



REPUBLIC OF KENYA



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SG (Formerly SR) v Denancy Investment Ltd & 7 others (Environment & Land Case 86 of 2019) [2025] KEELC 4223 (KLR) (7 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 86 OF 2019**

TW MURIGI, J

MAY 7, 2025

BETWEEN

SG (FORMELY SR) PLAINTIFF

AND

DENANCY INVESTMENT LTD 1ST DEFENDANT

DAVID RONALD NGALA ADHOCH 2ND DEFENDANT

LABH SINGH HARMAN SINGH LIMITED 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

SILVER BRIDGE INVESTMENT LIMITED 5TH DEFENDANT

REAL ENERGY LIMITED 6TH DEFENDANT

HOKING (KENYA) REAL ESTATE 7TH DEFENDANT

NATIONAL LAND COMMISSION 8TH DEFENDANT

JUDGMENT

1. Vide an amended Plaintiff dated 5th November 2018, the Plaintiff seeks the following orders: -
 - a) A declaration that the sale agreement referred to in paragraph 11 and the instrument of Transfer referred to paragraph 13 hereof are null and void ab initio.
 - b) A declaration that the agreement for sale referred to in paragraph 16 hereof and the Instrument of transfer referred to in paragraph 18 hereof are null and void ab initio.
 - c) A declaration that the Plaintiff is the lawful owner of the suit property.
 - d) Spent.



- e) Spent
 - f) Spent
 - g. An order cancelling the provisional certificate of title in respect of the suit property issued on 13th August 2010.
 - h. An order rectifying the grant No. I.R 4XX82 by removing the false page containing entries 5, 6, 7 and 8 and replacing it with the genuine page containing entries 5 and 6 only.
 - i. An order requiring the first Defendant its servants and agents to vacate forthwith the suit property.
 - j. An order of perpetual injunction restraining the first, second and third Defendants from entering, dealing or in any manner interfering with the Plaintiff's right of ownership over the suit property.
 - k. Spent.
 - l) Spent.
 - m) An order of perpetual injunction restraining the second Defendant from entering, dealing, or in any manner interfering with the Plaintiffs right of ownership over the suit property and the other suit property.
 - n. A declaration that the Grant number 14XX81 and all the instruments registered against the same are null and void.
 - o. A declaration that the Plaintiff is the lawful owner of the other suit property.
 - p. Spent.
 - q. Spent.
 - r. An order cancelling grant number 14XX81 in respect of the other suit property issued on 22nd January 2013
 - s) An order cancelling grant number 14XX81 in respect of the other suit
 - t) An order requiring the eighth Defendant, its servants and agents to vacate forthwith the other suit property.
 - u. An order of perpetual injunction restraining the eighth Defendant from entering, dealing or in any other manner interfering with the Plaintiff's right of ownership over the other suit property.
 - v. Alternatively, the other suit property be assessed as to its current value and an award be made by the court based thereon in favour of the Plaintiff against the fourth, sixth, seventh, eighth and ninth Defendants jointly and/or severally.
2. The 1st and 2nd Defendants filed a statement of defence dated 22nd March 2016 denying the Plaintiff's claim and urged the court to dismiss the suit with costs.
 3. The 3rd, 4th, 5th, 6th and 7th Defendants entered appearance but did not file a defence.
 4. The 9th Defendant did not enter appearance or file a defence.



5. The 8th Defendant filed its amended defence and counterclaim dated 5th August 2024 seeking the following orders: -
 - 1) A declaration that the counter claimant is the lawfully registered owner of L.R No. 12715/6X2.
 - 2) A declaration that the Transfer registered on 19th January 2015 being I.R No. 14XX81/5 is lawful and legally registered.
 - 3) A permanent injunction restraining the Plaintiff/Defendants whether by themselves or through their agents, employees, servants, relatives or anyone acting on their behalf and/or under their instructions from entering, trespassing, tampering or interfering in any way with the suit property herein.
 - 4) General damages.
 - 5) Aggravated damages.
 - 6) Exemplary damages.
 - 7) Costs of this suit.
 - 8) Any other relief this Honourable court may deem expedient to issue in the 8th Defendant's favour.
6. The Plaintiff filed an amended reply to the 8th Defendant's amended defence and counter claim dated 16th February 2024 denying the contents thereof.

