



**Ambogo v Ogutu & 4 others (Environment and Land Case  
179 of 2016) [2025] KEELC 5152 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5152 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 179 OF 2016  
EK WABWOTO, J  
JULY 10, 2025**

**BETWEEN**

**CALEB AMBOGO ..... PLAINTIFF**

**AND**

**RICHARD OCHIENG OGUTU ..... 1<sup>ST</sup> DEFENDANT**

**FREDRICK OGUTU ..... 2<sup>ND</sup> DEFENDANT**

**GILBERT OTIENO AMOKO ..... 3<sup>RD</sup> DEFENDANT**

**JANE NZULA NGUKU ..... 4<sup>TH</sup> DEFENDANT**

**THE CHIEF LANDS REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was instituted vide a plaint dated 18<sup>th</sup> January 2016 which was later amended on 26<sup>th</sup> November 2018. The Plaintiff sought for the following reliefs in his amended plaint:-
  - a. A declaration that the registration of Plot D No. Ngong/Ngong/69938 measuring 0.422 Ha in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is fraudulent and illegal.
  - b. A declaration that the Plaintiff is the lawful joint owner together with the 3<sup>rd</sup> Defendant of all that property known as Plot D No. Ngong/Ngong/69938 measuring 0.422Ha.
  - c. An Order Mandatory Injunction compelling the 5<sup>th</sup> Defendant to Cancel title deed number Ngong/Ngong/69938 registered in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and register the same in the names of the Plaintiff and 3<sup>rd</sup> Defendant.
  - d. An order of mandatory injunction directing the 4<sup>th</sup> Defendant by herself or by her agents, servants or otherwise however to forthwith remove and demolish any dwelling structures



erected on suit property Ngong/Ngong/69938, failing which the same be removed by the Plaintiff at the 4<sup>th</sup> Defendant's cost and expense.

- e. Damages or loss of use.
  - f. Costs.
  - g. Interests on (e) and (f) above.
2. The suit was contested by the Defendants. The 1<sup>st</sup> to 4<sup>th</sup> Defendants filed their statement of defence dated 26<sup>th</sup> February 2019 while the 5<sup>th</sup> Defendants filed a Statement of Defence dated 3<sup>rd</sup> November 2021.

### **The Plaintiff's case**

3. It was the Plaintiff's case that at all material times relevant to this suit, the Plaintiff, the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants together with 11 others were members of Couples Super Chama (hereinafter referred to as "Chama") a self-help group duly registered as such under the (former) Ministry of Gender, Children and Social Development. The Plaintiff was the registered chairperson of the Chama while the 2<sup>nd</sup> Defendant was the Secretary, the 3<sup>rd</sup> Defendant was the Assistant Chairman the 1<sup>st</sup> Defendant was an ordinary member. The 4<sup>th</sup> Defendant is a stranger not only to the Plaintiff but also to the Couples Super Chama group.
4. It was averred that sometimes in the year 2012, one Jacob Payakuoni Oke Suiyanga ("the Vendor") expressed his desire to sell to the Plaintiff his parcel of land known as Ngong/Ngong/36724 measuring 0.29Ha (hereinafter referred to as "the Land") for Kenya Shillings Two Million, Four Hundred Thousand (Kshs. 2,400,000.00). Because the Plaintiff could not afford the purchase price, he floated the idea to the interested member of the Chama with a view to convincing them to purchase the land jointly.
5. According to the Plaintiff, many members expressed interest in acquiring an interest in the land but not all the members could make the necessary financial commitments to acquire the same. The members of the chama had at the time already constituted themselves into a group and were only awaiting formal registration which was done on 27<sup>th</sup> March 2013.
6. It was averred that all agreements and arrangements with respect of the land prior to the formal registration of the chama were therefore done on the basis of mutual trust among members.
7. It was stated that the members of the chama interested in the land transaction resolved that they purchase the land through the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who were in the interest of convenience to hold the same in trust for all the other interested members pending the formal registration of the chama.
8. The Plaintiff averred that upon transfer to the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as trustees, the land was thereafter to be subdivided into smaller units (plots) with separate titles for each concerned member who were to make direct payments to the vendor for their respective plots.
9. According to the Plaintiff, the land was therefore subdivided and individual titles were to be procured for the benefit of the interested members as follows:-
- a. Sub plot A No. 69935 0.0422Ha Onyango Songa
  - b. Sub plot B No. 69936 0.0422Ha Walter Onditi
  - c. Sub plot C No. 69937 0.0422Ha Fredrick Ogutu



