



**Millionaire Real Estate Solutions Ltd v Malili Ranch Company
Limited & 4 others (Environment & Land Case 176 & 230 of 2018
(Consolidated)) [2024] KEELC 595 (KLR) (12 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 595 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 176 & 230 OF 2018 (CONSOLIDATED)
CA OCHIENG, J
FEBRUARY 12, 2024**

BETWEEN

MILLIONAIRE REAL ESTATE SOLUTIONS LTD PLAINTIFF

AND

MALILI RANCH COMPANY LIMITED 1ST DEFENDANT

CATHERINE NDUATA MBUGUA 2ND DEFENDANT

EJIDAI AH GACAMBI KAMAU 3RD DEFENDANT

**THE REGISTRAR OF TITLES CENTRAL REGISTRY
NAIROBI 4TH DEFENDANT**

JOHN MUSAU MUSYIMI 5TH DEFENDANT

JUDGMENT

1. By a Plaint dated the 17th September, 2018, the Plaintiff prays for Judgment against the Defendants jointly and severally for:
 - a. An order restraining the 1st and the 4th Defendants herein, their servants, agents, workers, employees and/or anyone claiming through them from altering and/or changing ownership details in respect to Title Number Konza North/konza North Block 2 (Malili) 449, previously Plot No. 1563, or in any other way interfering with the registration of the same in favour of the Plaintiff, and the Plaintiff’s quiet possession of the Land.
 - b. An order directing the 4th Defendant to finalize registration of Title Number Konza North/konza North Block 2 (malili) 449, in the name of the Plaintiff.



- c. An order directed at the 1st and 4th Defendants to issue a title deed for Title Number Konza North/konza North Block 2 (Malili) 449 to the Plaintiff.
 - d. In the alternative, an order directing the 4th Defendant to cancel any entry in the register made registering the property in favour of the 5th Defendant and instead make an entry in favour of the Plaintiff;
 - e. In the alternative compensation for the amounts paid by the Plaintiff towards purchasing the said parcel of land as well as all additional expenses incurred in improving and maintaining the same and interest at commercial rates from the date of the Agreement.
 - f. Any other relief that this Honourable Court may deem fit and just to grant.
 - g. Costs of this suit and interest.
2. The 1st Defendant filed a Defence dated the 14th May, 2019 where it denied the averments in the Plaint except the descriptive and jurisdiction of the court. It denied the particulars of fraud attributed to it. It explained that it is the 2nd and 3rd Defendants who presented to it forged documents. It confirmed that there is a related suit being Machakos ELC No. 230 of 2018. It reiterated that the Plaintiff had not made a case against it.
 3. The 2nd and 3rd Defendants though duly served failed to enter appearance nor file their respective defences.
 4. The 5th Defendant filed a Defence and Counter-claim dated the 11th March, 2019 where he denied the averments in the Plaint except the descriptive.

In the Counter-claim, he sought for the following Orders:

- a. The title parcel No. Konza North/konza North Block 2 (malili)449 be revoked and rectified, corrected and registered in favour of the 5th Defendant herein.
 - b. Transfer of parcel No. Konza North/konza North Block 2 (malili) 449 to the 5th Defendant.
 - c. Mesne profits from the date of filing this suit until the transfer of the suit property to the 5th Defendant.
 - d. An order directing the 1st and 4th Defendants to issue a title to Title Number Konza North/konza North Block 2 (malili) 449 to the 5th Defendant.
 - e. In the alternative an order directing the 1st Defendant to cancel any entry in its register of the suit property in favour of the Plaintiff and instead reinstate the initial entry made in favour of the 5th Defendant as the owner of the suit property.
 - f. Any other relief that this Honourable Court may deem fit and just to grant.
 - g. Costs of this suit and interest.
5. On 21st March, 2019, ELC 176 of 2018 was consolidated with ELC 230 of 2018.
 6. The matter proceeded for hearing where the Plaintiff called two witnesses while the Defendants' also had two witnesses.
Evidence of the Plaintiff
 7. The Plaintiff claimed it purchased land parcel number Konza North/ Konza North Block 2 (malili)449, previously Plot No. 1563 from the 2nd and 3rd Defendants for Kenya Shillings Five Million Five