The Plaintiff's Case

7. The Plaintiff SG (formerly SR) testified as PW1 and called one witness in support of her case.
8. She adopted her witness statement dated 5th November, 2018 as her evidence chief. She also produced the documents in her list dated 19th November, 2018, the supplementary list dated 5th November, 2018 and a further supplementary list dated 7th November, 2018 in support of her case.
9. PW1 testified that she is the registered proprietor of L.R No. 12715/5X5 having purchased the same from Samuel Muema vide a sale agreement dated 3rd November 1992.
10. She further testified that she is the registered proprietor of L.R No. 12715/6X2 (the other suit property) having purchased the same from Reuben Mutuku Kivia vide a sale agreement dated 12th November 1992.
11. It was her testimony that she left Kenya on 10th December 1994 and only came back during the hearing of this case. She went on to state that pursuant to her application, she was issued with Provisional Certificates of Title in respect of the suit properties on 23rd October 1997 and on 20th November 1997 on account of the original grants having been lost.
12. That on 17th February 2015, she instructed Mr Nanji Advocate to conduct a search on the suit properties and the same revealed that the suit property had been transferred to the 1st Defendant on 13th August 2010 for a consideration of Kshs. 20,000,000/= . The Plaintiff denied having sold the suit property to the 1st Defendant.
13. PW1 testified that she did not enter into a sale agreement dated 29th January 2007 with the 3rd Defendant. She informed the court that the signature appended on the sale agreement was not hers



- and is a forgery. She explained to the court that she was not in Kenya when the sale agreement is said to have been executed. She denied having signed the sale agreement in the presence of Mrs S.M Kivuva or having received any monies from the said firm. She testified that she does not know the 3rd Defendant and had never met its Directors.
14. PW1 went on to state that she did not sign the transfer instrument dated 8th May 2007. It was her testimony that the photograph attached to the transfer instrument belongs to an adult male and is not hers.
 15. She further stated that she had never held a PIN certificate in Kenya and added that the PIN certificate and the ID/Passport Number indicated on the transfer instrument dated 8th May 2007 was not hers. PW1 informed the court that she was born on 7th September 1951 in Greece and not on 23rd August 1962 in Switzerland as indicated in the PIN certificate. She further stated that she was formerly known as SR and not Pache Rousalia Stavroula as indicated in the PIN certificate and on the passport.
 16. The Plaintiff denied donating a Power of Attorney to the 2nd Defendant whom she claimed was a stranger. She asserted that the Power of Attorney is a forgery as the signature appended therein was not hers. In addition, she explained that she was not in Kenya when she is alleged to have signed the Power of Attorney. She further asserted that she did not sign the Power of Attorney in the presence of J.K Mwangi Advocate and added that she does not know the firm of Mcdhoch Kivindu & Co who purportedly drew the Power of Attorney. She further stated that she was not the holder of Swedish Passport No. F21XXX03 indicated in the Power of Attorney.
 17. According to PW1, the sale agreement dated 26th November 2009 and the transfer instrument dated 3rd March 2010 are forged documents as they were founded on a Power of Attorney that was fraudulently made by the 2nd Defendant.
 18. She went on to state that she did not lose the provincial certificate of title issued to her on 23rd October 1997 nor apply for one in January 2010.
 19. She contended that the 4th Defendant gazetted, issued and registered the provisional certificate of title on 19th May 2010 on the strength of a fraudulent Power of Attorney knowing very well that the provisional certificate of title registered on 23rd October 1997 was still valid and available.
 20. PW1 informed the court that the 4th and 2nd Defendants fraudulently removed the genuine page containing entries 5 and 6 from the provisional certificate of title for I.R 4XX82 issued to her on 23rd October 1997 and inserted a new page containing different entries in order to facilitate the registration of the 1st Defendant as the proprietor of the suit property.
 21. That after the 2nd Defendant made her aware that there was another registered owner of the other suit property, she applied for an official search which revealed that the title was missing from the deed file. It was her testimony that the 4th Defendant advised her that it could not furnish her with a copy of the title for the suit property because it was probably a forgery.
 22. That upon scrutinizing the purported grant annexed in the affidavit sworn on 27th April 2018 by the 2nd Defendant, she established that the grant was registered as I.R No. 14XX81 which was different from her title I.R 4XX64.
 23. She told the court that a search conducted revealed that I.R No. 14XX81 was issued by the Commissioner of Lands Zablon Agwata Mabea on 22nd January 2013 in her name and was registered by the 2nd Defendant as I.R 14XX81/1 on the same day.
 24. PW1 outlined the instruments registered against Grant No. I.R 14XX81 as follows: -