- d. Sub plot D No. 69938 0.0422Ha Caleb Ambogo & Gilbert Amoko
  - e. Sub plot E No. 69939 0.0422Ha Isaac Oluoch & Joseph Omala
  - f. Sub plot F No. 69940 0.0422Ha Richard Ogutu
10. The Plaintiff stated that jointly with the 3<sup>rd</sup> Defendant, he was supposed to acquire title of the sub plot D. No. 69938 measuring 0.042jHa after the subdivision of the land.
  11. All the members of the chama who had interests and invested in sub plots A, B, C, D, E and F acquired their respective title deeds pursuant to the process explained above except for the Plaintiff.
  12. Upon conducting an official search, the Plaintiff found that Plot D. Ngong/Ngong/69938 (hereinafter referred to as “the suit property”) had instead been registered in the joint names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
  13. According to the Plaintiff, the land purchase and subdivision was a closed transaction restricted only to members of the chama. The fact that the 4<sup>th</sup> Defendant was not and has never been a member of the chama at the material time in itself precludes her from acquiring the purported title to the suit property and it was not conceivable how the title ended up being registered in the joint names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants instead of those of the Plaintiff and the 3<sup>rd</sup> Defendant.
  14. The Plaintiff averred that he is the chairperson and a co-signatory of the chama accounts and as such could have been aware that the 4<sup>th</sup> Defendant joined the group and what contributions she made towards the acquisition of her purported interests in the suit property.
  15. The Plaintiff contends that the issuance of the title of the suit premises to the joint names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants was therefore fraudulent, illegal and therefore null and void.
  16. It was further contended that there was a deliberate scheme by the Defendants to fraudulently divest him of his lawful proprietary rights to the suit property thereby cruelly violating his constitutional right to property.
  17. It was averred that the 4<sup>th</sup> Defendant has now developed the suit property in a devious attempt to consolidate and fortify her non-existent claim over the same.
  18. It was also averred that he has been subjected to anguish and suffered loss from the Defendants action particulars of which were pleaded at paragraph 22(a) of the plaint.
  19. During trial two witnesses testified on behalf of the Plaintiff. The Plaintiff testifying as PW1 while Walter Onditi testified as PW2.
  20. The Plaintiff who testified as PW1 adopted and relied on his witness statement dated 26<sup>th</sup> November 2018 and the Plaintiff’s bundle of documents of even date and a supplementary bundle dated 17<sup>th</sup> May 2022 in his evidence in chief.
  21. It was his testimony that he is the one who came up with the idea to the members of the church to purchase the land for use as an investment. He denied being a broker. He also stated that they agreed for a purchase price of Kshs. 2,000,000/=. He did the transfer and also financed but paid in kind. He also stated that the members did not have the money save for Mr. Ogutu who had Kshs. 250,000/= which he transferred to Magdalene.



22. It was his testimony that he did a transfer of 2% of the purchase price, paid stamp duty and also hired a tractor to clear the area. He also stated that he did make further payments of Kshs. 32,000/=, Walter Onditi PW2 paid for him Kshs. 50,000/=
23. He also stated during trial that the contribution of the purchase price was shared. Fredrick Ogutu took an eighth. He stated that he did not take any money from Richard Ogutu.
24. It was his testimony that the group operated in mutual trust. According to him, the group also known as “The Chama” was started on 24<sup>th</sup> May 2013 after it had been registered on 27<sup>th</sup> March 2013 and their members also included the spouses to the registered members. He also stated that he is the one who signed the mutation form and later everyone got their title except for him.
25. When cross-examined by Learned Counsel Mr. Jaleny for the 1<sup>st</sup> to 4<sup>th</sup> Defendants he denied being a broker to the transaction but Mr. Karanja was the one who acted as a broker. He also stated that the transaction stated sometimes in early 2012. The land was going for Kshs. 2,000,000/= which he paid in cash and in kind. He stated that he paid 2% of the purchase price as stamp duty, even though he did not have the said receipt in court.
26. On further cross-examination, he stated that there was a meeting held on 24<sup>th</sup> March 2013 of which its minutes were prepared but had not been signed by the Secretary. He also stated that nobody had been forced to join the chama.
27. He further stated on cross-examination that he paid Kshs. 32,000/= on 9<sup>th</sup> September 2019. The sale agreement was done in the names of 2 individuals in trust of the rest. The said individuals completed the payment on behalf of the rest.
28. He also stated that Richard Ogutu paid Kshs. 150,000/= even though Kshs. 250,000/= was the required deposit. He also stated that in the course of the transaction, he did not appear before the Land Control Board. He did not forge any signatures of the members. The chama applied for funds from Uwezo Fund but did not receive any.
29. When cross-examined by Learned Counsel Ms. Njuguna for the 5<sup>th</sup> Defendant, he stated that the bank statement produced in evidence was in the names of “Couples Super Chama”. The account was operated for the purpose of the land. The members ordered him to withdraw the money. The chama is still in operation to date but the members have refused to give him access to the records.
30. When asked about the issue of buying the property in trust, he stated that he was present during the execution of the agreement but the issue of buying the property in trust of the members was not included in the agreement and this was a fact known to all its members. He also stated that Jane Nzula took his portion of the property. He reiterated that his contribution was in kind and that not all payments were made through the account.
31. When asked as to why he had sued the Chief Land Registrar, he stated that his office could have been involved or not involved in the transaction.
32. On re-examination, he stated that he is the one who took the names of the members to the Land Registrar as per the balloting that had been done. He also stated that his name was omitted at the point of registration and that is why he has sued the Land Registrar.
33. He also stated that he could quantify his services offered in kind to be equivalent of Kshs. 100,000/= in terms of its contribution. He also stated that the value of an 1/18 of an acre was set at Kshs. 400,000/= Each parcel was valued as such and he was to contribute Kshs. 200,000/= with the co-owner.