Hundred Thousand (Kshs. 5,500,000) vide a Sale Agreement dated the 14th June, 2011. The Plaintiffs' witnesses explained that they undertook due diligence with the 1st Defendant to confirm that Konza North/konza North Block 2 (malili) 449, previously Plot No. 1563, hereinafter referred to as the 'suit land', duly belonged to the 2nd and 3rd Defendants. The Plaintiff contended that the 2nd and 3rd Defendants had bought the suit land from the 5th Defendant because from the documents presented, it confirmed the 5th Defendant initially owned the said land. Further, the Plaintiff's witnesses testified that the vendors furnished them with the following documents: Original Allotment Letter; Original Ballot Card; Original Sale Agreement between 2nd and 3rd Defendants' with 5th Defendant; Copies of 2nd and 3rd Defendants' Identity Cards; Copy of 5th Defendant's Identity Card; Copy of Transfer Receipt for Kshs. 20,000 dated 3rd June, 2011 in the name of 2nd and 3rd Defendants' transferring the suit land from 5th Defendant, paid to the 1st Defendant. The Plaintiff insisted that the 1st Defendant confirmed that the documentation was proper after which a title deed was issued in its name but the 1st Defendant declined to release it. It reiterated that the documents it presented to effect transfer to its name were valid. The Plaintiff produced the following documents as exhibits: Copy of Sale Agreement dated 14th June, 2011; Copies of Banker's Cheque dated 14th June, 2011; Letter of Allotment dated 27th June, 2006; Ballot card for Plot No. 1563; Sale Agreement dated 21st May, 2011; Respective Copies of 2nd, 3rd, and 5th Defendants' Identity Cards; Transfer Receipt dated 3rd June, 2011; Transfer Receipt dated 11th July, 2011; Owaga & Associates Letters dated 7th June, 2018 and 3rd September, 2018; and Olando, Okello & Luseneke Advocates Letters dated 14th August, 2018 and 17th July, 2018.

Evidence of the Defendants

8. The 1st Defendant's witness explained that on 3rd June, 2011, a person purporting to be the 5th Defendant presented himself together with the 2nd and 3rd Defendants' who posed as buyers for the suit land. Further, that transfer was made to the 2nd and 3rd Defendants' upon verification of their records. It confirmed that on 7th July, 2011, a transfer was effected to the Plaintiff. It contended that from the documents presented, they appeared genuine and it did not suspect any fraudulent dealings. It averred that in November, 2017, the 5th Defendant came to their offices to inquire about his title deed and upon checking their records, it discovered that the suit land had been transferred to the Plaintiff. Further, the 5th Defendant informed them that he had not sold the suit land. It stated that the transfer to the Plaintiff was not legitimate as it was pegged on forged documents. Further, that the matter was referred to the DCIO, after which the 5th Defendant's name was forwarded to the Land Registrar for processing of his title as the suit land belongs to him. The 1st Defendant produced the following documents as exhibits: Copy of Title Deed for LR No. Konza North/Konza North Block 2 (Malili)/449 in the name of John Musau Musyimi and Copies of Certificate of Official Search including Green Card for LR No. Konza North/Konza North Block 2 (Malili)/449 in the name of John Musau Musyimi.
9. The 5th Defendant stated that he was and still a member No. 2307 of the 1st Defendant and had five shares. He explained that on 27th July, 2006, the 1st Defendant carried out a ballot allocation of plots to its members and he was allotted Plot No. 1563, an agricultural plot and commercial Plot No. 1537. He claimed on 14th May, 2012 vide an advertisement in the Daily Nation Newspaper, the 1st Defendant requested its members who had been allotted plots to provide passport size photos, identity cards, PIN, Allotment letters, Ballot Cards and Share Certificate to facilitate processing of title deeds which he provided. He explained that on 3rd November, 2017, he visited the 1st Defendant's office to follow up on issuance of title deeds for his two plots and discovered that his plot No. 1563 now Konza North/konza North Block 2 (malili) 449 had been fraudulently transferred allegedly by the 2nd and 3rd Defendants' to the Plaintiff. He stated that the 1st Defendant informed him that a person passing himself off as John Musau Musyimi, but later identified as David Mulwa Ngumbi presented documents bearing his name.



