



**Ntashart Ridge Limited v Lerte & 2 others (Environment and Land Case E074 of 2022) [2025] KEELC 5228 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5228 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E074 OF 2022  
LC KOMINGOI, J  
JULY 10, 2025**

**BETWEEN**

**NTASHART RIDGE LIMITED ..... PLAINTIFF**

**AND**

**ELIJAH KHANCHON LERTE ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR KAJIADO NORTH ..... 2<sup>ND</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Through the Plaint dated 21<sup>st</sup> September 2022, the Plaintiff a limited liability company claims that it is the registered proprietor of land Kajiado/Ntashart/1408 measuring approximately 43 hectares after acquiring it from one Kenrick Maina Miako. The title deed was issued on 30<sup>th</sup> December 2014. It avers that prior to the purchase, the land was in the name of the seller Kenrick Maina Miako, one of the Directors of the Plaintiff. The said Kenrick Maina Miako had acquired the land from Fidei Holdings Limited which was a subsidiary of United Insurance Company Limited. It claims that it had been enjoying quiet possession until they discovered that the same had been illegally and fraudulently transferred to the 1<sup>st</sup> Defendant without their knowledge, consent or authority while still in possession of the original Title.
2. The particulars of fraud and illegality against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are set out as follows: Colluding to have the property transferred to the 1<sup>st</sup> Defendant without their knowledge or consent; Issuing a title deed to the 1<sup>st</sup> defendant without requiring the surrender of the original title which was in their possession; Colluding to have the suit property transferred to the 1<sup>st</sup> Defendant using forged and illegal transfer documents; Registering the suit property in the 1<sup>st</sup> Defendant's name aimed at depriving the Plaintiff of its ownership.



3. It is the Plaintiff's case that this transfer has caused them loss of investment opportunities. It sought the following reliefs;
  - a. A declaration be and is hereby issued that the Plaintiff was and is the legal proprietor of land Title Number Kajiado/ Ntashart/1408 measuring approximately 43.0 Hectares or thereabout.
  - b. A declaration be and is hereby issued that the title deed issued by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant on 19/09/2014 was unlawful, null and void.
  - c. An order directing the 2<sup>nd</sup> Defendant to revoke the title deed over the suit property issued to the 1<sup>st</sup> Defendant on 19/09/2014.
  - d. An order of eviction of the 1<sup>st</sup> Defendant, his servants, agents, heirs, dependants and any other person claiming under or from the 1<sup>st</sup> Defendant land known as Title Number Kajiado/ Ntashart/1408.
  - e. An order of permanent injunction against the 1<sup>st</sup> Defendant, his servants, employees, agents, heirs and dependents and any other person claiming under or from the 1<sup>st</sup> Defendant, restraining them from occupying, trespassing and/or carrying out any activity in all that property known as Title Number Kajiado/ Ntashart/1408.
  - f. General damages for trespass and mesne profits against the 1<sup>st</sup> Defendant from 19/ 09/2014 up to the date of judgment.
  
4. The 1<sup>st</sup> Defendant in his Statement of Defence and Counterclaim dated 15<sup>th</sup> November 2022 contested the Plaintiff's claim stating that it was the Plaintiff who fraudulently transferred the land to itself using an impression that the land was sold for valuable consideration. He claims that Kenrick Maina Miako registered Fidei Holdings Limited with the intent to defraud the 1<sup>st</sup> Defendant's mother the late Timao Ene Lololigi who was the registered owner of the suit property after it was given to her by Saikeri Group Ranch in 1992 and a title issued in her favour on 23<sup>rd</sup> July 1992. His mother passed away on 4<sup>th</sup> may 1994 and at the time, the title was still in her name. It is his case that on 24<sup>th</sup> June 1996 when the Plaintiff claims the land was registered in favour of Fidei Holdings Limited, succession proceedings in respect of his mother's estate had not commenced. It is his case that they have been on the suit property and on 14<sup>th</sup> June 2013, he handed over the Title to his late brother Peterson Ole Supuko to commence succession proceedings. He claims that the entries number 4 and 5 on the Green Card were fraudulently registered, hence illegal, null and void. The particulars of fraud against the Plaintiff are set out as follows;Purporting to transfer the suit property to Fidei Holdings in 1996 through a forged Green cardUsing Fidei Holdings and Kenrick Maina Miano to defraud owners/beneficiaries of the Estate of the late Timao Ene LololigiPurporting to put a caution on the suit propertyPurporting to remove the caution and have the title issued on the same dayPurporting to effect a transfer using incomplete formsMaking dishonest claims about payment of Kshs. 320,000 as stamp duty
  