- a. A caveat registered on 6th February 2013 by Sharifow Abdi Rashid Abdul and Frank Oduol Oyoo the Directors of the sixth Defendant claiming purchasers interest as per the attached sale agreement.
 - b. Transfer dated 18th February 2013 to the seventh Defendant for Kshs. 10 000,000/=
 - c. Caveat dated 24th December 2013 by the Registrar of Titles under Section 65(1)
 - d. Withdrawal of caveat referred to in (c) above on 27th March 2014.
 - e. Transfer on 19th January 2015 to the eight Defendant for Kshs. 195,000,000/=.
 - f. Caveat on 6th March 2015 by the Registrar of Titles claiming an interest under section 65(1) (f) of RTA CAP 281 (repealed) under Section 76 of the Land Registration Act No. 3 of 2012.
 - g. Withdrawal of caveat referred to in (f) above on 27th July 2016.
25. She asserted that she was not given notice by the 4th Defendant to withdraw the caveat dated 24th December 2013 and 6th March 2015 respectively.
 26. PW1 testified that she did not enter into a sale agreement with the 6th, 7th or 8th Defendants nor execute a transfer instrument in respect of I.R No.4696. It was her testimony that she does not know the 6th Defendant or its directors and denied having entered into a sale agreement with the 6th Defendant.
 27. She informed the court that the 2nd Defendant acquired the title for (Grant No. 14XX81) within a day and transferred the same to the 7th and then to the 8th Defendant.
 28. She further testified that she did not apply to the Commissioner of Lands to be allocated Grant No. I.R 14XX81 and confirmed that she was not issued with a letter of allotment. She explained that she was not in Kenya when grant No. I.R 14XX81 was issued in her name as she had left Kenya on 10th December 1994.
 29. PW1 asserted that her marital name was SR and added that she reverted to her maiden name, SG after her marriage to SR was dissolved.
 30. She further asserted that the 2nd Defendant referred to her as a man in his affidavit sworn on 27th April 2018 and also relied on the Daily Nation report of 20th April 1993 to state that she was a man.
 31. That according to the affidavit of Sharifou Abdi sworn on 21st September 2018, the person appearing on the transfer documents and on the registered Power of Attorney is a man. That according to the Daily Nation published on 20th April 1993, the real SR was a man. She asserted that the photograph appearing in the daily nation belongs to her step son SR.
 32. On cross examination by Mr Mburu, she testified that she was born and resides in Greece.
 33. She further testified that she left Kenya in the year 1994.
 34. PW1 stated that by the time she left Kenya in the year 1994, she had already sold all the goats and pigs and had fenced the land with a simple fence. She further stated that she discovered in the year 2015/2014 while in Greece that she had lost her titles but did not report the matter to the police. She told the court she was issued with provisional certificates of title in the year 1997 and the same were forwarded to her in Greece.



35. She explained to the court that she divorced her husband in the year 1997 and added that he had nothing to do with L.R No. 12715/6X2. She testified that she did not find out what was happening on her land because she was going through a divorce.
36. She further testified that she instructed Mr. Nanji advocate to conduct a search of the suit properties because she felt that it was time to take care of her land.
37. She emphasized that the suit properties were fraudulently transferred without her consent.
38. She told the court that she visited plot No. 12715/6X2 during the first hearing of this case and found that the land was vacant though it was fenced.
39. She went on to state she sued the eighth Defendant because it had refused to vacate the suit property despite having been issued with demand by Mr. Nanji Advocate and her son.
40. On re-examination by Ms. Mulongo, she reiterated her evidence as above. She stated that she did not leave a caretaker on the suit property because she had already sold the pigs and goats.
41. She went on to state that she made a sworn statement at the British Embassy in Greece declaring that she had lost her titles.
42. She told the court that she was in possession of the new grants and denied having sold the suit properties.
43. She further testified that the caveat registered by the Registrar of titles on 6th March 2015 against the suit property demonstrates that she has a claim against the 8th Defendant whose title number is different from her title.
44. PW2 SR adopted his witness statement dated 5th November 2019 as his evidence in chief. It was his testimony that the Plaintiff adopted his father's name after she got married to him. That after their marriage was dissolved in Feb 2003, the Plaintiff reverted to her maiden name SG. He admitted that the photograph annexed to the 2nd Defendant's affidavit sworn on 27th April 2018 was his. He denied donating a Power of Attorney to the 2nd Defendant and claimed that he was a stranger.
45. On cross-examination by Mr. Mburu, he testified he resides in Cape Town and holds dual citizenship of Greece and South Africa. He testified that he worked in his father's fish business in Nairobi and Mombasa.
46. He went on to state that the Plaintiff purchased the suit properties to carry out farming activities. He further stated that their manager was one Rino Salvatore(deceased) and not David Ronald Ngala.
47. He further testified that he visited the suit property in the year 2021 and found that it was fenced with a stone perimeter wall.
48. He explained that he was not aware whether the 8th Defendant was issued with a notice to vacate the suit property.
49. He admitted that he was charged with the offence of fraud and added that the case was not in any way related to the suit properties.
50. On re-examination by Ms. Mulongo, he testified that he was arrested because the police thought that he was a Director in his father's company. He further testified that Richard Ola Finni alias Starvoula Rousalis is indicated as the accused person in the charge sheet. He asserted that the Plaintiff has never used the name Richard Ola Finni and that she was not in Kenya on 10th April 2015 which is indicated



as the date of the arrest. He further testified that the Plaintiff has never been charged with the offence of conspiracy to defraud.

51. It was his testimony that the Plaintiff did not donate a Power of Attorney to anyone outside the family to transact on her behalf.
52. Though duly served, the 1st – 7th and 9th Defendants did not attend the hearing nor call any witness in support of their case.