34. He also stated that Fredrick Ogutu's name was not in the sale agreement but the land was transferred to him.
35. In responding to the issues raised in respect to the bank account, he stated that the account had 3 signatures. No single person was allowed to withdraw the funds. His name appeared on the statement because he was the last person to withdraw funds from the account. He also stated that Joseph Omolo did withdraw Kshs. 400,000/= as per the said bank statement.
36. He further stated that there was no DCI report nor any document examination report that he forged the signatures. He was not informed when titles were being processed and issued. The members did not abide to the 90 days completion time since final payment was acknowledged on 6<sup>th</sup> June 2013 being way after the set completion date.
37. He once again denied being a broker and reiterated that Karanja was the broker in the said transaction even through he was not one of the members of the chama.
38. Walter Onditi who testified as PW2 adopted and relied on his witness statement dated 26<sup>th</sup> November 2018. He stated that the Plaintiff PW1 herein is his cousin and he is the one who had informed him about the land.
39. It was his testimony that he paid Kshs. 450,000/= the extra Kshs. 50,000/= being paid on behalf of the Plaintiff.
40. When cross-examined by Learned Counsel Mr. Jaleny, he stated that payment of Kshs. 450,000/= was made through a cheque though he could not remember the specific account number. He also stated that the bank statement showed that he made the payment.
41. It was his testimony that he has never done any withdrawal from the said account because he was not a signatory to the same. He also stated that he did not attend any chama meeting. He got a title of his plot. His name appears on the mutation form. He was not present when balloting was done. He does not remember signing the transfer documents.
42. When cross-examined by Learned Counsel Ms. Njuguna, he stated that he was aware that the Plaintiff was to co-own the plot with Gilbert Otieno. He stated that he was a member of the chama and all resolutions were communicated to him and there was also a resolution to equate Caleb's payment in kind with some monetary figure.
43. When re-examined, he stated that the extra payment of Kshs. 50,000/= was made on behalf of the Plaintiff and the Plaintiff was to pay Kshs. 200,000/= He also stated that Jane Nzula Nguku the 4<sup>th</sup> Defendant was not a member of the chama and together with the Plaintiff they had been denied minutes of the group.

#### **The case of the 1<sup>st</sup> to 4<sup>th</sup> Defendants**

44. The 1<sup>st</sup> to 4<sup>th</sup> Defendants filed their joint statement of defence dated 26<sup>th</sup> February 2019 together with a list of witness, witness statements and list and bundle of documents.
45. It was pleaded that the Plaintiff's role in the transaction was a land broker for the Vendor who paid his brokerage fees and that after the completion of the transaction, he then approached the purchasers with a view to join a chama he was forming but the Plaintiff forged the chama group minutes and their signatures an issue which had been referred to the Directorate of Criminal Investigations for handwriting and expert opinion on the same with a view of commencing criminal proceedings against the Plaintiff which ended up being an exercise in futility as the same did not take off to any activity.