5. In the counterclaim he stated that as of 14<sup>th</sup> February 1990, the suit property parcel number Kajiado/ Ntashart/1408 was owned by Sakeri Group Ranch. On 23<sup>rd</sup> July 1992, the group ranch gifted their late mother, Timao Ene Lololigi the parcel and it was registered in her favour on the same day. His mother passed away on 4<sup>th</sup> may 1994 leaving her children in possession and/or occupation of the suit property. That at the time of her demise, the suit property was still in her name. Hence, it could not have been transferred to Fidei Holdings Ltd on 24<sup>th</sup> June 1996 as claimed.



6. It is his case, that the transfer in 1996 and the entries in the green card was fraudulent and illegal, because the same were done without consent or authority. He therefore sought for the following orders against the Defendants in the Counterclaim:
  - a. An order do issue declaring the purported transfers and entries made in the green card / register involving the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as illegal, null and void.
  - b. An order for return and cancellation of the title held by the 1<sup>st</sup> defendant with an order directed at the 3<sup>rd</sup> defendant in the counterclaim to register the title in the name of Timao Ene Lololigi.
  - c. A permanent injunction restraining the 1<sup>st</sup> Defendant and any or any other person acting on his behalf from interfering with the ownership, occupation of the said land, trespass and or doing any activity that may prejudice the interests of the rightful owners/beneficiaries.
  - d. General damages for trespass.
  - e. Costs of the suit and counterclaim
7. The Plaintiff in its defence to the Defence and Counterclaim dated 21<sup>st</sup> March 2023 denied the 1<sup>st</sup> Defendant's allegations of fraud and collusion and sought for dismissal of the counterclaim with costs.
8. The counterclaim against Fidei Holdings Limited was later withdrawn by the 1<sup>st</sup> defendant.
9. The Plaintiff filed a reply to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants statement of defence.

#### **Evidence of the Plaintiff**

10. PW1, Kenrick Maina Miako, one of the Directors of the Plaintiff adopted his witness statement dated 21<sup>st</sup> September 2022 as his evidence in chief and produced his bundle of documents marked P. Exhibit 1 to 20. He stated that as per the land registry records, the 1<sup>st</sup> defendant has now been registered as the owner of the suit property.
11. On cross examination he stated that the names of the transferors were not indicated on the transfer form, and there was no signature on the part of the Director or the secretary. He also confirmed that the signature of the person certifying did not disclose who it belonged to. He acknowledged that there was no KRA PIN certificate accompanying the transfer and there was no copy of receipt as evidence of payment for the application for consent from the Land Control Board. He stated that he purchased the land from Fidei Holdings Limited and a Title issued on 26<sup>th</sup> June 1996. However he did not have a copy of the consent for this transfer. He also stated he undertook due diligence before the purchase, but did not have a copy of the green card. He admitted that he did not confirm the history of the suit property. When shown the green card, he confirmed that the registered owner was Timao Ene Lololigi and that the certificate of death showed that she passed away on 4<sup>th</sup> May 1994 while the title in favour of Fidei Holdings Limited was issued on 26<sup>th</sup> June 1996. He stated that he could not confirm that there was no consent to transfer the property from Timao ene Lololigi. He however stated that he believes that the transfer was regular because his advocates appeared before the Land Control Board although he could not recall if he was present. When referred to the advertisement in the Newspaper on illegal transfers of land, he stated that the suit property was not among the parcels of land with disputes before the National Land Commission.
12. On further cross examination he stated that he purchased the land on 7<sup>th</sup> August 2014 after due diligence was undertaken by his advocates, although he did not inquire from Fidei Holdings Limited how it acquired the land. He stated that the suit property which is about 100 acres was vacant and bushy and upon the purchase, he took a surveyor who re-established the beacons. He confirmed that



the transfer form produced in Court neither bore the names of the Director or secretary nor the seal of the company. He maintained that the original transfer form had the seal on it.

13. On re-examination he stated that there was a seal of the company on the transfer form and the transfer had been witnessed by two directors who signed and affixed their photographs thereon. He also stated that the transfer was certified by an advocate and consent from Land Control Board issued. He also indicated that he was not aware whether Fidei Holdings Limited had a copy of certificate of official search for the suit property. He stated that he was not aware if his advocate carried out a search on the green card.

