



**Vikiru (Suing as the Administrator of the Estate of Herbert Vikiru
Kinadira – Deceased) v Vikiru (Environment and Land Case E011 of 2021)
[2025] KEELC 6116 (KLR) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6116 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E011 OF 2021
DO OHUNGO, J
SEPTEMBER 23, 2025**

BETWEEN

**AGGREY MUDOTO VIKIRU (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF HERBERT VIKIRU KINADIRA – DECEASED) PLAINTIFF**

AND

TIMOTHY BUNYALI VIKIRU DEFENDANT

JUDGMENT

1. The Plaintiff moved the Court through Plaintiff dated 5th August 2021, which he filed on 9th August 2021, against the Defendant who is his brother. The initial Plaintiff was replaced by Amended Plaintiff amended on 27th October 2022. The Plaintiff averred in the Amended Plaintiff that Herbert Vikiru Kinadira (deceased) the parties' father who passed away in the year 2020 was the proprietor of the parcels of land known as Isukha/Shirere/1693, 4843, 2132, 2485, 4886 and 733.
2. That pursuant to a will which the deceased made in the year 2014, land parcel number Isukha/Shirere/4843 was subdivided during the deceased's lifetime into parcel number Isukha/Shirere/6533 which was allocated to the Plaintiff and his brother Nicholas Vikiru and that the Defendant unlawfully caused parcel number Isukha/Shirere/6534 to be registered in his name.
3. The Plaintiff further averred that the Defendant fraudulently and unlawfully caused registration of parcel numbers Isukha/Shirere/1693, Isukha/Shirere/6533 and Isukha/Shirere/6534 in disregard of the will. That parcel number Isukha/Shiswa/733 was sold to the Defendant but he failed to pay the purchase price and that all transaction conducted in respect of the deceased's estate between the years 2014 and 2020 are null and void since the deceased was incapacitated by illness and was of unsound mind.
4. The Plaintiff therefore prayed for judgment against the defendant for:



- a. An order of permanent injunction (sic) restraining the Defendant by himself, his agents, servants, employees from trespassing, constructing and /or dealing in any manner and/or interfering with the land parcel numbers Isukha/Shiree/1693, 6534 and 4886, until the succession is carried out.
 - b. An order for nullification and/or cancellation of title deeds in respect of L.R No. Isukha/Shirere/1693 and 6534 and the same be reverted to our late father's name awaiting succession among the other assets.
 - c. An order to compel the Defendant to account for the purchase price in respect of L.R No. Isukha/Shirere/1733.
 - d. That the O.C.S Kakamega Police Station to enforce the compliance of this (sic) orders.
 - e. That this court be pleased to give any relief that may deem fit and expedient.
 - f. Costs of this suit.
5. The Defendant filed Statement of Defence dated 10th February 2023 through which he denied the Plaintiff's allegations of illegality, fraud, non-payment and the deceased's alleged incapacity to transact. He urged the Court to dismiss the Plaintiff's case with costs.
 6. In view of the family relationship between the parties, the Court gave them several opportunities to negotiate and amicably settle the dispute, but no settlement was reached. Additionally, the Court referred the matter to mediation. The parties failed to reach a mediation settlement.
 7. The Plaintiff testified as PW1 and adopted his witness statement which he filed on 9th August 2021 as well as his further witness statement dated 13th December 2022 as his evidence in chief. He also produced copies of the documents listed as item numbers 1 to 17 in Plaintiff's Further List of Documents dated 27th October 2022 as his exhibits.
 8. The Plaintiff went on to testify that the deceased was very sick and of unsound mind between the years 2014 and 2020 when he passed away. He added that although the Defendant became proprietor of parcel number Isukha/Shirere/1693 during the deceased's lifetime, his complaint over the parcel is that the deceased had given him a portion of the parcel, yet the Defendant obtained title to the whole of it.
 9. The Plaintiff stated that he was aware that parcel number Isukha/Shiswa/733 was sold to the Defendant's company and added that he consented to the sale and that the whole family was aware of the transaction. He however complained that the purchase price had not been fully paid. He went on to state that the deceased subdivided parcel number Isukha/Shirere/4843 into parcel number Isukha/Shirere/6533 which as of the date of his testimony was registered in the deceased's name and parcel number Isukha/Shirere/6534 which as of the date of his testimony was registered in the Defendant's name.
 10. Nicholas Adika Vikiru (PW2) adopted his witness statement dated 27th October 2022 as his evidence in chief. He went on to testify that the Defendant obtained title to parcel number Isukha/Shirere/1693 contrary to the deceased's will and that he doubted whether the deceased transferred the parcel to the Defendant. He also stated that he was aware that parcel number Isukha/Shiswa/733 was sold that and added that he received KShs 2 million which was part of the proceeds of the sale.
 11. The Plaintiff's case was thereafter closed.