The 8th Defendant's Case

53. The 8th Defendant Hoking (Kenya) Real Estate Company Limited called one witness in support of its case.
54. DW1 Shi Shunzhe adopted his witness statement dated 5th August, 2024 as his evidence in chief. He also produced the documents in the list dated 5th August, 2024 as DEXH 1-8, and the supplementary list dated 18th November 2024 as DEX 9,10,11,12 and 13.
55. DW1 testified that he is the Country Representative of the 8th Defendant. It was his testimony that sometimes in the year 2024, he conducted a google search of the company and discovered that the 8th Defendant was involved in a case regarding L.R No.12715/6X2 situated within Machakos County which it had earlier purchased.
56. It was his testimony that the 8th Defendant entered into an agreement for the sale of the suit property with the 7th Defendant at an agreed purchase price of Kshs. 195,000,000/= which was paid in two instalments.
57. That the first instalment of Kshs. 19, 500,000/= being 10% of the purchase price was paid on 18th November, 2014 to the seller's advocate through their advocate Charles Wamae of Wamae & Allen advocates while the balance of Kshs.175, 000,000/= was paid on 10th December, 2014.
58. That after the 8th Defendant paid stamp duty of Kshs.7, 800,000/= the transfer of the suit property was effected on 19th January, 2015 in its favour.
59. Concluding his evidence, DW1 urged the court to grant the orders sought in the counter claim.
60. On cross-examination by Mr. Nanji, DW1 testified that the 8th Defendant is a Chinese Company whose five Directors are based in China. He informed the court that he was not in Kenya when the transaction regarding the suit property was concluded.
61. He confirmed that he did not have any document to show that their advocate remitted the purchase price to the 7th Defendant's advocate.
62. He further confirmed that the Plaintiff's title was different from the title held by the 8th Defendant. He admitted that he had not produced the sale agreement between the 7th and 8th Defendants or receipts to prove payment of the purchase price.
63. He confirmed that the survey plan number indicated in their title was similar to the one in the Plaintiff's title. He stated that he did not see the sale agreement attached to the caveat registered by the directors of the 6th Defendant.
64. It was his testimony that he did not see a transfer instrument in favour of Real Energy for Kshs.10 million.



65. He admitted that the 8th Defendant did not produce the rates/ land receipts, consent to transfer, and proof of payment of the purchase price.
66. On re-examination by Mburu, he testified that the caveat registered on L.R 12715/6X2 by the Directors of the 6th Defendant was cancelled by the Registrar because the entry never existed.
67. He went on to state that he had never seen the Plaintiff inquiring about the suit property.
68. DW1 informed the court that the 8th Defendant was not aware that the suit property had issues as at the time of the sale.
69. It was his testimony that attempts to get a copy of the sale agreement executed in November, 2014 did not yield any fruit as the lawyer informed them that he had closed the files. He insisted that the 8th Defendant had been paying rates for the suits property and that the last payment was made in the year 2021.
70. After the close of the hearing, both parties agreed to file and exchange their written submissions.

The Plaintiff's Submissions.

71. The Plaintiff filed her submissions dated 21st January 2024.
72. On behalf of the Plaintiff, Counsel gave a background of the case and summarized the pleadings and the evidence on record.
73. Counsel relied on the evidence on record to submit that the Plaintiff had proved her case on a balance of probabilities.
74. Counsel further submitted that the 8th Defendant did not produce the land rent/rates receipts and consent of the Commissioner of Land to transfer the other suit property from the 7th to 8th Defendant. Counsel relied on the pleadings and the evidence on record to submit that the 8th Defendant did not prove on a balance of probabilities that it is a bona fide purchaser for value without notice. Counsel submitted that the Plaintiff had proved that she never applied to be issued with a letter of allotment in respect of the other property and therefore she could not have been issued with the other grant.

The 8th Defendant's Submissions

75. The 8th Defendant filed its submissions dated 12th March 2025
76. On behalf of the 8th Defendant, Counsel outlined the following issues for the court's determination: -
 - a. Who is the lawful proprietor of L.R No. 12715/6X2?
 - b. Whether the 8th Defendant is an innocent purchaser for value?
 - c. Who bears the costs of this suit?
77. On the first issue, Counsel submitted that the 8th Defendant is the lawful proprietor of the suit property having purchased the same from the 7th Defendant.
78. It was submitted that the 8th Defendant has been in continuous and uninterrupted possession of the property since the year 2015.
79. Counsel submitted that the Plaintiff exhibited disinterest in the suit property as she never made any efforts to ascertain its status between 1994 and the year 2015 when she filed the instant suit.