46. It was averred that the Plaintiff only used to attend their meetings on behalf of Walter Onditi, who was one of the purchasers.
47. The 1<sup>st</sup> to 4<sup>th</sup> Defendants further averred that they bought land for Kshs. 2,000,000/= and not Kshs. 2,400,000/= and the 4<sup>th</sup> Defendant bought her plot for Kshs. 600,000/= on a willing seller willing buyer arrangement.
48. During trial, 5 witnesses testified on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Defendants.
49. Richard Ochieng Ogutu testified as DW1. He adopted and relied on his witness statement dated 26<sup>th</sup> February 20219 in his evidence in chief. He stated that he met Francis Opole in September 2012 who introduced the idea of buying the plot to him. He was told that the land was going for Kshs. 2 Million. He did not have the money at that time but he would partner with other buyers to raise the purchase price.
50. He also stated that he visited the land and on 24<sup>th</sup> October 2012 where he met the seller. He also stated that he was introduced to 3 other people who were land brokers. These were the Plaintiff, Evans Opole and Joseph Karanja. At that time the Plaintiff was known to him.
51. It was also his testimony that they later made payment of the purchase price for the land amounting to Kshs. 2,000,000/=. They were 7 persons upon which they were to pay Kshs. 400,000/- each. The payments were complete, subdivision done and transfer made to their individual names. The Plaintiff's name was missing from the mutation form. Plaintiff never made any payment and he never deposited any money to the Vendor's account.
52. When cross-examined by Learned Counsel Ms. Njuguna he stated that the Couples Super Chama Group was not in existence at the time of purchase of the property. The purchase price was Kshs. 2,000,000/= The same was also indicated in the sale agreement.
53. When asked about the involvement of the 4<sup>th</sup> Defendant Jane Nzula Nguku he stated that she made payment after the purchase had been open to other persons who were not members of the group and she paid Kshs. 600,000/= He also stated that the Plaintiff was a broker representing his Cousin. He paid Kshs. 400,000/= directly to the sellers account.
54. When cross-examined by Learned Counsel Mr. Ambala for the Plaintiff, he stated that Fred Ogutu was brought to him by Isaac Oluoch and Isaac Oluoch was introduced by Gilbert while Walter Onditi was brought by the Plaintiff.
55. He also stated in cross-examination that he did not have any agreement showing that the Plaintiff was a land broker. He also stated that the broker was to be paid 3% of the value of the land but they were not paid. He also stated that since the transaction had been completed then the Plaintiff's role as a broker had also been completed.
56. He further stated in cross-examination that during the balloting process, the Plaintiff participated on behalf of his Cousin Walter Onditi.
57. When asked about the alleged forgery of signatories and minutes, he stated that they never received any report from the DCI. He further stated that he never deposited any money to the Plaintiff's account. The sale agreement had only the names of Richard Ogutu and Gilbert Amoko for the reasons that they were the only ones who had completed payment. He denied signing any transfer forms.



58. According to him, PW2 did not pay any money on behalf of the Plaintiff. He did not bring his deposit slip. He never attended any of their meetings. Jane Nzula paid more because at the time she was making payment, price had changed and the money was used to improve the property.
59. When re-examined, he stated that the Plaintiff was paid his brokerage fees by the seller. The payment made by Jane Nzula for Kshs. 600,000/= was not part of the purchase price. There was no trusteeship. Each purchaser was to pay directly. There was no agreement to give the Plaintiff a plot for his services rendered in kind. The entire purchase price that was made was deposited in the seller's account.
60. Fredrick Ogutu testified as PW2. He adopted and relied on his witness statement dated 26<sup>th</sup> February 2019 in his evidence in chief. It was his testimony that he was introduced to the transaction by one Isaac Oluoch. He went and saw the land then met the group members. Later he paid a deposit of Kshs. 250,000/= and completed the remaining balance a total of which came to Kshs. 400,000/= He also stated that he met the Plaintiff and Richard Ogutu before he made the payment of the property. It was his further testimony that payment was made to Equity Bank and the deposit slip handed over to the Plaintiff.
61. He also stated in his testimony that the names of Richard Ogutu and himself were to be on the title to represent the other members of the group. He also stated that once the title was transferred to their names, the mutation was done, the property was subdivided into 6 portions and balloting was done for allocation upon which the Plaintiff was present representing his cousin PW2. He confirmed being Secretary of the group. He denied declining the release of any documents in his possession. He also stated that the DCI were not able to release the report because the original documents were missing. He also stated that the bank account was opened by the Plaintiff. Karanja was one of the brokers. The seller had undertaken to pay all the brokers. He denied ever withdrawing any funds from the bank.
62. He further stated that the Plaintiff never offered any services to them, he only stood in for the Plaintiff and they never promised him any land.
63. Upon cross examination by Learned Counsel Ms. Njuguna, he stated that he joined the Super Chama at the tail end. He joined as a member and later became its Secretary. No meeting nor any election was held. He also stated that Jane Nzula came later. Members had agreed to have the property transferred to himself and Richard Ogutu. The original mutation forms that they were given had no names.
64. On further cross examination, he stated that Gilbert Otieno only paid Kshs. 200,000/= and his portion was taken over by Jane Nzula. He also stated that Jane Nzula was introduced to them by Isaac.
65. He also stated that the Plaintiff was the Chairman of the group but no meetings were held. He maintained that the Plaintiff was a broker and only represented PW2.
66. On cross-examination by Learned Counsel Mr. Ambala for the Plaintiff, he stated that he reiterated that he had been introduced to the group by Isaac Oluoch who was also a member. He also stated that he was not sure if the Plaintiff was paid by the seller. He also stated that they had no meeting and he never signed any minutes neither did he sign any Uwezo form.
67. When asked if the documents were forgeries, he stated that he did not have any DCI report confirming the same.
68. He further stated that everyone was given a role. PW2 through the Plaintiff was in charge of logistics and communication between the lawyer, surveyor and the seller.
69. He also stated that Walter was called and informed of their decision to sell one of the plots to Jane Nzula.