12. The Defendant testified as DW1. He adopted his witness statement dated 10th February 2023 as his evidence in chief and produced copies of the documents listed as item numbers 1 to 10 in his list of documents dated 10th February 2023 as his exhibits.
13. The Defendant went on to testify the deceased died in November 2020 and that despite making a will in the year 2014, the deceased later did many things that were contrary to the will. That the Plaintiff was utilising shops on parcel number Isukha/Shirere/1693 until the year 2019 when the deceased transferred to him without giving any of the shops to the Plaintiff.
14. Regarding parcel number Isukha/Shiswa/733, the Defendant stated that the parcel was sold to Ace Jawabu Enterprises, a company in which he is a director. That the transaction was completed during the deceased's lifetime and that the deceased dealt with the proceeds of the sale as he wished.
15. Naftali Nyagwaka Vikiru (DW2) adopted his witness statement dated 16th May 2023 as his evidence in chief. He further testified that the deceased was his father and that the deceased wrote a will dated 14th October 2014 but later made practical changes to his properties between 2014 and 2020. That parcel number Isukha/Shirere/1693 was given to the Defendant because he is the last born.
16. Stanley Vikiru Ubayo (DW3) adopted his witness statement dated 16th May 2023 as his evidence in chief. He too is a son of the deceased. He took the position that the transfers during the deceased's lifetime were undertaken willingly.
17. The defence case was thereafter closed. Directions that parties file and exchange submissions were then issued. The Plaintiff filed submissions dated 17th April 2025 while the Defendant filed submissions dated 11th June 2025.
18. I have carefully considered the pleadings, evidence and submissions in this matter. The issues that arise for determination are whether fraud and illegality have been established and whether the reliefs sought are available.
19. The Plaintiff is seeking cancellation of titles in respect of Isukha/Shirere/1693 and 6534 on account of fraud and illegality. The Plaintiff is also seeking a permanent injunction to restrain the Defendant from dealing with the said parcels and Isukha/Shiree/4886.
20. The right to property is a matter that is firmly protected in law. Article 40 of the [Constitution](#) stipulates that every person has the right, either individually or in association with others, to acquire and own property of any description and in any part of Kenya. It bars the State from depriving a person of property of any description or of any interest in property unless the conditions stated therein are satisfied. Nevertheless, in line with Article 40 (6), the protection afforded by the [Constitution](#) does not extend to any property that has been found to have been unlawfully acquired.
21. Additional protection of the right to property is obtained through Section 24 of the [Land Registration Act](#) which provides as follows:
Subject to this Act—
 - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges



belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

22. Pursuant to Section 25 of the *Land Registration Act*, the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in the Act, and shall be held by the proprietor free from all other interests and claims whatsoever, but only subject to the encumbrances and restrictions shown in the register and the overriding interests specified in the Act.

23. Further, Section 26 (1) of the *Land Registration Act* provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.”

24. It follows therefore that the grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party and where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.