### **Evidence of the Defendants**

14. DW1 Christine Gachau, the County Civil Registrar, produced the death certificate of the late Timao Ene Lololigi who died on 4<sup>th</sup> May 1994 at the age of 63 years. She produced a certified copy of the death certificate which was marked as D. Exhibit 6.
15. On cross examination she stated that the deceased passed away in 1994 but the death certificate was issued in 2020, which was 26 years after her demise. She stated that late registration documents were duly filled as well as an Affidavit from the applicant and a letter from the area chief, accompanied by a copy of the national identification card of the applicant and the deceased. She also stated that in this case, they did not require a burial permit because the death was not registered but relied on the information declared by the area chief and the applicant. She also stated that evidence of the grave if available was also a requirement.
16. On re-examination she stated that confirmation of death is received from the area chief who signs the forms as a witness, as well as another witness from the area. She stated that the office believes the information of the Chief.
17. DW2 Elijah Khanchon Lerte, the 1<sup>st</sup> Defendant adopted his witness dated 15<sup>th</sup> November 2022 as his evidence in chief and produced his bundle of documents which was marked as D. Exhibit 1 to 7. He stated that as per the green card in his possession, the suit property was registered in his late mother's name Timao Ene Lololigi who passed away in 1994. But two years after her demise, on 24<sup>th</sup> June 1996, it was registered in favour of Fidei Holdings Limited without any transaction between the two or Administrators of her Estate. He stated that there was no sale agreement, consent from the Land control Board or transfer forms executed by his late mother in favour of Fidei Holdings Limited. He stated that the transfer forms produced by the Plaintiff's director were not genuine because the signatures, identification numbers and KRA Pin Nos were missing. He sought for cancellation of the Title in favour of the Plaintiff together with costs of the suit.
18. On cross examination he confirmed that the death certificate was issued in 2020, 26 years after his mother's demise. He stated that he applied for the death certificate as a late registration using the letter from the Area Chief, an affidavit, his late mother's identification card as well as his identification card to support the application. He stated that at the time of his mother's demise, the chief was John Tupana who retired in the year 2024. He stated that the Green Card in his possession was issued on July 2022 in presence of his advocate, and the Plaintiffs Advocate although it was not certified as a copy of the original nor did it show that it was issued in July 2022. He stated that the advertisement Standard Newspaper dated 7<sup>th</sup> December 2021 indicated that the Green card was lost and he was not aware whether it had been found. When referred to the Newspaper cutting dated 22<sup>nd</sup> July 2021, he confirmed that the suit property was not among the list of properties listed by the National Land Commission, nor was the Plaintiff mentioned therein.