70. When re-examined, he reiterated that he never signed any minutes. There were no minutes talking about any sale of the land. The resolution was not minuted. He never signed for any withdrawal of any monies. He only signed for the transfer document. The Plaintiff never produced any receipt confirming deposit made towards the purchase of the property.
71. Evans Opole testified as DW3. He relied on his witness statement dated 26<sup>th</sup> February 2019 in his evidence in chief. It was his testimony that the Plaintiff informed him that the land was being sold and he was to purchase the same together with other persons. He also stated that the Plaintiff was not a purchaser but was just standing in for his cousin Walter Onditi.
72. When cross-examination he stated that the land did not belong to him. He did not sign any transfer forms.
73. On further cross-examination he stated that he knew the Plaintiff way back from 1996 and the Plaintiff had told him that he was a broker for the said transaction though he did not show him any agreement to confirm the same. He also stated that he did not pay any agency fees. He also denied being a broker for anyone. He did not have copies of the minutes of the meeting held and any resolutions made. He also stated that the Plaintiff brokerage fees was paid by the seller but he did not have any evidence of the same. He also stated that he was not aware of any chama.
74. In cross-examination, he stated that the seller was better placed to prove who participated in the transaction. The meetings in reference were for the intended purchasers and not the registered group.
75. Gilbert Otieno Amoko testified as DW5. He relied on his witness statement dated 26<sup>th</sup> February 2019 in his evidence in chief. He stated that he knows the Plaintiff since they attend the same SDA church and the Plaintiff was the broker for the transaction. He stated that he had requested him to look for land for purchase on his behalf. Once the land was available, he visited the site and they agreed on the mode of payment of the purchase price. He also stated that they had agreed that the seller would pay the broker's commission and deposit of the purchase price was made.
76. He further stated that Jane Nzula was not in the initial list. She joined later and paid Kshs. 600,000/= He equally stated that the Plaintiff never paid any money as purchase price. He was paid his commission fee by the seller and he was not to be given any land.
77. On cross-examination, by Learned Counsel for the 5<sup>th</sup> Defendant he stated that they were buying the land individually and the Plaintiff was present when the agreement was signed.
78. Upon cross-examination by Learned Counsel Mr. Ambala for the Plaintiff, he stated that he did not have any brokerage agreement in court and he did not know how much the Plaintiff was paid. He also stated that he did not have any agreement stating that the Plaintiff would be paid any commission. He did not have any minutes. He did not know the members of the Couples Super Chama. He reiterated that the Plaintiff was involved as a broker. Jane Nzula came later and made payment to Isaac Oluoch.
79. When re-examined, he stated that all the payments made as purchase price was paid directly to the seller's account and the Plaintiff ought to have produced the brokerage agreement.
80. Jane Nzula Nguku, DW6 was the last witness to testify on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Defendants. She relied on her witness statement dated 26<sup>th</sup> February 2019. It was her testimony that she was introduced to the other Defendants by Isaac Oluoch. She paid the purchase price of Kshs 600,000/= in instalments. She was issued a title deed after completion of the purchase price. She has never seen the Plaintiff.



81. When cross-examined by Learned Counsel for the Plaintiff she stated that she did a search before purchase. Though she did not have the same in court. She also stated that she does not know the seller personally since she never met him.

### **The case of the 5<sup>th</sup> Defendant**

82. The 5<sup>th</sup> Defendant filed a Statement of Defence dated 3<sup>rd</sup> November 2021 denying the averments made in the plaint and seeking for dismissal of the suit.

83. During trial, John Matheka the Land Registrar testified as DW4. He relied on his witness statement dated 16<sup>th</sup> February 2022 and the 5<sup>th</sup> defendant's bundle of documents dated 15<sup>th</sup> February 2022 in his evidence in chief.

84. On cross-examination by Learned Counsel Mr. Jaleny for the 1<sup>st</sup> to 4<sup>th</sup> Defendants he stated that a transfer was done and no complaint was ever received in respect to the said transfer.

85. On cross-examination by Learned Counsel Mr. Ambala for the Plaintiff, he stated that he had not seen any trust agreement. There are 6 subdivisions which were made.

86. When re-examined, he stated that he was not the one who prepared the consent.

### **Submissions**

87. Upon close of the respective parties' cases, the counsel for the parties filed and exchanged written submissions for consideration by the court.

88. The Plaintiff filed written submissions dated 13<sup>th</sup> May 2024. Counsel submitted on the following issues:-

- a. Whether the Plaintiff has successfully challenged the issuance of the title number Ngong/Ngong/69938 in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
- b. Whether the Plaintiff should be granted orders sought in the plaint.
- c. Costs.

89. On the first issue, it was submitted that the Plaintiff had clearly demonstrated with cogent evidence how he participated in the acquisition of the suit property and he even signed the transfer instruments and mutation forms.

