Muraa Mangua (deceased). The plaintiffs in their evidence state that in a bid to repossess the land, they filed Meru Central LDT No 27 of 2004 against the defendant's father and in the award dated August 12, 2004 the tribunal ordered that the land be returned to the plaintiffs. That the defendant's father was dissatisfied with that award and filed Eastern Province Land Appeals Committee Appeal No 54 of 2004 and that appeal was dismissed on April 3, 2005. That the award of the Appeals Committee was read to the parties on May 11, 2006 in Meru Ldt Case No 83 of 2004. However, judicial review proceedings were taken and the High Court quashed the said decision for the reason that the suit land was registered and therefore the tribunal had no jurisdiction to entertain the claim, hence this suit.
42. The plaintiffs state that immediately the said award was read, the defendant and his siblings descended upon the suit land and destroyed properties belonging to the plaintiffs.
43. From the evidence on record and the documents produced, it is evident that the original owner of the suit land parcel LR No Nkuene/Ngonyi/400 was M'Muraga Mangua (deceased). The said M'Muraga Mangua alias M'Moraa was father to the plaintiffs and was first registered as proprietor of the land on April 18, 1967, and a land certificate issued on August 23, 1976.
44. According to entry No 3 of the green card (P exhibit 9) the land is indicated to have been registered in the name of M'Ananua M'Itere as a gift at a consideration of Kshs 10,000/= on September 29, 1976, and title issued on the same date. M'ananua M'Itere (deceased) is father to the defendant herein. According to the evidence and the documents on record, when the plaintiffs discovered that the defendant's father had transferred the suit land together with another parcel LR Nkuene/Ngonyi /672 to himself without their consent or knowledge, the plaintiffs filed Meru Central Land disputes Tribunal case No 27 of 2004 against the defendant's father M'Ananua Itere. From the proceedings produced the tribunal found in favor of the plaintiffs and returned the two parcels of land to plaintiffs. It appears that the defendant's father was dissatisfied with the tribunal award and therefore filed an



Appeal No 54 of 2004 at the Eastern Province Land Tribunal Appeals Committee. The appeal was however dismissed and the appeal committee made the following observations:

- “ 1. The panel heard that M’Ananua, was not the son of M’moraa Alias M’Muraga Mungua was the original owner of the two land in dispute.
 2. The panel also learned from the identity card of the applicant that there was no relationship between him and M’moraa, the father of the respondents. The applicant was noted to have taken advantage of the fact that he took the letters of administration”.
45. And still being dissatisfied, the defendant’s father filed Judicial review Meru High Court Misc Application No 14 of 2006 on the ground that the tribunal had no jurisdiction to hear and determine the claim on ownership of land that was registered and had title. The record indicates that the high court quashed the decision that had been made by the tribunal.
46. It is also clear from the material on record that there was a Succession Cause No 72 of 1997 at the High Court at Meru in which M’ananua M’Itire had petitioned for grant of letters of administration intestate for the estate of M’Muraa Mungua (deceased) in which he described himself as the son of the deceased. On the grant being confirmed, Parcel No Nkuene/Ngonyi/672 was awarded to one Peter Gichobi Gachagua. However, an application dated November 11, 2006 was filed by the 1st and 2nd plaintiffs herein seeking the revocation or annulment of the grant of letters of administration issued to M’ananua. In its judgment dated May 28, 2010, the court (Mary Kasango J) found that the 1st and 2nd plaintiffs herein had proved their case on balance of probabilities that there was a basis of setting aside the grant issued to M’Ananua and that they (the 1st and 2nd plaintiff herein) were the rightful heirs of the deceased estate. The grant issued to M’ananua M’Itire was therefore revoked and the same issued to Silvana Karimi Chabari and Dominica Muthoni M’Ibari (the 1st and 2nd plaintiffs herein). That grant was immediately confirmed and parcel No Nkuene Ngonyi/672 shared out equally to the 1st and 2nd plaintiffs herein and their siblings. The court further ordered the land registrar to rectify the register of Nkuene/Ngonyi/672 and for Peter Gichobi Gachagua to vacate from the land. By the time the matter came up for hearing, M’Ananua had died and had been substituted through an order of the court by his son Fabian Kithinji the defendant herein.
47. Having perused the proceedings and judgement in Meru High court Succession Cause No 72 of 1997 as well as the proceedings before the Land Disputes Tribunal and the Eastern Province Land Tribunal Appeals Committee, it is clear to this court that the issue of the relationship of the parties herein vis a vis the suit property had been settled. The High Court in succession Cause No 72 of 1997 in particular found that the evidence that was adduced before that court did not support Fabian’s claim that he or his late father were dependents of the estate of M’Muraa Mungua. The court further found that M’Ananua had lied under oath when he said that he was the son of the deceased, Mungua. That he also lied about other beneficiaries who survived the deceased in failing to disclose the existence of the deceased’s daughters.
48. While the defendant claimed that he dealt with the title deed of his deceased father, M’ananua and not that of M’Muraga Mungua, the plaintiffs father, from the evidence on record, it is undisputed that the land parcel No Nkuene/Ngonyi/400 was initially in the names of M’Muraa Mungua and later registered in the name of M’Ananua M’Itire. The grant of letters of administration that had been issued to M’Ananua M’Itire in respect of the estate of M’Muraa Mungua was revoked on May 28, 2010 in Succession Cause No 72 of 1997. The said M’Ananua M’Itire died some time on December 4, 2006. In this case, the 1st plaintiff had lodged a caution over the suit land on May 12, 2006. However, the