80. Counsel relied on the case of *Mtana Lewa v Kahindi Ngala Mwangandi* 2014 eKLR to submit that the Plaintiff had abandoned the suit property hence this court should not assist her in reviving a long dormant claim to the detriment of the 8th Defendant.
81. Counsel relied on the case of *Evanson Wambugu Gachugu vs Simon Wainana Gatwiki & 2 others* (2014)eKLR to submit that the 8th Defendant took possession of the suit property after it acquired the title thereof. It was submitted that the 8th Defendant exercised its rights of ownership by fencing the land, engaging a security guard, paying the land rates/rent and other statutory fees.
82. Counsel relied on the maxim equity aids the vigilant and not the indolent to submit that the Plaintiff was not vigilant in safeguarding her interest since she had neglected the suit property for decades without any justifiable reason. Counsel contended that the 8th Defendant acquired a good title and is therefore entitled to protection of the law.
83. On the second issue, Counsel relied on the case of *Osir & another v Mburu & 3 others* (2023) KEELC 19080 (KLR) to submit that the 8th Defendant is an innocent purchase for value without notice. It was submitted that the Plaintiff did not adduce any evidence to show that the 8th Defendant fraudulently acquired the suit property. Counsel further submitted that the 8th Defendant had no knowledge of any fraudulent dealings regarding the suit property.
84. Counsel argued that if the Plaintiff had notified the 8th Defendant of the proceedings herein, it would have taken necessary steps to protect its interest at an earlier stage of the proceedings. It was submitted that the Plaintiff has caused the 8th Defendant to suffer irreparable prejudice since it has invested substantial sums in the suit property. According to Counsel, the delay should not be rewarded with judicial intervention but should be sanctioned as an abuse of the court process.
85. Counsel submitted that the 8th Defendant is an innocent purchaser for value without notice. To buttress this point, Counsel relied on the definition of an innocent purchaser set out in the *Black's Law Dictionary* 8th Edition.
86. It was submitted that the 8th Defendant entered into a sale agreement with the 7th Defendant in good faith and without any fraud. To this end, Counsel urged the court to find that the 8th Defendant is an innocent purchase for value without notice.
87. Counsel relied on the case of *Charles Karathe Kiarie & 2 others v Administrators of the Estate of John Wallace Mathare (deceased) & 5 others* (2013) KECA 127 (KLR) to submit that the 4th Defendant has a duty to avert instances of fraudulent transfer of property by maintaining accurate registers. Counsel submitted that the 2nd and 4th Defendants should be held accountable if the court finds that they orchestrated the fraudulent acquisition of the suit property.
88. Counsel urged the court to apply the principle of *restitutio in integrum* if it finds that the 8th Defendant has no valid title. To buttress this argument, Counsel relied on the case of *Kenya National Highway Authority v Shalien Masood Mughal & 5 others* (2017) eKLR where the Court of Appeal held that:-
- “Where a purchase acquires property in good faith, pays valuable consideration and later discovers defects in the title, the party that conveyed the defective title bears the responsibility of restitution.”
89. Counsel urged the court to ensure that justice is served by issuing an order of restitution in favour of the 8th Defendant. It was submitted that the 7th Defendant must be held liable for transferring a defective



title to the 8th Defendant and should therefore be ordered to refund the full purchase price together with the consequential losses suffered by the 8th Defendant.

90. On costs, Counsel relied on the case of Cecilia Karuru Ngavu v Barclays Bank of Kenya & another (2016)eKLR to submit that the Plaintiff's suit should be dismissed with costs to be borne jointly by the 2nd, 3rd, 4th, 6th and 7th Defendants.
91. The Plaintiff filed supplementary submissions which I have duly considered.

Analysis and Determination

92. Having considered the pleadings, the evidence on record and the submissions by the parties, the following issues fall for determination:
- a) Whether the Plaintiff is entitled to the orders sought in the plaint
 - b) Whether the 8th Defendant is entitled to the orders sought in the counterclaim
93. The dispute between the parties herein revolves around the ownership of the suit properties. This court is called upon to determine the following issues: -
- a) Whether the sale agreement dated 29th January 2007 and the transfer instrument dated 8th May 2007 are null and void.
 - b) Whether the sale agreement dated 26th November 2009 and the transfer instrument dated 3rd March 2010 are null and void.
94. At this juncture, it is imperative to give a background of the suit properties herein.
95. The Plaintiff informed this court that she purchased L.R No. 12715/5X5 for Kshs 2,000,000/= from Samuel Muema vide the sale agreement dated 3rd November 1992. That pursuant to the transfer dated 23/12/1992, the suit property was registered in her name on 06/01/1993. In this regard, the Plaintiff produced the sale agreement between her and Samuel Muema dated 03/11/1992, the transfer instrument dated 23/12/1992 and the provincial certificate of title for Grant No. I.R 4XX82 issued on 23rd October 1997 in support of her evidence.
96. She further testified that she purchased L.R No. 12715/6X2 from Rueben Mutuku Kivia for Kshs. 2,000,000/= vide the sale agreement dated 12/11/1992. That pursuant to the transfer, the property was registered in her name on 26/11/1992. She produced the sale agreement between her and Reuben Mutuku Kivia dated 12/11/1992, the transfer instrument dated 23/12/1992 and the Provisional Certificate of Title for Grant No. I.R 4XX64 in support of her evidence.
97. She told the court that she left Kenya for Greece on 10th December 1994 and came back to Kenya for the hearing of this case. That while in Greece she instructed Mr Nanji to conduct a search of the suit properties and that is when she established that her land had been transferred to the Defendants.
98. The Plaintiff asserted that the sale agreements and the transfer instruments between her and the 1st and 3rd Defendants were fraudulently executed as the signature appended therein was not hers.
99. It is trite law that allegations of fraud must be specifically pleaded and proved.