19. On the issue of the alleged fraud against Kenrick Maina, he stated that he had not tendered evidence to prove the alleged fraud or evidence to show that he was the Director of the Companies mentioned in his witness statement. He noted that the succession proceedings for the Estate of the late Timao ene Lololigi began in 2017 but were yet to be finalised due to the pendency of this suit. He admitted that entry number 3 on the green card dated 19<sup>th</sup> September 2014, showed that he was the proprietor of the suit property. He admitted that he had not produced the title deed in his late mother's name because it got lost in 2009. He could not confirm the loss.
20. On re-examination he stated that he got a copy of the certificate of official search from the Lands Registry in 2022, one year after the advertisement of the loss of the Green card. He also stated that the incomplete documents held by the Plaintiff showed that the transfer was fraudulent, since that it was carried out after the demise of his mother.
21. DW3 Rahab Muthoni Njoroge, Land Registrar Kajiado West produced the copy of the Green Card as exhibit – D9. She stated that as per the Green Card, the land was allocated to Timao Ene Lololigi by Saikeri Group Ranch on 23<sup>rd</sup> July 1992. Entries on the green card shows it was transferred to Fidei Holdings Limited on 24<sup>th</sup> June 1996 but the Transfer document was not in the parcel file. She stated that the transfer document ought to be in the parcel file as proof of the transfer. She also stated that she was aware that the property of a deceased person cannot be transferred without undertaking succession proceedings.
22. On cross examination, she stated that she did not have any document in court to show that she was a Land Registrar. She stated that she was in Court to produce copy of the Green Card but indicated that she could not confirm when it was issued to the Defendant. She pointed that on 9<sup>th</sup> November 2023, they received a letter from the Directorate of Criminal Investigations requesting for the green card for purposes of investigating a purported fraud. This letter was not produced in Court neither was the parcel file. She stated that the Green Card was authentic although it had not been certified as a copy of the original because at the time of issuance, they did not have the original document. When asked about the certificate of official search produced by the Plaintiff, she stated that it had originated from the Land Registry and it was authentic. She stated that the property shown on that search was the suit property. She also confirmed that the words 'suspected fraud' written on the Certificate of official search had been written by the Land Registrar.
23. On re-examination she stated that there was no transfer from Timao Ene Lololigi to Fidei Holdings Limited and that the details on the green card tallied with the search produced by the Plaintiff and that the Green Card did not have the name Elijah Khanchon Lerte.
24. DW4 Kenneth Gitau Njoroge a Government Surveyor at the Ngong Survey Office stated that he was in charge of all the maps and mutations in Kajiado North and Kajiado West. He was present in Court to produce a letter dated 10<sup>th</sup> March 2022 relating to Kajiado/Ntashart/1408. The letter was from the Land Registrar asking him to confirm the beacons on the ground and if the land belonged to the person in occupation. He stated that he visited the suit property on 4<sup>th</sup> February 2022. He found the 1<sup>st</sup> Defendant on the ground, a house, he saw four beacons and the area Chief confirmed that the land belonged to Timao ene Lololigi. After the site visit he prepared the report and sent it to the Land Registrar. The said report was produced as D. Exhibit 10.
25. On cross examination he stated that the instructions for the site visit by the Land Registrar were issued verbally. He was to establish whether the beacons were still on the ground, the occupants of the property and whether the occupant was the owner. He stated that he established and picked out the beacons on the ground using a handheld GPS and coordinates. He stated that he did not know the



parties to the dispute and it was the area Chief who informed him who the owner of the land was. He then wrote a report and handed it to the Land Registrar although he did not have evidence to show it was received by the Land Registrar.

26. On re-examination he stated that Government surveyors were exempt from obtaining licenses. He also confirmed that the suit property measured 42.75 hectares on ground.
27. At the close of the oral testimonies, parties tendered final written submissions.

### **Submissions of the Plaintiff**

28. The following were the highlighted issues for determination: Whether the Plaintiff is the legal proprietor who holds a valid and indefeasible title of all that piece of land known as Title Number Kajiado/Ntashart/1408; Whether the 1<sup>st</sup> Defendant had proven fraud against the Plaintiff; and Whether the Plaintiff is entitled to the reliefs sought.
29. On whether the Plaintiff is the legal proprietor and holds a valid and indefeasible title of Kajiado/Ntashart/1408, it was submitted that the Plaintiff lawfully acquired the suit property from Kenrick Maina Miako, a director of the Plaintiff Company, who purchased it for valuable consideration from Fidei Holdings Limited, a subsidiary of United Company Limited. The transaction was duly registered, and a title deed was issued on 30<sup>th</sup> December 2014 by the then Kajiado North District Land Registry. As per the documentary evidence produced. The Plaintiff's titles was therefore statutorily protected and unimpeachable unless through fraud or procedural irregularities as provided under Section 26(1) of the *Land Registration Act*, and supported by the Court of Appeal in *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR and *Dr. Joseph Arap Ngok v Justice Moiwo ole Keiwua & 5 Others*, Civil Appeal No. 60 of 1997.
30. Counsel submitted that the property was currently registered in the 1<sup>st</sup> Defendant's name without evidence of how the transfer or registration was done. Counsel also indicated that the 1<sup>st</sup> Defendant's contest was on the grounds that his mother, Timao Ene Lololigi, the initial owner passed away on 4<sup>th</sup> May 1994, and could not have been transferred the property to Fidei Holdings Limited on 24<sup>th</sup> June 1996. Counsel casted doubts on the death certificate produced by the 1<sup>st</sup> Defendant which was issued on 7<sup>th</sup> July 2020. This death certificate was registered 26 years after the purported date of death, casting doubt on its credibility and suggesting that it was an afterthought aimed at contesting the Plaintiff's ownership. Counsel also submitted that the Registrar of Persons confirmed that the source of information for the death certificate was given by the 1<sup>st</sup> Defendant, and this further raised doubts on its reliability. And no reasons for the late registration were given. Counsel also raised questions on the green card presented by the 1<sup>st</sup> Defendant and produced by DW3, the Land Registrar, on grounds that it was neither certified nor dated. He indicated that DW3 admitted that standard practice requires green cards and official searches to be certified and dated just like the Official search produced by the Plaintiff. The green card by the 1<sup>st</sup> Defendant was therefore, highly questionable and inadmissible as evidence. It was submitted that Section 26(2) of the *Land Registration Act* provided that only a certified copy of a registered instrument, signed by the Registrar and sealed with the official seal, shall be admissible in evidence. And, Section 83 of the *Evidence Act* required courts to accept official documents only if certified by a public officer. Therefore, the Plaintiff had proved that he was the indefeasible owner of the property.
31. On whether the 1<sup>st</sup> Defendant had proven fraud against the Plaintiff, it was submitted that, fraud must be strictly pleaded and proved to a standard higher than a balance of probabilities as held in *Gichinga Kibutha v Caroline Nduku* [2018] eKLR. Counsel submitted that all the 1<sup>st</sup> Defendant did was allege there was fraud, but did not strictly prove it adding that the counterclaim against the Plaintiff and