10. He produced the following documents as exhibits: Copy of his National Identity Card Number 4422471; Share Certificate No. 2307 issued to him by 1st Defendant; Copy of the membership card issued to him by 1st Defendant; Copy of Ballot issued to him by the 1st Defendant for plot numbers 1563 and 1537; Copy of an affidavit sworn by 5th Defendant on 3rd November, 2017; Copy of an advertisement in the Daily Nation Newspaper dated 14th May, 2012 placed by 1st Defendant; Copy of the Title Deed for parcel no. Konza North/konza North Block 2 (malili) 449 in the name of the Plaintiff; Copy of the demand notice dated the 7th March, 2018 issued to 1st Defendant; Copy of 1st Defendant's letter dated 7th March, 2018; Copies of Letters from Olando, Okello & Luseneka Advocates to e.k. Mutua & Co. Advocates dated 27th June, 2018, 17th July, 2016, 5th September, 2018 and 10th September, 2018; and Copy of 5th Defendant's Statement recorded at Salama Police Station under OB. No. 13/15/02/2019 at 10.25 Hrs.

Submissions

Plaintiff's Submissions

11. The Plaintiff in its submissions provided a background of the dispute herein, highlighted the evidence presented by the parties, challenged the testimonies of the Defendants' witnesses and insisted that it is a bona fide purchaser for value without notice of fraud. It contended that it purchased the suit land in good faith and the said land is already registered in its name. It argued that the 2nd and 3rd Defendants' had original documents as confirmed by the 1st Defendant that verified them. It further submitted that the Court should make an order directing the 4th Defendant to cancel any entry in the register made in favour of the 5th Defendant and instead make an entry in its favour. It reiterated that the 1st Defendant came to court with unclean hands and was guilty of neglect in discharging its duties. It claimed that the 1st Defendant colluded with the 2nd and 3rd Defendants to defraud as well as deprive it, of the suit land. It denied that there was any fraud in its acquisition of the suit land. Further, that the 1st Defendant owed a duty of care in respect to the transaction that the Plaintiff entered into with the 2nd and 3rd Defendants. It reaffirmed that it is hence entitled to the orders as sought. To buttress its averments it relied on the following decisions: Ugandan Case of *Katende v Haridar & Co. Ltd* (2008) 2 EA 173; *Republic v the Registrar of Titles Mombasa & 2 Others ex parte EMfil Limited* (2012) eKLR (Miscellaneous Civil Application 84 of 2011); *Gichinga Kibutha v Caroline Nduku* (2018) eKLR; Court of Appeal Civil Case No. 114 of 1998 being *Hems Group Trading Company Limited v Cotecna Inspection S.A*; English Case of *Capro Industries plc v Dickman* (1990) UKHL 2 and *Blyth v Birmingham Water Works Co.* (1856).