In the case of *Vijay Morjaria vs Nansing Madhusingh Darbar & Others* [2000] eKLR (Civil Appeal No 106 of 2000) Tunoi JA stated as follows:

“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 as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

100. Similarly, in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR the Court of Appeal held that:-

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo Vs Ndolo* [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”

101. Section 107 (1) and (2) of the *Evidence Act* provides that: -

107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

102. The Plaintiff denied having entered into an agreement for the sale of L.R No. 12715/5X5 with the 3rd Defendant. I have looked at the sale agreement dated 29th January 2007 drawn by S.M Kivuva Advocates. The sale agreement shows that it is between the Plaintiff and the 3rd Defendant. The purchase price is indicated as Kshs. 15,000,000/=.

103. The Plaintiff testified that the signature appended on the sale agreement is not hers. She denied having signed the sale agreement in the presence S.M Kivuva Advocate or receiving the sum of Kshs. 15,000,000/= from the said firm. She explained to the court that she was not in Kenya when the sale agreement was purportedly executed.

104. The sale agreement culminated into the transfer of the suit property to the 3rd Defendant. In this regard, the Plaintiff produced a transfer instrument dated 8th May 2007 for L.R No. 12715/5X5- (Grant No. I.R 4XX82). The Plaintiff pointed out that the photograph attached to the transfer instrument is not hers and depicts an adult male. She further testified that the ID/Passport number indicated in the transfer instrument is not hers. The Plaintiff denied executing the transfer instrument in the presence of J.T Nzioki Advocate.

105. The Plaintiff produced her passport to show that she left Kenya on 10th December 1994. She also produced extracts of her passport to show that she was not in Kenya when she is alleged to have signed the sale agreement as well as the transfer instrument. From the foregoing, this court finds and holds that the Plaintiff was not in Kenya when she is alleged to have signed the sale agreement as well as the transfer instrument with regards to the suit property.



106. A perusal of the transfer instrument dated 8th May 2007 between SR(Transferor) and Labh Singh Harnman Singh Ltd(Transferee) shows that the photograph of the transferor (the Plaintiff herein) is an image of an adult male. The photograph of the Plaintiff is not attached to the transfer instrument. From the foregoing, it is clear that Plaintiff did not execute the transfer instrument as alleged.
107. The Plaintiff denied that she is the holder of passport No. F21XXX03. It was her testimony that she was born and resides in Greece. In this regard, the Plaintiff produced her passports Nos. A2XXX18 in the name of Stavroula Rousali and AP1XXX766 in name of Stavroula Georgopoulo which confirms that she is a Citizen of Greece. Her evidence was corroborated by the letter dated 27th March 2024 in which the Embassy of Sweden confirmed that passport No. F21XXX03 was not in their records for passports.
108. The Plaintiff denied having held a PIN certificate in Kenya. The transfer instrument indicates the Plaintiff's PIN as No. A004XXX500G. I have carefully looked at the PIN Certificate No. A004XXX500G in the name of Stavroila Pache Rousalis. The date of birth is indicated as 23/08/1962 while the place of birth is indicated as Switzerland.
109. The Plaintiff demonstrated to this court vide her passport Nos. A2XXX18 and AP1XXX766 that she was born in Greece on 7th September 1951 and not on 23/08/1962. Similarly, the Plaintiff has proved that she is a citizen of Greece and not of Switzerzaland as indicated in the PIN. The Plaintiff produced a divorce certificate to show that her marriage to SR was dissolved. She also produced her passports which clearly prove that she reverted to her maiden name SG after her marriage to SR was dissolved. This court therefore finds and holds that the name Stavroila Pache Rousalis appearing on the PIN Certificate does not refer to the Plaintiff.
110. From the foregoing, I find that the Plaintiff has proved that she is not the holder of PIN Certificate NO. AOO4XXX005G.
111. The Plaintiff produced a letter dated 16th March 2010 by the Principal Registrar of Titles who confirmed that the 3rd Defendant's registration was cancelled on the grounds that the transaction was fraudulent.
112. From the foregoing, it is crystal clear that the Plaintiff did not enter into a sale agreement with the 3rd Defendant or sign the transfer instrument for the suit property. It is the finding of this court that the sale agreement dated 29th January 2007 and the transfer instrument dated 8th May 2007 are forged and are therefore null and void.
113. The Plaintiff also produced an agreement for the sale of L.R No. 12715/5X5 (Grant No I.R 4XX82) dated 26th November 2009. The sale agreement shows that the agreement is between the Plaintiff and the 1st Defendant and is drawn by Ario & Co. Advocates. The purchase price is indicated as Kshs. 20,000,000/= . The sale agreement shows that the 2nd Defendant signed the agreement on behalf of the Plaintiff by virtue of a Power of Attorney.
114. Pursuant to the sale agreement, the 2nd Defendant signed the transfer instrument on 3rd March 2010 on behalf of the Plaintiff by virtue of the Power of Attorney.
115. The Plaintiff denied donating a Power of Attorney to the 2nd Defendant. She denied signing the Power of Attorney and added that she was not in Kenya when it is alleged that she signed the purported Power of Attorney.