Fidei Holdings was withdrawn by the 1<sup>st</sup> Defendant. It was also pointed out that the fact that the 1<sup>st</sup> Defendant did not produce the suit property's title only lead to the conclusion that, his late mother transferred the suit property during her lifetime and surrendered the title to the 2<sup>nd</sup> Defendant. Counsel also submitted that the 1<sup>st</sup> Defendant had intermeddled with the Estate of the late Timao because if succession had not been conducted, how could the 1<sup>st</sup> Defendant have been legally registered as its owner?

32. As such, the Plaintiff was entitled to the orders sought in the Plaint as it had demonstrated that it is the lawful proprietor of the suit property and the 1<sup>st</sup> Defendant had failed to establish grounds for impeaching the Plaintiff's title..

### **Submissions of the 1<sup>st</sup> Defendant**

33. Counsel submitted that the issues for determination were: whether the plaintiff had proved that it was the lawful owner of property Kajiado/Ntashart/1408; Whether the plaintiff proved that the 1<sup>st</sup> defendant colluded with the 2<sup>nd</sup> defendant to transfer property to himself; Whether the court can order for eviction/injunction on registration done fraudulently; Who should bear the costs.
34. On whether plaintiff had proved lawful ownership of the land, counsel submitted that from the evidence, it was clear that:
- (i) The documents used to effect the transfer were inadequate as the names of the transferors or their identify were not disclosed.
  - (ii) No documents were availed, say copies of Identity cards and PIN numbers of the transferors thus making the transaction suspect.
  - (iii) The initial transaction prior to the transfer to Ntashart Ridge Limited was also suspect as the transfers were done without transfer forms duly filled, no consent was obtained, and at the time of transfer, the registered owner was deceased and therefore not possible to transact/transfer.
  - (iv) No Grant of Representation had been obtained and the transaction was therefore Null and void ab-initio.
  - (v) The 2<sup>nd</sup> defendant testified in court and confirmed that several documents, which ordinarily must have been presented before the Title was issued. She also confirmed that the matter was before the Directorate of Criminal Investigation for fraud. Therefore, the title was not properly obtained. Reference was made to the cases of Super Nova properties limited & another vs District Land Registrar Mombasa & 2 others; Kenya Anti corruption & 2 others - interested parties (2018) eKLR and Dina management limited vs County Government of Mombasa & 5 others, KESC 30 (KLR) to support that a title not procedurally acquired should be cancelled.
35. On whether plaintiff had proved that there was collusion between 1<sup>st</sup> and 2<sup>nd</sup> defendants, it was submitted that there was no evidence advanced as proof of collusion between the parties and that no evidence was advanced to show that a title had been registered in the 1<sup>st</sup> defendant's Name.
36. Since, the title held by the Plaintiff was illegal, counsel submitted that an order for eviction should fail and the suit should equally be dismissed with costs to the 1<sup>st</sup> Defendant.