1st Defendant's Submissions

12. The 1st Defendant in its submissions highlighted the evidence of the parties herein as presented and insisted that the Plaintiff did not prove the allegations of fraud against the Defendants. It contended that the Plaintiff digressed in its evidence to impute negligence on the part of the 1st Defendant but never pleaded or proved the same. It further submitted that it acted in good faith to register the Plaintiff as owner of the suit land as it had no reason to suspect the documents presented were forgeries. It was its further submissions that the Plaintiff could hence not be deemed as a bona fide purchaser for value without notice as it acquired no title since the 2nd and 3rd Defendants obtained a bad title and as such could not pass a good title to it. Further, that the Plaintiff did not carry adequate due diligence prior to purchasing the suit land and this negates its assertion that it is a bona fide purchaser for value without notice. It reaffirmed that the title to the suit land registered in the name of the Plaintiff has since been cancelled and reverted to the name of the 5th Defendant. Further, that prayer



for compensation of purchase price should have been made against the 2nd and 3rd Defendants since they were the beneficiaries of the same. To buttress its averments, it relied on the following decisions: Demutila Nanyama Pururmu v Salim Mohamed Salim (2021) eKLR; Daniel Otieno Migore v South Nyanza Sugar Co. Ltd (2018) eKLR; Farid Abdul Ali v Mohamed Farouk Adam t/a Farouk Adam & Co. Advocates (2017) eKLR; Harilal Velji Shah & Anor v Matiri Mburu & Chepkemboi Advocates (2017) eKLR; Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No. 252 of 2005 (2014) eKLR; Mwangi James Njehia & Anor v Simon Kamanu (2021) eKLR and Samuel Kamere v Land Registrar, Kajiado (2015) eKLR.

The 5th Defendant's Submissions

13. The 5th Defendant in his submissions also provided a background of the dispute herein and analyzed the evidence as presented by the parties. He disputed that the Plaintiff is a bona fide purchaser for value without notice. He contended that the Plaintiff never undertook proper due diligence before purchasing the suit land from the 2nd and 3rd Defendants. Further, that the Sale Agreement dated the 21st May, 2011 between the Plaintiff and 2nd as well as 3rd Defendants' is ambiguous and shallow. He further submitted that the 1st Defendant did not owe the Plaintiff a duty of care as claimed and the rectification of the Plaintiff's title to his name was proper. He argued that as a member of the 1st Defendant Company, he was issued with an allotment letter and ballot card on or about 26th July, 2006 for Plot No. 1563. Further, that the Plaintiff did not bother to prove that the 2nd and 3rd Defendants had valid Membership Cards or Share Certificates if any from the 1st Defendant. To support his arguments, he relied on the following decisions: Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 (2015) eKLR; Munyu Maina v Hiram Gathiha Maina Civil Appeal No. 239 of 2009 (2013) eKLR and Dina Management Limited v County Government of Mombasa & Another Petition No. 8 (E010) of 2021.

Analysis and Determination

14. Upon consideration of the parties' pleadings filed herein including witness testimonies, exhibits and rivalling submissions, the following are the issues for determination: Whether the Plaintiff is a bona fide purchaser for value without notice of fraud or defect in title. Whether the Plaintiff is entitled to Orders as sought in the Plaint. Whether the 5th Defendant is entitled to Orders as sought in the Counter-claim.
15. As to whether the Plaintiff is a bona fide purchaser for value without notice of fraud or defect in title.
16. The Plaintiff claims it purchased land parcel number Konza North/ Konza North Block 2 (malili)449 (suit land), from the 2nd and 3rd Defendants' for Kenya Shillings Five Million Five Hundred Thousand (Kshs. 5,500,000) vide a Sale Agreement dated the 14th June, 2011. PW1 Edgar Otieno in his testimony stated that together with their lawyer, they undertook due diligence before purchase of the suit land which confirmed the said land duly belonged to the 2nd and 3rd Defendants. PW1 further testified that the 2nd and 3rd Defendants had bought the suit land from the 5th Defendant because from the documents the vendors' furnished to them which included Allotment Letter, Ballot Card, Sale Agreement between 2nd and 3rd Defendant with 5th Defendant, Copies of 2nd and 3rd Defendants' Identity Cards, Copy of 5th Defendant's Identity Card, Transfer Receipts for Kshs. 20,000 dated 3rd June, 2011, it was clear that the suit land belonged to the 2nd and 3rd Defendants. Further, from the documents the vendors' presented to it, it deemed them to be valid. He however confirmed during cross examination that before purchase of the suit land, he never consulted the 5th Defendant, who was not involved in the sale. Further, that he was not aware that the Plaintiff's title was cancelled. PW1 was emphatic in re-examination that they visited the offices of the 1st Defendant where it was confirmed