said caution was removed on June 4, 2014 and the land was transferred to Fabian Kithinji M’ananua, the defendant herein on August 15, 2014. It is clear from the evidence on record that the said transfer was not on transmission. The defendant did not explain how the land was transferred to him by his father on June 4, 2014 yet his father had died way back on December 4, 2005 as per the death certificate on record. More importantly, the court has noted that the defendant was charged in Nkubu SRM Criminal Case No 28 of 2015 with making a document without authority and transferred land parcel No Nkuene/Ngonyi/400 purporting to have been made by his deceased father M’Ananua M’Itire. In that case, the defendant was found guilty, convicted and sentenced. There is no evidence that that conviction has ever been set aside.

49. In light of the foregoing, and in view of the findings in Land disputes Tribunal Meru Central case No 27 of 2004, the Eastern Province Land Disputes Appeals Committee Appeal No 54 of 2004, Meru High Court Succession Cause No 28 of 2015, and further considering the totality of the evidence tendered and the material on record, it is my finding that the plaintiffs have proved that the suit land was illegally, wrongfully and fraudulently transferred to the defendant. I am thus satisfied that the plaintiffs have proved their case against the defendant on a balance of probabilities and are entitled to the orders sought herein.
50. The plaintiffs have proved that the case falls within the exceptions under section 26(1) of the Land Registration Act, 2012. Further, the law relating to cancellation of titles is to be found in section 80 of the Land Registration Act which provides inter alia, that:
- “(1) Subject to subsection (2) the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake
- (2) The register shall not be rectified to affect the title of a proprietor unless the proprietor had knowledge of omissions, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by act, neglect or default”
51. The court has examined the evidence on record and is satisfied that fraud on the part of the defendant was proved. It is clear that the defendant was aware of the fraud, mistake or omission. The evidence on record shows that the defendant had no legal basis to transfer the land to himself. Indeed the defendant was charged and convicted. In the circumstances, the plaintiffs have sufficiently discharged the legal burden of proof placed upon them.
52. The upshot is that this court is satisfied that the plaintiffs have proved their case against the defendant on a balance of probabilities. Accordingly and in light of the above findings, I hereby enter judgment in favour of the plaintiffs as follows:-
- a. A declaration that LR No Nkuene/Ngonyi/400 is family and ancestral land of the plaintiffs
- b. A declaration that the transfer of LR No Nkuene/Ngonyi/400 to the defendant was illegal, wrongful and fraudulent.
- c. An order directed to the Land Registrar Meru for rectification of the register of LR No Nkuene/Ngonyi/400 by cancelling the name of M’ananua M’itere, Fabian Kithinji M’ananua and registering the plaintiffs as proprietors of the said land and eviction of the defendant.
- ci) An order of Eviction of the defendant, his siblings, agents, servants or any person claiming under the defendant’s authority, direction or behest from parcel No Nkuene/Ngonyi/400 and the OCS Nkubu Police station to ensure compliance within 60 days.



- d. An order of permanent injunction restraining the defendant his siblings, agents, servants or any person claiming under the defendant's authority direction or behest from ever interfering with the plaintiffs' user, occupation and ownership of LR No Nkuene/Ngonyi/400.
- e. Costs and interests of the suit are awarded to the plaintiffs.

53. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF DECEMBER, 2022

IN THE PRESENCE OF

Court assistant - Kibagendi

Mwanzia for the plaintiff

Thangicia for the defendant

C.K YANO

ELC JUDGE