### **Analysis and Determination**

37. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:



- i. Who is the lawful owner or property Kajiado/Ntashart/1408;
  - ii. Whether the Defendant has proved fraud against the Plaintiff;
  - iii. Whether the Plaintiff is entitled to the reliefs sought;
  - iv. Who should bear costs of the suit?
38. The Plaintiff claims that it acquired the suit property following a transfer from one of the directors who purchased it from Fidei Holdings Limited through the Statutory Manager United Insurance Co. Limited. The suit property was registered in favour of Fidei Holdings Limited on 26<sup>th</sup> June 1996 from one Timao Ene Lololigi. The Defendant contested this claim on grounds that his mother, the late Timao ene Lololigi passed away in 1994 and could not have transferred the suit property in 1996.
39. To determine which claim was genuine, the Court has to go to the history of the title. This was the holding in *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR) where the court stated thus;
- “ ... when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register...”
40. To support its claim and registration, the Plaintiff produced the following documents: A title deed in favour of the Plaintiff- Ntashart Ridge Limited issued on 30<sup>th</sup> December 2014. Letter of consent from Oololaiser Land Control Board dated 9<sup>th</sup> December 2014. Transfer form from Kenrick Maina Miako to Ntashart Ridge Limited dated 29<sup>th</sup> December 2014. A certificate of official search dated 7<sup>th</sup> January 2015 showing the suit property was registered in favour of the Plaintiff.
41. The Plaintiff also produced the following documents as evidence of how the property was acquired from Fidei Holdings Limited by the director Kenrick Maina Miako. A title deed dated 26<sup>th</sup> June 1996 in favour of Fidei Holdings Limited. A Certificate of official search dated 24<sup>th</sup> January 2014 which showed that the land was registered to Fidei Holdings Ltd and a caution had been registered against it by its statutory Manager United Insurance Company Limited under receivership. On 10<sup>th</sup> April 2014 a Sale agreement was entered between Statutory Manager United Insurance Company Limited and Kenrick Maina Miako for sale of the suit property - Kajiado/Ntashart/1408. The agreement reads:
- Fidei Holdings Ltd a wholly owned subsidiary of United Insurance Co. Ltd an insurance company ... currently under Kenya Reinsurance Corporation Ltd statutory management ... herein referred to as vendor...
- a. The Vendor is registered as proprietor of an absolute title of all that piece of land situate in Kajiado County in the Republic of Kenya containing by measurement ... (43.0) hectares or thereabouts that is to say Land Reference Number Kajiado/Ntashart/1408 at Kajiado District.
  - b. The Purchaser is desirous of purchasing the said piece of land known as Kajiado/Ntashart/1408 measuring approximately 43.0 hectares or thereabouts and the Vendor is desirous of selling the described piece of land



- c. The Statutory Manager's mandate having been extended on 25<sup>th</sup> September 2013 by the High Court in Milimani Miscellaneous Civil Suit Number 67 of 2012...

There is also a Letter of consent from the Land Control Board to transfer the property from Fidei Holdings Limited to Kenrick dated 15<sup>th</sup> April 2014. Letter dated 22<sup>nd</sup> July 2014 from N.K. Mugo & Co. Advocates to Millimo Muthomi & Co advocates, forwards the payment slip of Kshs. 12,000,000 paid by Kenrick Maina Miako for parcel Kajiado/Ntashart/1408 and requests for completion of the registration process. Thereafter a transfer form dated 7<sup>th</sup> August 2014 from Fidei Holdings Limited to Kenrick Maina Miako is executed. There is evidence of payment of Stamp duty of Kshs. 320,040 paid on 7<sup>th</sup> August 2014. A Certificate of official search dated 21<sup>st</sup> August 2014 shows the property as registered in Kenrick's name. And a Certificate of official search dated 30<sup>th</sup> June 2022 shows the property was registered in favour of Elijah Khanchon Lerte on 19<sup>th</sup> September 2014. The search has the word 'suspected fraud' written on it.

42. It is worth noting that the registration in favour of the 1<sup>st</sup> defendant was done one month after the suit property had been duly transferred and registered in favour of Kenrick Maina Miako.
43. The 1<sup>st</sup> Defendant's case is, that the transfer was fraudulently undertaken because his mother had passed on by 1996. To support his case, he produced: Copy a Green card which shows that entry number 2 and 3 dated 23<sup>rd</sup> July 1992 were in favour of Timao Ene Lololigi and title issued, entry number 4 dated 24<sup>th</sup> June 1996 was in favour of Fidei Holdings Limited and title issued on 26<sup>th</sup> June 1996 as entry number 5. An undated caution was then placed by the Statutory Manager United Insurance Company Limited under receivership. Entry number 6 dated 7<sup>th</sup> August 2014, shows the caution was withdrawn by the cautioner. Entry number 7 and 8 similarly dated 7<sup>th</sup> August 2014 shows the parcel was registered in favour of Kenrick Maina and title deed issued.
44. To support the claim that his mother passed away in 1994, the Defendant produced a death certificate issued on 7<sup>th</sup> July 2020. Although, the Registrar of persons indicated that it was a late registration, there is no explanation that was given by the Defendant as to why he did not apply for the same, for over two decades since his mother's demise.