25. Fraud is a serious allegation. The party alleging it must plead it, particularise it, and strictly prove it to standard higher than the usual one in civil cases of proof on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR and *John Mbogua Getao v Simon Parkoyiet Mokare & 4 others* [2017] eKLR. In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. See *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR.

26. In *John Mbogua Getao v Simon Parkoyiet Mokare & 4 others* (*supra*), the Court of Appeal elaborated on the standard of proof as follows:

“The standard or burden of proof where fraud is alleged in civil matters has been held in decided cases to be of higher than the ordinary standard of balance of probabilities... Indeed, 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. It would be foolhardy for the appellant to dismiss allegations carrying such far reaching consequences as merely procedural. In *Emfil Ltd v Registrar of Titles Mombasa* (*supra*), this Court pronounced itself as follows on the issue:-

“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities. Although Article 159 enjoins the court to administer substantial justice without undue regard to procedural technicalities, Article 159 does not allow the respondents to totally ignore the rules of evidence.”



27. The Plaintiff filed this case as the administrator of the deceased's estate pursuant to Limited Grant Ad Litem issued to him on 8th July 2021. A perusal of the grant reveals that the deceased died on 11th November 2020.
28. The reliefs that the Plaintiff is seeking are focused on parcel numbers Isukha/Shirere/1693, 6534 and 4886 and Isukha/Shiswa/733. The Plaintiff produced certified copies of the registers or green cards in respect of parcel numbers Isukha/Shirere/1693 and 4886. I note from the registers that the Defendant became the registered proprietor of parcel number Isukha/Shirere/1693 on 8th February 2019 and that title deed was issued to him on 12th February 2019. That was one year and nine months before the deceased's death.
29. As for parcel number Isukha/Shirere/6534, the Plaintiff testified that the said parcel was created when the deceased subdivided parcel number Isukha/Shirere/4843 during his lifetime. The Plaintiff further testified that as of the date of his testimony the Defendant was the registered proprietor of parcel number Isukha/Shirere/6534. Although the Plaintiff neither produced a copy of the register nor a certificate of official search in respect of the parcel, the Plaintiff's case on proprietorship is confirmed by the Defendant's testimony as well as the copy of the title deed which the Defendant produced, and which shows that the Defendant was registered as proprietor on 21st April 2016 and the title deed issued to him on 27th April 2016. Proprietorship passed to the Defendant some four years and a half years before the deceased's death.
30. Regarding parcel number Isukha/Shirere/4886, the register shows that the deceased was registered as proprietor on 25th May 2007. There is no dispute that his estate remains the proprietor. Thus, the parcel will have to be subjected to administration pursuant to the Law of Succession Act.
31. Although no register in respect of Isukha/Shiswa/733 was produced, there is no dispute that the deceased sold it to Ace Jawabu Enterprises on 20th March 2020 and that the Plaintiff not only consented to the sale but also received KShs 2 million being part of the proceeds. The Defendant is a director of Ace Jawabu Enterprises. Despite receiving a major part of the proceeds of the sale, the Plaintiff has not offered his own breakdown of what the Defendant paid and what is outstanding.
32. The Plaintiff contended that the deceased was incapacitated by illness and was of unsound mind and that the transactions conducted in respect of the deceased's properties between the years 2014 and 2020 are therefore null and void. The allegation of unsoundness of mind is a serious one, more so when made to support allegations of fraud and illegality. The Plaintiff has not offered any medical evidence to support his allegations.
33. I find that the Plaintiff failed to prove fraud and illegality to the required standard. The Plaintiff's case is bereft of merit. It follows therefore that the reliefs sought are not available.
34. In the result, I dismiss the Plaintiff's case. Considering the relationship between the parties, I make no order as to costs.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 23RD DAY OF SEPTEMBER 2025.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

The Plaintiff present



Mr Malala for the Defendant

Court Assistant: B Kerubo