90. This evidence was not rebutted by the Defendants or at all. DW4 had confirmed that he could see three signatures on the transfer document and mutation form.

91. It was also submitted that the Plaintiff had proved beyond reasonable doubt that all the defendants with the exception of the 4<sup>th</sup> Defendant were members of Couples Super Chama group. He further proved that the said chama had a bank account which was used as a central point to collect money from the members towards the purchase of the property.

92. Further, he had an intricate knowledge and involvement towards the purchase and sub division of the mother title.

93. When it came to the receipt of his title, that is when he was defrauded by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, who sold it to a third party who was not part of the original land buyers.



94. The court was also urged to note that it was in evidence by both the Plaintiff and the 1<sup>st</sup>, 3<sup>rd</sup> Defendants that for each of the six parcel of land that were sub-divided from the mother title being Ngong/Ngong/36724, every purchaser was to pay Kshs. 400,000.00 while for the person who could not afford the Kshs. 400,000.00 they would share the 0.0422HA and each person sharing would contribute Kshs. 200,000.00. A quick math of the contributions by all the parties would show that the full amount for all the six (6) parcels would amount to Kshs. 2,400,000.00. This catered for payment of the purchase price to the seller and the balance would cater for transfer fees, mutation sub-division and subsequent transfer and clearing of the said parcel.
95. It was argued that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants could not produce a true reflection of accounts on what was collected, what was paid to Joseph Payakuoni, what was paid in terms of transfer fees, mutation and general preparation of the land for occupation.
96. It was further submitted that the Plaintiff had demonstrated that indeed they were initially 10 people who had shown interest in the land but two people fell of and they remain eight.
97. The Plaintiff further submitted that he had demonstrated how couples super chama collected funds which were used towards payment of the purchase price, funds that were used for payment of the transfer fees, sub-division and even general preparation of the parcel of land for occupation.
98. He also submitted that he had deposited money to this account, withdrew money from this account and even used his contribution in kind towards acquisition of the suit property.
99. It was argued that in this whole transaction, the 4<sup>th</sup> Defendant came in at the tail end. She had not history of how the parcel was acquired and even paid a higher amount to purchase the suit property than what was agreed among the other purchasers and this could only mean that she was brought in through a corrupt means and on a higher consideration than was expected.
100. Reliance was placed on Section 26(1)(a) and (b) of *Land Registration act* No. 3 of 2012 and the cases of Vijay Morjaria =Versus= Nansingh Madhusingh Darbar & Another (2000) eKLR and Mirko Blaeterman (suing through his power of attorney - Shabir Hatim Ali) & Another =Versus= David Mwangi Muiruri & 2 Others (2015) eKLR and argued that from the evidence produced in this matter the Plaintiff had clearly discharged the burden of proof required of him.
101. On whether the Plaintiff should be granted the reliefs sought and costs of the suit it was submitted that the Plaintiff has sought declaratory and mandatory injunctions and damages and thus should be granted the reliefs sought together with costs. The case of Susan Kanini Mwangangi & Another =Versus= Patrick Mbithi Kavita (2019) eKLR and Section 13(5) of the *Environment and Land Court Act* No. 19 of 2011 were cited in support.
102. The 1<sup>st</sup> to 4<sup>th</sup> Defendants filed written submissions dated 12<sup>th</sup> January 2024. Counsel submitted on the following issues:-
  - i. Did the 1<sup>st</sup> and 2<sup>nd</sup> Defendants held title number.
  - ii. Was there an intention by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to form and use Couples Chama Group as a vehicle purchasing the suit property.
  - iii. Was the Plaintiff a land broker in the conveyance of title number Ngong/Ngong/36724.
103. Counsel submitted that the sale agreement dated 24<sup>th</sup> October 2012 had no trusteeship which was envisaged. The Plaintiff never challenged the validity of the transfer mother title and the subsequent sub titles on grounds that the same were fraudulent or made by misrepresentation on the part of 1<sup>st</sup>,



2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The cases of Court of Appeal Civil Appeal No. 83 of 2017 Heatbet Ltd =Versus= Ng'ambwa Heatbeat Community Children's Homes Rescue Centre, Peter Ndungu Njenga =Versus= Supha Watiri Ndungu (2000) KLR, Civil Appeal No. 75 of 2016 Juletabi African Adventure Ltd & Another =Versus= Christopher Michael Lockleby and Tony Justus Ongale =Versus= Catherine Lorna Mariati Busia ELC No. 145 of 2017 were cited in support.

