



REPUBLIC OF KENYA



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**Wandabwa v Nabangala & 8 others (Environment and Land Case
E003 of 2024) [2025] KEELC 5220 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE E003 OF 2024**

EC CHERONO, J

JULY 3, 2025

BETWEEN

WEELINGTON WANYONYI WANDABWA PLAINTIFF

AND

MOSES WANJALA NABANGALA 1ST DEFENDANT

CHARLES WANGILA NABANGALA 2ND DEFENDANT

RICHARD KHAMALA MAKHANU 3RD DEFENDANT

CORNELIUS WEKESA 4TH DEFENDANT

PETER JUMA MANG'OLI 5TH DEFENDANT

ABDALA NANGABO WEKESA 6TH DEFENDANT

GRACE SITAWA NABANGALA 7TH DEFENDANT

MARTIN WERE WANDABWA 8TH DEFENDANT

LAND REGISTRAR BUNGOMA COUNTY 9TH DEFENDANT

JUDGMENT

Background

1. By a Plaint dated the 01/02/2024, the Plaintiff seeks judgement against the Defendants for:
 - a. Cancellation of title deeds for parcel of land E.Bukusu/W.Sang'alo/6922, 6923,6924, 6925,6926,6927,6928 and 6930.
 - b. Eviction as per paragraph 20.



-The Plaintiff's further claim to this court against the Defendant's jointly and severally is for an eviction order removing them from occupation of East Bukusu/West Sang'alo/554.

c. Permanent injunction as per paragraph 21.

The Plaintiff further prays for an order of permanent injunction against the Defendant's jointly and severally, restraining the Defendant's, their agents, servants, family members and or anyone acting on their instructions from interfering in whatsoever way the parcel of land known as East Bukusu/West Sang'alo/554.

2. The Plaintiff averred that he and the 8th Defendant were the registered proprietors of LR no East Bukusu/West Sang'alo/554 measuring about 18.0ha. That the 1st, 2nd and 7th Defendants are the surviving children and widow to one Christopher Nabangala S/O Matayo Mukuyi [deceased]. That in the year 1978, the Plaintiff, the 8th Defendant and the said Christopher Nabangala entered into an agreement for exchange of land. That it was a term of the said exchange agreement that the Plaintiff and the 8th Defendant were to occupy LR no Ndivisi/Muchi/1574 while Christopher Nabangala was to occupy LR no East Bukusu/West Sang'alo/554.
3. That thereafter, the Plaintiff moved to Funyula-Port Victoria where he was engaged in business until the year 1981 when he returned and wanted to occupy LR no Ndivisi/Muchi/1574 only to find that the said Christopher Nabangala had taken out a loan facility using title to the said land as a collateral security. That he filed a suit for enforcement of the said land sale/exchange agreement in Bungoma High Court Civil Case no 107 of 1994 which was determined against him in the year 2015. He later discovered that the said Christopher Nabangala had already transferred LR no East Bukusu/West Sang'alo/554 to his name which he alleged was fraudulent since he did not execute any of the relevant transfer documents. The Plaintiff set out particulars of fraud against the said Christopher Nabangala. He averred that upon the demise of the said Christopher Nabangala, his family secretly conducted succession proceedings and thereafter caused the subdivision of LR no East Bukusu/West Sang'alo/554 into LR no East Bukusu/West Sang'alo/6922, 6923,6924, 6925,6926,6927,6928 and 6930.
4. The 1st, 2nd, 7th and 8th Defendants entered appearance and filed a joint statement of defence dated 26/02/2024 where they denied the Plaintiffs claim and averred that LR no East Bukusu/West Sang'alo/554 was sold and succession done procedurally without any secrecy and that they were bona absolute owners.
5. During pre-trial directions, the parties agreed that this suit to proceed by viva-voce evidence.

Evidence By Parties.

6. PW1 Wellingtone Wanyonyi Wandabwa adopted his witness statement dated 07/09/2024 as his evidence-in-chief. He also produced into evidence ten [10] documents contained in his list of documents dated 01/02/2024 as P-Exhibit 1-10. In cross-examination, he was shown a sale agreement which he stated that together with the 8th Defendant, they were the registered proprietors of LR no East Bukusu/West Sang'alo/554 and that they sold/exchanged the same with LR no Ndivisi/Muchi/1574 which belonged to one Christopher Nabangala who has since died. That together with the 8th Defendant, they filed a suit against Christopher Nabangala which suit was dismissed. He testified that they refused to take up LR no Ndivisi/Muchi/1574 after they discovered that Christopher Nabangala had taken out a loan using its title as security.
7. DW1 Martin Were Wandabwa adopted his witness statement dated 26/02/2024 as his evidence-in-chief. He also produced into evidence four [4] documents contained in his list of documents dated 26/02/2024 as D-Exhibit 1-4. He stated that together with the Plaintiff, they sold LR no East Bukusu/



West Sang'alo/554 to one Christopher Nabangala in 1978. He stated that the initial case filed was without his consent and that he has no claim against the people occupying the land.