116. I have carefully looked at the Power of Attorney dated 2nd February 2007. The Power of Attorney was first registered on 2nd October 2009 in Volume NP/A Folio 6/466 File 5091. Thereafter it was registered on 11th February 2010 as P/A 53520/1.

117. At this juncture, this court is called upon to determine whether the Plaintiff donated a Power of Attorney to the 2nd Defendant.

The Power of Attorney dated 2nd February 2007 states as follows in part:-

“I SR holder of Swedish passport No F21XXX03.....do hereby ordain , nominate and appoint David Ronald Ngala odchoch(my attorney).....”

118. The Power of Attorney states that the Plaintiff is the holder of Swedish Passport No. F21XXX03. The Plaintiff proved to this court that she was born in Greece. She also proved to this court that she is not the holder of Swedish Passport No. F21XXX03. The Swedish Embassy vide a letter dated 27/03/2024 confirmed that Swedish Passport No. F21XXX03 was not in their passport records. The record shows that the Plaintiff reverted to her maiden name after her marriage to SR was dissolved in February 2003. In essence in the year 2009 the Plaintiff was using her maiden name and not SR.

119. The court can safely conclude that the passport number appended on the Power of Attorney dated 02/10/2009 is a forgery. There is no evidence on record to show that the Plaintiff signed the Power of Attorney in the presence before J.K Mwangi Advocate. The Plaintiff demonstrated to the satisfaction of this court that she was not in Kenya when she is alleged to have donated the Power of Attorney to the 2nd Defendant.

120. The Plaintiff proved to the satisfaction of this court that she left Kenya on 10th December 1994 and only came back during the hearing of this matter.

121. It is crystal clear that the Power of Attorney dated 02/10/2009 that was used to execute the sale agreement as well as the transfer instrument was a forgery.

From the foregoing this court finds and holds that sale agreement dated 26/11/2009 and transfer document dated 3rd march 2010 are null and void.

122. The Plaintiff is seeking a declaration that she is the owner of the suit property. It is not in dispute that the Plaintiff purchased No. 12715/5X5-(Grant No. I.R No. 4XX82) from Samuel Muema and was subsequently registered on 6/1/1993 as the owner thereof. The 3rd Defendant's registration was declared fraudulent by the Principal Registrar of titles. The 3rd Defendant did offer any defence or challenge the Plaintiff's evidence,

123. Similarly, the 1st Defendant did not challenge the Plaintiff's evidence as it did not attend the hearing. It is crystal clear that the registration of the 1st Defendant was effected on the strength of a fraudulent Power of Attorney and is therefore null and void. The Plaintiff having established the root of her title, this court finds and holds that she is the registered proprietor of the suit property and is entitled to all rights and privileges belonging or appurtenant thereto.

124. Having found that the sale agreement dated 26th November 2009 and the transfer instrument dated 3rd March 2010 are null and void it is the finding of this court that the Plaintiff has proved that she is the registered proprietor of the suit property.

125. The Plaintiff is seeking the cancellation of the provisional certificate of title issued on 13th August 2010 in respect of the suit property. The provincial title was issued on the basis of a transfer instrument dated



03/03/2010. This court has already found that the transfer of the suit property to the 1st Defendant was effected by a fraudulent power of attorney. Section 80 of the Land Registration Act gives the court power to order for rectification of the register and provides as follows: -

- 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.
126. In the matter at hand it is the finding of this court that the sale agreement and the transfer instrument leading to the issuance of the provincial certificate of title is a forgery and are therefore null and void. Consequently, the provisional certificate of title issued on 19th May 2010 to the 1st Defendant is also null and void
127. The Plaintiff is seeking the cancellation and declaration that Grant No. 14XX81 and all the instruments registered against it are null and void. The 8th Defendant in its counter claim is seeking a declaration that it is the lawful owner of L.R 17215/6X2. The prayers sought by the Plaintiff and the 8th Defendant are similar and as such I will address the same simultaneously.
128. It is not in dispute that the Plaintiff purchased land parcel No. L.R 12715/6X2- I.R No. 4XX64 from Reuben Mutuku Kivia and was subsequently registered on 26/11/1992 as the owner thereof.
129. The Plaintiff informed the court that she applied for a provisional certificate of title for the suit property on account that the title was lost and the same was issued on 20/11/1997. According to the Plaintiff the 2nd Defendant fraudulently applied for a provincial certificate of title in her name and obtained it on the same day.
130. A perusal of Grant No. I.R 14XX81 shows that it was allocated to the Plaintiff by the Commissioner of Lands on 22/01/2013 and that it emanated from L.R No. 12715/3X2 belonging to the Plaintiff.
131. The Commissioner of Land can only allocate unalienated government land. L.R No. 12715/3X2 – Grant No. I.R 4XX64 is private land belonging to the Plaintiff and cannot therefore be subjected to allocation.
132. No evidence was adduced to show that the Plaintiff applied to be issued with a letter of allotment in respect of Grant No. I.R 14XX81 or that she complied with the terms and conditions therein.
133. The provisional certificate of title shows that a caveat was registered by the directors of the 6th Defendant on 6/2/2013 claiming a purchaser's interest. The Plaintiff denied having entered into a sale agreement with the 6th Defendant or knowing its directors. The record shows that the caveat registered by the 6th Defendant was cancelled/withdrawn by the land Registrar on 27th March 2014.
134. There is no evidence on record to show that the 6th Defendant was registered as the owner of the suit property. The grant also shows that on 18/2/2013, a transfer was registered in favour of the 7th Defendant for a consideration of Kshs 10,000,000/=. No evidence was adduced to show that the Plaintiff sold the land to the 7th Respondent. DW1 confirmed that he did not see the transfer instrument in favour of the 7th Respondent.
135. Interestingly the Survey Plan Number in I.R 14XX81 and in I.R No. 4XX64 is the one and the same. From the foregoing, I find the 2nd Defendant fraudulently obtained Grant No. I.R 14XX81 in respect of the other suit property and as such the instruments registered against the grant are null and void.
136. The 8th Defendant contends that it is the lawful owner of L.R No. 12715/6X2. The Plaintiff proved to this court that she is the registered owner of the property having purchased the same from Reuben