that the 2nd and 3rd Defendants' were owners of the suit land. He insisted that the 1st Defendant was the custodian of all the records in respect to the suit land. He was not aware if any fraud was committed. Further, that they produced all requisite documents as directed by the 1st Defendant whose officials duly verified them and issued them with a Transfer Receipt dated the 11th July, 2011. PW1 further confirmed that he had never met the 5th Defendant. PW2 Richard Njaro Kariuki in his testimony confirmed he is the one who identified the suit land for the Plaintiff. He explained that the suit land was sold by one vendor Catherine Nduta Mbugua. Further, that he knew her as owner of the suit land and they transacted well. It was his testimony that he met the 3rd Defendant who was a co-owner of the suit land at the point of executing the Agreement and they went to the offices of the 1st Defendant to do the transfer. He further testified that they were together with the Plaintiff's lawyer Mr. Owaga when they conducted a search at Malili Ranch but they were not issued with a Search Certificate. Further, he got copies of Identity Cards, Transfer Document and Ballot from the Seller, which documents were in the names of Catherine Nduta Mbugua and Ejidaiah Gacambi Kamau. He did not know the 5th Defendant and had never met him during the transaction in respect to suit land. He averred that the 2nd Defendant never took him to the 5th Defendant and he never found out who the first owner of the suit land was. He contended that he met the 2nd Defendant at the suit land and when they went to the 1st Defendant's offices together with the Lawyer, they met the Chairperson as well as Secretary but could not recall their names. DW1 Leonard K. Kyania who was an official of the 1st Defendant in his testimony denied colluding to take away the Plaintiff's land. He explained that they verify details in the Ballot, Allotment Letter, confirm the said details and if they correspond with what is in their records as per the ID Card as well as Register of Members. He recalled there were criminal proceedings in respect to suit land as he reported the matter to the Police. It was his testimony that around November, 2017, the 5th Defendant who was Member No. 2307 and had been allocated Plot Nos. 1563 and 1537 respectively, came to the 1st Defendant's offices, following up on the progress of processing of his title deeds and they discovered that Plot No. 1563 had been changed into the Plaintiff's name. Further, on inquiring from him, if he had sold the suit land to the 2nd and 3rd Defendants, he denied. He was emphatic that the Police conducted investigations and Catherine Nduta was arrested. He denied any form of negligence on the part of the 1st Defendant and insisted that from the forged documents presented by the 2nd and 3rd Defendants, they had appeared genuine. During further cross examination, he confirmed that the 5th Defendant was the genuine allottee of the suit land and not the person (imposter) who presented himself to the 1st Defendant's office as owner of the said suit land. He insisted that the transfer of the suit land to the 2nd and 3rd Defendants was not effected using proper documents. Further, that the photograph in the ID for the imposter and the genuine 5th Defendant looked different. He highlighted features in the genuine ID vis a vis the forged one. It was his further testimony that the 5th Defendant did not sell the suit land to the 2nd and 3rd Defendants. He further confirmed that the 1st Defendant forwarded the names of the 5th Defendant to the Lands Registrar, to issue a title in his name in respect to suit land, which was done, while the Plaintiff's name cancelled therefrom. During further cross examination, he clarified that in 2011, they did not have title deeds to the suit lands but plot numbers were recorded against the member and it is from the register of allotments, where they carried out verification. He confirmed the features of the ID for the imposter John Musyimi and 5th Defendant. Further, he clarified that the date of birth in the 5th Defendant's ID is 15th January, 1948 but for the imposter is 1954. He further explained that as per their records they only retain ID Number but not the serial number or date of birth. He confirmed that the 1st Defendant received Kshs. 20,000 Transfer fees from the Purchaser (2nd and 3rd Defendants) and Kshs. 20,000 being Transfer fees from the Plaintiff on 11th July, 2011 when it was the purchasing suit land from 2nd and 3rd Defendants.