According to the *Births and Deaths Registration Act*, (Cap 149 Laws of Kenya) Late registration may require additional documentation. DW1, Christine Gachau, the County Civil Registrar, produced the Death Certificate of Timao ene Lololigi as exhibit D6. She confirmed that the same was issued in the year 2020. She stated that she relied on the letter from the area Chief and the information from the 1<sup>st</sup> Defendant.

45. The area Chief who wrote the letter was not called to testify. This leaves the evidence of the 1<sup>st</sup> Defendant only. The same has not been corroborated by any other witness. As stated earlier DW1 did not state what other documents she received to confirm the said Timao ene Lololigi passed away on the 4<sup>th</sup> May 1994.

It is difficult for the court to believe that the certificate of death was obtained in good faith. The details as to the date of death may not be true. The source of the information is the 1<sup>st</sup> Defendant, the same registered 26 years after the purported death.

I agree with the Plaintiff's submissions that it is an afterthought and obtained solely to contest the plaintiff's ownership of the suit property.

I find that the 1<sup>st</sup> Defendant may have sought to mislead this court as to when Timao ene Lololigi actually died.



46. The Defendant also indicated that no letters of administration in respect of the Estate of the late Timao had been taken out. How then, was the registration in his favour in September 2014 effected?
47. The Defendant contested the Plaintiff's claim on grounds that the transfer and registration had been fraudulently undertaken. In *John Mbogua Getao v Simon Parkoyiet Mokare, Karempu Kaata, Nkama Group Ranch, Chief Land Registrar & Attorney General* [2017] KECA 156 (KLR) the Court of Appeal held as follows regarding the issue of fraud:
- “...allegations of fraud are of serious nature that may carry with them penal consequences that may further infringe on a person's right to liberty hence the insistence that fraud ought to be specifically pleaded, with particulars thereof, and proved...”
48. From the above, this Court finds that the Defendant did not prove the alleged fraud against the Plaintiff to the required threshold.
49. In the case of *Benson Wandera Okuku Vs. Israel Were Wakho* (2020) eKLR the court stated thus;
- “ 15. And what about the standard of proof? The Plaintiff said he has proved the case on a balance of probability. Is that the standard required in law? Certainly NOT. The law has been clear all along. In *RG Patel Vs. Lalji Makanji* (1957)EA the court expressed itself as follows; “Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require prove beyond reasonable doubts, something more than a mere balance of probabilities is required.”
16. In *Janeffer Nyambura Kamau Vs. Humphrey Nandi* (2013) eKLR the Court of Appeal sitting at Nyeri emphasized that fraud must be proved as a fact of evidence, and more importantly that standard of proof is beyond a balance of probabilities. This is the same position found in *Koinange & 13 Others Vs. Nyati* (1984) EA 425, *Gudka Vs. Dodhia* [CA No. 21 of 1980](#) and *Richard Ekwesera Onditi Vs. Kenya Commercial Finance Co. Ltd.*; [CA No. 329 of 2009](#), Nairobi.”
50. Going back to the issue of who is the lawful owner of property *Kajiado/Ntashart/1408*, the Court finds that the Plaintiff has adduced evidence as to how it acquired the property without a break in the chain. The same cannot be said for the 1<sup>st</sup> Defendant.
51. The 1<sup>st</sup> Defendant claims he has been sued wrongly but he made no application to be taken out of these proceedings. He also admitted that he had withdrawn the counterclaim against *Fidei Holdings Limited*. This means that his claim that the land was fraudulently transferred from his late mother to *Fidei Holdings Limited* cannot stand. As things stand the said Company is not a party to these proceedings.
52. The 1<sup>st</sup> Defendant also stated that the title deed in his late mother's name got lost in the year 2009 yet he tendered no evidence to confirm this.
- He stated that he got a copy of the green card from the Land Registrar in July 2022 but the same does not state it was issued in July 2022. He also relied on a newspaper advertisement dated 7/12/2021 stating that the green card was lost or could not be found.
53. In a nutshell, I find that the 1<sup>st</sup> Defendant has failed to prove that the land was fraudulently transferred from his late mother's name. His counter claim against the Plaintiff also fails.