8. DW2 Grace Sitawa Nabangala adopted his witness statement dated 26/02/2024 as his evidence-in-chief. She testified that she was not privy to the plans of her late husband Christopher Nabangala and Japhetha Wanjala.

Parties Submissions.

9. At the close of their respective cases, the parties agreed to file submissions.
10. The Plaintiff filed submissions dated 29/04/2025 where he submitted on three issues. First, he submitted that the green card exposes the fraudulent actions of Christopher Nabangala and Japhether Wanjala Mukuyi where the entries indicate transactions were carried out by deceased and unauthorized persons. That the alleged transfer of land parcel no E. Bukusu/W.Sangalo/554 to Christopher Nabangala was signed by the 8th Defendant without the consent and knowledge of the Plaintiff which made it unlawful. He argued that the titles held by the Defendants were capable of being challenged on grounds of fraud and misrepresentation and that having established that the land parcel no E. Bukusu/W.Sangalo/554 that devolved to them after succeeding Christopher Nabangala's estate was fraudulently obtained, it follows that the resultant titles cannot stand and ought to be cancelled. Reliance was placed in the case of; *Elijah Makeri Nyangwara v Stephen Mungai & Another* [2013] eKLR and *Dina Management Limited v County Government of Mombasa & 10 Others* [Petition no8 of 2021].
11. The 1st, 2nd, 7th and 8th Defendant's filed submissions dated 16/04/2025 where they submitted on five issues. The first issue was whether there was fraud in the transfer of land parcel no E. Bukusu/W.Sangalo/554. Reliance was placed in the case of *Vijay Morjaria v Nansingh Madbusingh Darbar & anor* [2000] eKLR. It was submitted that the Plaintiff in his plaint attributes fraud to Christopher Nbangala but has not proved any of the particulars of fraud set out thereunder. They argued that the Plaintiff's claim is based on a sale agreement for land entered into in the year 1978 and registered in the name of Chris Nabangala in the year 1979 therefore, the suit was time barred in accordance with section 4 and 7 of the *Limitation of Actions Act*. They cited the case of *Mukuru Munge v Florence Mwawana & 2 Others* [2016] eKLR.
12. It was also submitted that the Plaintiff ought to have sued the estate of Chris Nabangala whom he claims acted fraudulently and in whose land parcel no E. Bukusu/W.Sangalo/554 vested after succession. They relied in the case of; *Koech [suing as the legal representative of the estate of the late Kipkoech arap Mutai v Siele & 18 others* 2013 [KEELC] 861 [KLR]. It was further submitted that fraud has not been proved and that no sufficient reasons have been given for the cancellation of the resultant sub-divisions. They submitted that the Plaintiff's claim should be dismissed with costs.

Legal Analysis And Determination.

13. The Plaintiff's claim is that LR no East Bukusu/West Sang'alo/554 was registered jointly in his name and that of the 8th Defendant. He also averred that in the year 1979, they agreed to exchange the said parcel for LR no Ndivisi/Muchi/1574, registered in the name of one Christopher Nabangala. However, the Plaintiff contends that without his consent, the 8th Defendant and the said Christopher Nabangala fraudulently caused the transfer of LR no East Bukusu/West Sang'alo/554 to the name of Christopher Nabangala and thereafter caused the said land to be subdivided into numerous resultant portions. The Plaintiff further averred that in the year 1981, he discovered that Christopher Nabangala



had charged LR no Ndivisi/Muchi/1574 to secure a financial facility and he could not therefore occupy the said land.