17. DW2 John Musau Musyimi testified that his ID Number was 4422471 Serial No. 213401316 while for the imposter John Musyimi was 4422471 Serial No. 217190169. Further, that the photographs in the two Identity Cards were different. He stated that he was member No. 2307 and got his land in 2006 after balloting after which he received Allotment Letter. The land was No. 1563 Agricultural and 1537 Commercial Plot. It was his testimony that on 7th March, 2018 during a meeting at Malili Ranch Offices where he was present together with the Chairman, Secretary, Treasurer, his wife, his advocate as well as the 2nd Defendant, the 2nd Defendant confessed that the person who sold the suit land to them was not John Musau Musyimi but a Mr. David Mulwa Ngumbi. Further, that her documents which included the Ballot and Allotment Letter were found to be fake. She claimed to have reported the matter to the Police and David Mulwa Ngumbi was arrested but he denied the charges. It was his testimony that after the meeting, he reported the matter to Salama Police Station vide OB No. 13/15/02/2019 and Malili Ranch proceeded to correct the title which was registered in the Plaintiff's name into his name. He denied selling the suit land to anybody.
18. From this analysis alone, I note the initial title issued in the name of the Plaintiff was on 7th July, 2017 but the 1st Defendant returned it for cancellation in 2018. Further, the new Title in the name of the 5th Defendant was issued on the 29th January, 2021. Further, it has emerged that it is indeed an imposter David Mulwa Ngumbi who sold the suit land to the 2nd and 3rd Defendants' using forged documents, but not the 5th Defendant who was the legal allottee of the said land. The 1st Defendant has indeed admitted that the documents presented by the 2nd and 3rd Defendants' looked genuine as per their records and they verified the same and even received Transfer fees of Kshs. 20,000, only to later realize in 2017, when they met the 5th Defendant, that the said documents were fake.
19. In the case of Farid Abdul Ali v Mohamed Farouk Adam t/a Farouk Adam & Co. Advocates (2017) eKLR, the Judge observed that:
- “From the evidence adduced herein, it is indubitable that the Defendant acted in the ordinary course of things and did what any advocate of his stature would have done. The fraudsters were introduced to him by the Plaintiff and the names they gave were the same names that were in the identification and title documents. He further caused a search of the title to be conducted and nothing untoward was evinced thereby. He therefore had no reason to be suspicious. His posturing is buttressed by the fact that even the Lands Office was unable to detect any anomaly; and consequently approved and processed the transaction and issued a Certificate of Lease in the name of the Plaintiff. Moreover, no query was raised over the transaction until one year later. [23] I would thus take the view that the Defendant performed his duties as was expected, and undertook due diligence within his scope of duty in the circumstances. He had the vendors identified by their identity cards, which was an acceptable option at the material time. There was no particular prohibition against payment by open cheque. Thus, it cannot be said that there was gross negligence on his part in the foregoing respects. As was explicated in the case of Bolam vs. Friern Hospital Management Committee [1957] 2 All ER 118, the test is:
- “...the standard of the ordinary skilled man exercising and professing to have that special skill ... It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.”
20. Based on the facts as presented, noting that the Plaintiff did not particularize any form of negligence as against the 1st Defendant and sought to introduce it at the submissions stage, I find that there was no gross negligence on the part of the 1st Defendant as claimed.



21. On whether the 2nd and 3rd Defendants had a proper title to pass to the Plaintiff, I wish to make reference to the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment), where the Supreme Court of Kenya held that:

“Article 40 of *the Constitution* entitled every person to the right to property, subject to the limitations set out therein. Article 40(6) limited the rights as not extending them to any property that had been found to have been unlawfully acquired. As the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter could not therefore be protected under article 40. The root of the title having been challenged; the appellant could not benefit from the doctrine of bona fide purchaser.”