Mutuku Kivia. The Plaintiff demonstrated that she did not lose the provisional certificate issued to her on 23rd October 1997. Moreover, no evidence was adduced to show that she applied to be allocated grant No. I.R. 14XX81.

137. It was contended that the 8th Defendant is an innocent purchaser for value without notice.

Black's Law Dictionary defines an innocent purchaser as follows:-

“One who buys something for value without notice of another claim to the property and without actual or constructive notice of any defect in or infirmities claims or equities against the sellers title, one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

138. The 8th Defendant alleged that it purchased the suit property from the 7th Defendant for Kshs.195,000,000/= . The 8th Defendant did not produce a sale agreement between it and the 7th Defendant to prove that indeed it purchased the property. Similarly, the 8th Defendant did not adduce any evidence to prove payment of the purchase price or acknowledgement of the same.

139. In the case of *Macfoy v United Africa Co Ltd* (1961) 3ALLER 1169 Lord Denning stated as follows:

“If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado though it is sometimes convenient to have the court to declare it to be so. And every proceeding that is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

140. Having found that the registration of Grant No. I.R No. 14XX81 was effected fraudulently, the transfer from the 7th Defendant to the 8th Defendant was null and void.

141. The 7th Defendant had no title to pass to the 8th Defendant.

In the end, I find that the Plaintiff has proved her case against the Defendants on a balance of probabilities.

142. From the material placed before me, I am not satisfied that the 8th Defendant was a bona fide purchaser of the suit property and even if he was, the 8th Defendant's title is rooted on a fraudulent title which cannot stand against the Plaintiff's interest in the suit property. I therefore find that the 8th Defendant has not proved its case against the Plaintiff as required by the law.

143. The upshot of the foregoing is that I enter judgment for the Plaintiff against the Defendants in the following terms: -

- a. A declaration be and is hereby issued that the sale agreement dated 29th January 2009 and the Instrument of Transfer dated 8th May 2007 are null and void ab initio.
- b. A declaration be and is hereby issued that the sale agreement dated 26th November 2009 and the Instrument of Transfer dated 3rd March 2010 are null and void ab initio.
- c. A declaration be and is hereby issued that the Plaintiff is the lawful owner of the suit property.
- d. An order be and is hereby issued cancelling the provisional certificate of title in respect of the suit property issued on 13th August 2010.



- e. An order be and is hereby issued rectifying the grant No. I.R 4XX82 by removing the false page containing entries 5,6,7 and 8 and replacing it with the genuine page containing entries 5 and 6 only.
- f. An order be and is hereby issued requiring the 1st Defendant, its servants and agents to vacate the suit property.
- g. An order of perpetual injunction be and is hereby issued restraining the 1st, 2nd and 3rd Defendants from entering, dealing or in any manner interfering with the Plaintiff's right of ownership over the suit property.
- h. A declaration be and is hereby issued that grant No. 14XX81 and all the instruments registered against it are null and void.
- i. A declaration be and is hereby issued that the Plaintiff is the lawful owner of the other suit property.
- j. An order be and is hereby issued cancelling grant No. I.R No. 14XX81 in respect of the other suit property issued on 22nd January 2013.
- k. An order be and is hereby issued requiring the 8th Defendant, its servants and agents to vacate forthwith the other suit property.
- l. An order of perpetual injunction be and is hereby issued restraining the 8th Defendant from entering, dealing or in any other manner interfering with the Plaintiff's right of ownership over the other suit property.
- m. The Plaintiff is awarded costs of the suit.

JUDGMENT DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS 7TH DAY OF MAY 2025

.....

T. MURIGI

JUDGE

IN THE PRESENCE OF:

Ms Mulongo for the Plaintiff

Ahmed – Court Assistant