14. In support of his claim, the plaintiff produced a copy of the register for LR no East Bukusu/West Sang'alo/554 as P-Exhibit 1, Certificate of official search for LR no East Bukusu/West Sang'alo/6922,6923,6924,6925,6926,6927,6928,6929&6930 as P-Exhibit 2a,2b,2c,2d,2e,2f,2g,2h,2i, chief's letter dated 13/05/2021 as P-Exhibit 3, land adjudication ordinance as P-Exhibit 4, a copy of land sale agreement dated 18/01/1978 as P-Exhibit 5, a copy of mutation form as P-Exhibit 6, a copy of judgment as P-Exhibit 7, a copy of transfer forms as P-Exhibit 8, a copy of consent forms as P-Exhibit 9 and a copy of application for consent forms as P-Exhibit 10.
15. The 1st, 2nd, 7th and 8th Defendants in their defence alleged that the Plaintiff and the 2nd Defendant sold LR no East Bukusu/West Sang'alo/554 to the said Christopher Nabangala in 1979. That the said Christopher Nabangala then sold the land to one Japheth Wanjala Mukuyi who has since died and succession of his estate was done by administrators to his estate who caused the sub-division of the said land creating the following resultant parcels namely LR no East Bukusu/West Sang'alo/6922, 6923, 6924, 6925, 6926, 6927, 6928, 6929 and 6930 respectively. In support of their claim, the defendant produced a copy of a green card opened on 02/08/1969 for LR no East Bukusu/West Sang'alo/554 as D-Exhibit 1, copies of their National Identity Cards as D-Exhibit 2a, 2b,2c & 2d, a copy of application for the Land Control Board consent dated 12/09/1978 as D-Exhibit 3, copies of title deeds in their names as D-Exhibit 4a, 4b,4c,4d & 4e.
16. From my analysis of the evidence adduced, it is not in contestation that LR no East Bukusu/West Sang'alo/554 was registered in the names of the Plaintiff and the 8th Defendant on 02/08/1969 as shown in P-P-Exhibit 1. It is also not in contention that the said land has since been sub-divided into various plots namely LR no East Bukusu/West Sang'alo/6922 to 6930 registered in the names of the Defendant's. The point of departure is how the said land was acquired. While the Plaintiff contends that there was an exchange of land, the 1st, 2nd, 7th and 8th Defendants claim that there was a sale which was completed.
17. From the foregoing, it is my view that the issues that commend for determination in this case are as follows;
 - a. whether the Plaintiff has made a case for the orders sought.
 - b. Who bears the costs.

Whether the Plaintiff has made a case for the orders sought.

18. The Plaintiff's claim is that LR no East Bukusu/West Sang'alo/554 which was jointly owned by him and the 8th Defendant was fraudulently transferred to one Christopher Nabangala without his consent and therefore, the resultant sub-divisions are illegal, fraudulent, unlawful and ought to be cancelled and the Defendants who are in occupation of the land evicted and a permanent injunction be issued restricting them from occupying the same. In support of his claim, the plaintiff produced a sale agreement dated 18/01/1978 as P-Exhibit 5 which agreement shows that Christopher Nabangala sold part of LR no Ndivisi/Muchi/1574 measuring approximately 11 ½ acres for the exchange of LR no East Bukusu/West Sang'alo/554 measuring 45 acres. In an addendum to the said agreement, the said Christopher Nabangala confirmed having received the full purchase price for the sale of his land.
19. In further support of his claim, the Plaintiff produced copies of transfer forms, consent form and an application for LCB Consent as P-Exhibits 8, 9 and 10 and argued that despite being a co-proprietor, he was not involved in the transfer process. An examination of these documents reveals that both the



Plaintiff and the 8th Defendant appear on the Transfer Form as Transferees. However, only the 8th Defendant seems to have signed the said transfer form. As for the application to the Land Control Board [LCB] and Consent, both the Plaintiff and 8th Defendant signed.

20. In my view, whether the transaction was an exchange as alleged by the Plaintiff or a consensual sale as alleged by the 1st, 2nd, 7th and 8th Defendants, it is clear that there was an intention by the plaintiff and the 8th Defendant to transfer LR no East Bukusu/West Sang'alo/554 to Christopher Nabangala. The Plaintiff has produced an application form for LCB consent which bears two signatures on the part of the vendor/owner and in his evidence, he does not deny that the signature appearing there belongs to him. His major contention is that he did not sign the transfer forms therefore, the transfer is fraudulent for lack of his consent.
21. The Plaintiff's claim is based on fraud. The general Principle in law is that the onus of proof lies on the person who asserts and/or alleges. This position is succinctly captured in Section 107, 108 and 109 of the Evidence Act, Cap 80, Laws of Kenya. The said Sections of the Evidence Act provides as follows;

“ 107. Burden of proof

- [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 s bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact

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.”

22. From the evidence presented as P-Exhibit 2a,2b,2c,2d,2e,2f,2g,2h,2i which is supported by D-Exhibit 4a, 4b,4c,4d & 4e, it emerges that the resultant subdivisions are registered as follows;

E.Bukusu/W.Sangalo/6922 Moses Wanjala Nabangala
E.Bukusu/W.Sangalo/6923 Charles Wangila Nabangala
E.Bukusu/W.Sangalo/6934 Moses Wanjala Nabangala
E.Bukusu/W.Sangalo/6925 Charles Wangila Nabangala
E.Bukusu/W.Sangalo/6926 Richard Khamala Makhanu
E.Bukusu/W.Sangalo/6927 Cornelius Wekesa
E.Bukusu/W.Sangalo/6928 Peter Juma Mang'oli
E.Bukusu/W.Sangalo/6929 Abdalla Nangabo Wekesa