104. On the second issue, it was submitted that Couples Super Chama Group was never formed for the purposes of purchasing the land. No minutes were produced to confirm the same. The group was formed on 27<sup>th</sup> March 2013 the agreement for sale was executed on 29<sup>th</sup> October 2012 and as such the Plaintiff has failed to prove that the group was involved in the purchase of the suit property.
105. On whether the Plaintiff was a land broker in the conveyance of the title number Ngong/Ngong/36724, it was submitted that from the evidence tendered by DW1, DW2, DW3 and DW4 it was clear that the Plaintiff was a land broker, he had failed to produce any payment document for registrable interest on the suit property and further claim of ownership in kind was just mere allegation without proof.
106. It was also submitted that the Plaintiff never called the seller of the property Mr. Jacob Payakuoni Ole Suiyanga to shed light on the status of the Plaintiff in the said transaction.
107. The court was urged to dismiss the suit with costs.

### **Analysis and Determination**

108. Having considered the pleadings filed herein, oral and documentary evidence tendered and the written submissions filed by the parties, the court has considered the following issues for determination herein:-
  - i. Whether the Plaintiff has proved any registrable interest in respect to Plot D. No. Ngong/Ngong/69938 measuring 0.422Ha.
  - ii. Whether the Plaintiff was a land broker in the said transaction in respect to the suit parcel.
  - iii. Whether the Plaintiff has proved his case against the Defendants and is entitled to the reliefs sought.
  - iv. What orders should issue as to costs.

### **Issue No. (i)**

#### **Whether the Plaintiff has proved any registrable interest in respect to the suit parcel**

109. It was the Plaintiff's case that the Plaintiff herein brought the instant suit alleging collusion between the Defendants to defraud him of a piece of land known as Ngong/Ngong/69938 they had bought jointly with 8 other individuals. Consequently, he seeks a declaration that the registration of the said parcel of land in the name of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants be declared fraudulent and illegal thereafter have the said parcel of land registered in the names of the Plaintiff and the 3<sup>rd</sup> Defendant with the 4<sup>th</sup> Defendant to give vacant possession of the parcel to the Plaintiff.
110. During trial, the Plaintiff who testified as PW1 stated that he made payment amounting to 100,000/= and the remaining sum of Kshs. 100,000/= was to be quantified for his work done in kind towards purchase of the suit property. Walter Onditi who testified as PW2 also stated that the Plaintiff was a purchaser and he paid for him Kshs. 50,000/= and the rest was to be quantified in kind from the work he had done.



111. A registered proprietor of a parcel of land is the absolute and indefeasible owner thereof, subject only to encumbrances, easements, restrictions, wayleaves, airways, restrictions, conditions contained or endorsed on the certificate, overriding interest and matrimonial rights and and/or unless fraud or misrepresentation or illegality or unprocedural process or corrupt scheme is proved by the opposing party. In that position, the registered proprietor enjoys proprietary rights including the right to possession and the right to admit or licence any person thereinto.
112. The Torrens System of land registration now adopted in Kenya imported the principle of sanctity of title – now housed in section 26(1) of the *Land Registration Act* - renders the registered proprietor the absolute and indefeasible owner thereof, subject only to such encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and/or unless fraud or misrepresentation or illegality or unprocedural process or corrupt scheme is proved. See also *Breskvar v Wall* [1971] 126 CLR, per Barwick CJ; *Gibbs v Messer* (1891) AC 254; *David Peterson Kiengo & 2 Others vs. Kariuki Thuo* [2012] eKLR, per Prof. Ngugi, J.; *Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others* [1997] eKLR, per Tunoi, Shah and Pall, JJA (as they then were); *Charles Karathe Kiarie & 2 Others vs. Administrators of the Estate of John Wallace Mathare (deceased) & 5 Others* [2013] eKLR, per Onyango Otieno, JA (as he then was), Gatembu and Mohammed, JJA; *Hannah Wangui Ithebu & Other vs. Joel Nguigi Magu* [2005] eKLR, per Visram, J. (as he then was); *Nairobi Permanent Markets Society & other eleven vs. Salima Enterprises and NCC Appeal No. 185 of 1997*; *Dinshaw Byramjee & Sons Ltd v A.G. of Kenya* [1966] E.A. 198; *Frazer v Walker* [1967] 649 ALL E.R.; *Shimoni Resort v Registrar of Titles & 5 others* [2016] eKLR (per Okongó, J); *Njilux Motors Ltd v KP&L & Another Civil Appeal Number 206 of 1998*; *Russel & Co. Ltd vs. Commercial Bank of Africa Ltd* (1986) KLR 633; and *Wreck Motors Enterprises v Commissioner of Lands Nairobi, Civil Appeal Number 71 of 1997* (Unreported).
113. In considering whether or not the Plaintiff has demonstrated any registrable interest in the suit property, It was submitted by the Plaintiff that he has demonstrated and proved the same before this court. However a perusal of the sale agreement dated 29<sup>th</sup> October 2012 showed the following; that the sale agreement was between Jacob Payakuoni Ole Suiyanga as the Vendor and Richard Ocheing Ogutu, Gilbert Otieno Amoko and Others as the purchasers and the purchase price was Kshs. 2,000,000/= . The said agreement stipulated how the purchase price was to be paid but it never provided and or stated that the Plaintiff was to be a party to it. The said agreement equally never stated whether or not the Plaintiff's contribution was to be quantified in kind. The said agreement equally never stated whether or not the Plaintiff's contribution was to be quantified for the work done. It is worth noting that parties should always be aware of the consequences and repercussions before entering into any agreement since they will always be bound by the terms of the said agreement. I place reliance on the case of *National Bank of Kenya Ltd vs. Pipeplastic Samkolit & another* (2001) KLR 112 the court stated that:
- “ A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved”.
114. The court has also painstakingly gone through *the Constitution* of the Couples Super Chama Group and notes that Clause 3 of the same which deals with the objectives of the group did not expressly provide that the groups objectives will be to purchase any land on behalf of its members. From the evidence that was also tendered, it was established that the said group was registered on 27<sup>th</sup> March 2013 as per its certificate registration which was produced in evidence by the Plaintiff yet the Sale Agreement in respect to the suit parcel was executed on 24<sup>th</sup> October 2012. In essence the group was registered way after the transaction had taken place.