22. In the case of *Arthi Highway Developers Limited V West End Butchery Limited & 6 others* (2015) eKLR the Court of Appeal while dealing with a dispute relating to bona fide purchaser for value without notice favourably cited the Uganda Court of Appeal Case of *Katende V Haridar & Company Ltd*, where the Court defined what amounts to a bona fide purchaser for value inter alia:

“a bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a certificate of Title
- b. He purchased the Property in good faith;
- c. He has no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

23. While in the case of *Munyu Maina Vs Hiram Gathiha Maina*, Civil Appeal No.239 of 2009, the Court of Appeal held that: -

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

24. Based on the pleadings, exhibits and evidence before court including my analysis above, while associating myself with the cited decisions, I find that since the 5th Defendant who was the legal allottee of the suit land did not sell it to the 2nd and 3rd Defendants, even if the Plaintiff insists that the transfer fees was paid to the 1st Defendant, thus they acquired a good title, I hold that the 2nd and 3rd Defendants did not have a valid title as they relied on forged documents, hence the root of their title was challenged. Further, since the Plaintiff acquired its title from a vendor that held an invalid and illegal title obtained through forged documents, even if it did not participate in the fraud, it cannot be deemed to be a bona



fide purchaser for value without notice of fraud or defect in title. I opine that it was correct for the title that had initially been issued in the name of the Plaintiff, to be cancelled and a fresh one issued in the name of the 5th Defendant who was the valid allottee. It is interesting to note that even though PW2 confirmed knowing the identity of the 2nd Defendant, the Plaintiff did not seem to vigorously pursue the vendors' by instituting criminal proceedings against them nor follow up on the refund of the purchase price as indicated in the Sale Agreement.

25. In the circumstance, I find that the Plaintiff is only entitled to orders sought as per the Plaintiff against the 2nd and 3rd Defendants.
26. Further, I find that the 5th Defendant was indeed entitled to the orders as sought in the counterclaim but however since he had already been issued with his Certificate of Title on 29th, January, 2021 during the pendency of this suit, I will not grant the said orders as sought. On the claim for mesne profits, I find that the 5th Defendant did not prove them and will hence not award it.
27. On the issue of costs, I note both the Plaintiff and 5th Defendant are the inconvenienced parties herein. Further, even if it is the 2nd and 3rd Defendants who presented forged documents to the 1st Defendant who effected transfer, I opine that the officials of the 1st Defendant should have exercised more caution to avoid the dispute that arose herein. In the circumstance, I will award the Plaintiff and the 5th Defendant costs of the suit and counterclaim to be borne by the 1st, 2nd and 3rd Defendants' jointly and severally.
28. It is against the foregoing that I find the Plaintiff has only proved its case against the 2nd and 3rd Defendants on a balance of probability and not against the 1st, 4th and 5th Defendants. I will proceed to dismiss the Plaintiff's case as against the 1st, 4th and 5th Defendants' and enter Judgment for the 5th Defendant as per the Counter-claim and make the following final Orders:
 - a. That the 2nd and 3rd Defendants be and are hereby directed to compensate the Plaintiff for the amount of Kenya Shillings Five Million Five Hundred Thousand (Kshs. 5,500,000) incurred towards purchasing land parcel number Konza North/Konza North Block 2(Malili)/499 as well as all additional expenses incurred in improving and maintaining the same with interest at court rates from the 14th June, 2011 until payment in full.
 - b. The Certificate of Title dated the 29th January, 2021 issued in the name of John Musau Musyimi, the 5th Defendant herein for Konza North/Konza North Block 2 (Malili)449 be and is hereby declared valid.
 - c. The costs of the suit and Counter-claim are awarded to the Plaintiff and the 5th Defendant to be borne by the 1st, 2nd and 3rd Defendants' jointly and severally.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 12TH DAY OF FEBRUARY, 2024

CHRISTINE OCHIENG

JUDGE