54. The Plaintiff prayed for general damages for trespass and mesne profits against the defendant from 19<sup>th</sup> September 2014 to the date of the judgement.

55. In this regard, the Court of Appeal in ... held:

“...In the same vein, the Court of Appeal in Christine Nyanchama Oanda vs. Catholic Diocese of Homa Bay Registered Trustees [2020] eKLR held that:

“It is settled law that where a party claims for both mesne profits and damages for trespass, the court can only grant one and not both. Mesne Profits is defined as the profit of an estate received by a tenant in wrongful possession between the dates when he entered the suit property and when he leaves (See: Black's Law Dictionary 9th edition). Mesne Profits must be pleaded and proved...

56. As held, mesne profits must be proved, this Court finds that save for the pleading of mesne profits, there was no evidence presented to prove the claim.

57. I also find that the Plaintiff was able to prove trespass against the 1<sup>st</sup> Defendant as the surveyor who testified as DW4 acknowledged that when he visited the suit property, he found the 1<sup>st</sup> Defendant in occupation. It is also on record by the Defendant's witness that he was in occupation of the suit property. The Plaintiff is thus entitled to general damages for trespass, which I assess at Kshs.500,000/= to be adequate.

58. Having found that the Plaintiff was the duly registered owner of the suit property, it was also entitled to the order of eviction and permanent injunction against the Defendant as sought.

59. In the case of Samuel Kawere Vs. Land Registrar, Kajiado (2013) eKLR the Court of Appeal held thus;

“.....in order to be considered a bonafide purchaser for value they must prove; that they acquired a valid and legal title. Secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly they paid valuable consideration for the purchase of the suit property.....”

I am of the view that the Plaintiff acquired the suit property in good faith and for valuable consideration and without notice of any fraud in the director's acquisition of the suit property from Fidei Holdings Limited.

60. In conclusion I find that the Plaintiff has proved its case against the Defendants on a balance of probabilities.

61. Accordingly Judgement is entered for the Plaintiff as against the Defendants as follows;

- a. That a declaration is hereby issued that the plaintiff – Ntashart Ridge Limited, is the lawful and registered owner of parcel of land known as Title No. Kajiado/Ntashart/1408;
- b. That a declaration is hereby issued that the title deed issued to the 1<sup>st</sup> defendant – Elijah Khanchon Lerte on 19<sup>th</sup> September 2014 is unlawful, null and void.
- c. That the Land Registrar Kajiado is hereby ordered to cancel the title deed issued to Elijah Khanchon Lerte on 19<sup>th</sup> September 2014 and the same do revert to the Plaintiff.
- d. That the 1<sup>st</sup> defendant, Elijah Khanchon Lerte, his servants, dependants, or anyone claiming under him are hereby ordered to vacate parcel of land known as Title No. Kajiado/



Ntashart/1408 within Ninety (90) days from the date of this Judgement. In Default the Plaintiff do evict them using lawful means at the 1<sup>st</sup> Defendants expense.

- e. That a permanent injunction is hereby issued restraining the 1st defendant – Elijah Khanchon Lerte, his servants, dependants, or anyone claiming under him from occupying, trespassing, or in any other way whatsoever from interfering with parcel of land known as Title No. Kajiado/ Ntashart/1408.
- f. That the 1<sup>st</sup> defendant – Elijah Khanchon Lerte, is hereby ordered to pay the Plaintiff Kshs.500,000/= as general damages for trespass on parcel of land known as Title No. Kajiado/ Ntashart/1408.
- g. That costs of the Plaintiff's suit shall be borne by the 1<sup>st</sup> Defendant.

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

**L. KOMINGOI**

**JUDGE.**

In the Presence of:

Ms. Mathii for Mr. Ondiek for the Plaintiff.

Mr. Mbeche for the 1<sup>st</sup> Defendant.

N/A for the 2<sup>nd</sup>, 3<sup>rd</sup> Defendants.

Court Assistant – Mateli.