115. The court also notes that the Plaintiff had hinged his case on the fact that the mutation form had indicated his name as a co-owner of Parcel D together with Gilbert Otieno the 3<sup>rd</sup> Defendant. However, while testifying on the said issue, Gilbert Otieno Omoko, DW5 stated that the said property was being purchased individually and he reiterated that the Plaintiff was just a broker to the said transaction and as such no evidence was adduced in support of the said averment made by the Plaintiff.
116. From the analysis of the evidence tendered and all the documentation of the evidence that was produced in court, it is the finding of this court that the Plaintiff has been unable to prove his stake or registrable interest in the suit parcel.

**Issue No. (ii)**

**Whether the Plaintiff was a land broker in the said transaction in respect to the suit parcel.**

117. The 1<sup>st</sup> to 4<sup>th</sup> Defendants pleaded at paragraph 9 of their Statement of Defence dated 26<sup>th</sup> February 2019 that the Plaintiff was a land broker who attended their meeting to cater for the interest of Walter Onditi.
118. Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Defendants also submitted as much on the same and urged the court to find as such.
119. During trial both the Plaintiff and Walter Onditi who testified as PW1 and PW2 denied the said allegations while the 1<sup>st</sup> to 4<sup>th</sup> Defendants witness who testified as DW1, DW2, DW3 and DW5 reiterated that according to them they knew the Plaintiff as a broker and not a seller.
120. In land transactions, a broker is defined to include an agent employed to make bargains and contracts between other persons preferably the seller and the purchaser.
121. Considering that this was an issue raised by the 1<sup>st</sup> to 4<sup>th</sup> Defendants then the 1<sup>st</sup> to 4<sup>th</sup> Defendants ought to have demonstrated to this court that indeed the Plaintiff was their broker. While the 1<sup>st</sup> to 4<sup>th</sup> Defendants witnesses testified that the Plaintiff was a broker, no documentation and or evidence was produced to confirm the same and neither was the seller Jacob Payakuoni Ole Suiyanga called to testify to confirm the same. In the circumstances, it the finding of this court that the 1<sup>st</sup> to 4<sup>th</sup> Defendants have been unable to demonstrate and convince this court that the Plaintiff was a land broker to the said transaction.

**Issue No. (iii)**

**Whether the Plaintiff has proved his case to the required standard to warrant the grant of the reliefs sought**

122. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the [Evidence Act](#), which provides as follows:
- “(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.”



Sections 109 and 112 of the same Act states;

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

123. Registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest.

124. In the instant case, this court has already found that the Plaintiff has been unable to prove any registrable or legitimate interest in respect to the suit parcel and in view of the foregoing it is the finding of this court that the Plaintiff has not proved his case to the required standard to warrant the grant of the reliefs sought.

125. In respect to costs, the same is at the discretion of the court and having considered the circumstances of the case herein, it would not be necessary to condemn the Plaintiff to bear the costs of the suit. Consequently, this court directs each party to bear own costs of the suit.

### **Conclusion**

126. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that the Court file was among those that were misplaced during the Court's transfer to a different station which involved movement of so many files within quite a short time.

127. In conclusion, having considered the totality of the weight of the evidence tendered herein it is the finding of this court that the Plaintiff has failed to prove his case to the required standard and the following final orders are hereby issued:-

i. The Plaintiff's suit be and is hereby dismissed.

ii. Each party to bear own costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

N/A for the Plaintiff.

Mr. Jaleny for the 1<sup>st</sup> to 4<sup>th</sup> Defendants.

Ms. Njuguna for the 5<sup>th</sup> Defendant.

Court Assistant: Mary Ngoira.