23. This Court takes into account section 24 of the *LRA* on interest conferred by registration as well as section 25 as read with section 28 of the same Act in respect of the indefeasibility of the rights of a proprietor. This court also considers that section 26 of the *LRA* provides that a certificate of title issued by Registrar shall be taken by all courts to be conclusive evidence of ownership. Nonetheless, the section provides that the title of that proprietor is subject to challenge on the grounds of fraud and misrepresentation.
24. The burden of proof of an allegation of fraud is on the person alleging. In *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* [2016] eKLR the court pronounced itself as follows:
- “It is trite law that he who alleges fraud must prove fraud. Allegations of fraud must strictly be proved. Great care must be taken in pleading allegations of fraud or dishonesty. In particular, the pleader needs to be sure that there is sufficient evidence to justify the allegations...”
25. It is also trite that an allegation of fraud must be specifically pleaded and proved. In *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, Tunoi, JA [as he then was] 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 distinctly proved, and it is not allowable to leave fraud to be inferred from facts.”
26. Further, it is trite that the standard of proof of allegation of fraud is higher than proof on a balance of probabilities required in civil cases but lower than beyond reasonable doubt required in criminal cases. In *Ndolo v Ndolo* [2008] 1KLR [G &F] 742 the Court stated that:
- “...Since the Respondent was making 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 case...”
27. In the instant case, it was incumbent upon the Plaintiff to prove fraud against the Defendants. As can be seen from his pleadings, the plaintiff set out particulars of fraud against the defendants as follows;
- Particulars of fraud.
- a. Causing the transfer of title to Christopher Nabangala without the involvement of the Plaintiff.
 - b. Issuing a title deed in favour of Christopher Nabangala without following due process.
 - c. Causing registration of title in the name of a deceased person.
 - d. Causing the subdivision of parcel E.Bukusu/W.Sangalo/554 to various members.
28. With respect to the 1st to 7th Defendants who are the registered proprietors of land parcels no E. Bukusu/W. Sang’alo/6922 to 6930 being the resultant subdivisions of the original parcel E. Bukusu/W. Sang’alo/544, I find that the Plaintiff has failed to establish any factual or legal nexus between the Defendants and the allegations of fraud pleaded in the plaint. There is no evidence adduced to suggest that these Defendants were parties to, or had any knowledge of the alleged fraudulent transaction



involving the original parcel. It is settled law that for a title to be impeached on grounds of fraud, the claimant must demonstrate not only the existence of fraud, but also that the registered proprietors were either complicit in or had prior notice of the fraud. The Plaintiff has not met this threshold.

29. As for the 7th and 8th Defendants, this Court takes the view that the unilateral signing of the transfer form being the sole basis of the Plaintiff's claim was done in furtherance of a transaction whose validity has not been disputed or challenged by the Plaintiff. Moreover, the Plaintiff's prior execution of the Land Control Board application form, in my considered opinion, denotes consent to the transaction rather than fraud. I find no material placed before this Court to demonstrate that the 8th and 9th Defendants acted with a willful and dishonest intention to deceive, which is the essential ingredient of fraud. In Black's Law Dictionary 11th Edition, fraud is defined as "A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment."
30. Moreover, the plaintiff stated that upon leaving Funyula-Fort Victoria, he moved in to take possession of land parcel LR no Ndivisi/Muchi/1574. This assertion raises a pertinent question as to the legal basis upon which he intended to assume the said occupation. This court in the circumstances can only conclude that the plaintiff's intention to occupy LR no Ndivisi/Muchi/1574 is consistent with the agreed terms of sale/exchange and further supports the conclusion that he acquiesced to the transfer process.
31. It is also my view that by asserting claim over both LR no Ndivisi/Muchi/1574 and the resultant subdivisions of LR no E.Bukusu/W.Sang'alo/544, the Plaintiff is clearly forum shopping considering that he had previously litigated over the former land parcel no Ndivisi/Muchi/1574 in *Bungoma High Court Civil suit no 107 of 1994* without success. While he now seeks cancellation of the latter, he does not appear to dispute the validity of the underlying sale agreement, casting doubt on the legal basis and ultimate objective of his claim.
32. In light of the foregoing, the Plaintiff's assertions fall short of the threshold required for the grant of the prayers sought in the plaint under the applicable legal framework.
33. Having considered and reviewed all the evidence and material placed before me, I find and hold that the Plaintiff has not proved his case against the Defendants to the required standard. Accordingly, the Plaintiff's suit is hereby dismissed with costs to the 1st, 2nd, 7th and 8th Defendants.
34. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 3RD DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Masiga H/B Wekesa for the plaintiff/Applicant.
2. Mr. Wekesa H/B for Wattangah for the 1st, 2nd, 7th and 8th Defendants.
3. Bett C/A.

