



**Muriungi v M'igweta (Environment & Land Case E001 of 2020)
[2024] KEELC 605 (KLR) (7 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E001 OF 2020**

CK NZILI, J

FEBRUARY 7, 2024

BETWEEN

PETER MUGAMBI MURIUNGI PLAINTIFF

AND

STANLEY MURERWA M'IGWETA DEFENDANT

JUDGMENT

1. The plaintiff has sued the defendant, claiming that on 23.4.2015, he fraudulently and unlawfully transferred L.R No. Nyambene/Old Kiare/2754 measuring four acres, which he had bought from the late Zakayo Ekabu M'Ekabu on 16.7.2013 for Kshs.400,000/= taken possession of and embarked on various developments.
2. The plaintiff prayed for a permanent injunction restraining the defendant from interfering with his proprietary rights over the land and an order for the District Land Registrar Tigania to rectify the register, remove the defendant's name and replace it with his name.
3. The defendant opposed the claim, terming the supporting documents relied upon by the plaintiff on the sale as fraudulent and forged. He denied that the plaintiff had been in occupation of the land as alleged or at all. On the contrary, the defendant averred that he bought L.R no. Nyambene/old Kiare/2754 measuring 1.55 ha or thereabout in 2014, which the deceased legally and procedurally transferred to him, took vacant possession of, and has openly and exclusively remained on it with no objection from the plaintiff.
4. By a reply to the statement of defense dated 1.4.2023, the plaintiff termed the defendant's entry into the already ongoing land transaction between him and the deceased with the sole intention of defrauding him of the land since he had already attended land control board for both subdivisions and transfer of the initial parcel No. L.R Nyambene/Old Kiare/53 into L.R NO's 2754, 2755, and 2756 and had subsequently taken possession.



5. Further, the plaintiff averred that the defendant had no land control board consent or transfer forms duly signed by the deceased. He denied that the thumbprints appearing on the documents held by the defendant as belonging to the deceased; otherwise, he was a clean person and craved leave to subject them to forensic examination by the police. The plaintiff averred he had suffered loss and damage out of the unlawful action of the defendant.
6. At the trial, Peter Mugambi testified as PW 1 and adopted his witness statement dated 8.10.2020 as his evidence in chief.
7. PW 1 told the court that he acquired L.R No. Nyambene/Old Kiare/2754 from the late Zakayo Ekabu M'Ekabu for Kshs.400,000/= by a sale agreement dated 16.7.2013 out of L.R No. Nyambene/Old Kiare/53, after undertaking due diligence.
8. PW 1 said the deceased subdivided the original land into three portions, sold and transferred L.R No. 2754 to him following his appearance before the land control board on 1.8.2014. He produced a copy of the sale agreement as amended transfer forms, application for land control board consent, official receipts for registration, bank deposit slip, registration fee receipt, and copy of an official search as P. Exh No. 1 (a) & (b), 2, 3, 4 & 5, respectively.
9. In cross-examination, PW 1 told the court he wrote three sale agreements in 2007 and 2013 with the seller, though only two were available before the court. He said his attempts to transfer the land in 2019 were in vain.
10. According to PW 1, there was a delay in transferring the land, for the seller kept selling more land to him until he passed on before the transfers were effected. He said the stamp duty and transfer forms were paid during the deceased's lifetime. PW 1 insisted that the signatures and thumbprints in the documents belonged to the deceased.
11. PW 1 told the court they attended two land control board meetings, after which he lodged the transfer documents with the land registry and obtained a title deed in 2014. Further, PW 1 told the court he found out the land registry had canceled his title deed and was advised to move to court. PW 1 said that after conducting an official search, he established that the land was in the defendant's name. He termed the transfer to the defendant's name fraudulent since he has occupied the land with effect from 2007. PW 1 told the court the seller passed on 25.5.2015. He said it took a long to file the suit since there was a delay with the land registry transiting from Nyambene District to the Tigania West land registry. PW 1 told the court his lawyers, Elijah Ogoti and Co. Advocates, drew and witnessed the sale agreements. PW1 also admitted that whoever witnessed the two sale agreements was not indicated, while some letters and signatures appeared different. He denied that the signatures were forgeries.
12. In re-examination, PW 1 told the court that even though he paid stamp duty, he could not collect his title deed since the defendant had already been registered as the owner of the land. PW 1 said he conducted two official searches over the title deed which indicated that the seller and the defendant were the owners in 2007 and 2019, respectively.
13. Daniel Mwingirwa Ntolaya testified as PW 2 and adopted his witness statement dated 11.4.2023 as his evidence in chief. He confirmed that the plaintiff had been cultivating the suit land since 2008, while the defendant was on an adjacent parcel of land. PW 2 told the court that the defendant had been encroaching onto the plaintiff's portion, yet the plaintiff bought the land from the deceased. PW 2 clarified that the trespass started in 2022.
14. Grace Wangari testified as the PW 3 and adopted her witness statement dated 11.4.2023 as her evidence in chief. She testified that she gave her husband Kshs.23,000/= to purchase a portion of land in



- July 2007. She said PW 1, her husband, bought three parcels of land from the deceased, took vacant possession, started tilling the land, and at some point, she accompanied him to attend a land control board meeting in 2008 to facilitate the transfer of the land to his name.
15. PW 3 clarified that the defendant was on an adjacent land, but he started trespassing onto their land, claiming ownership in August 2021. PW 3 in addition said they established that the defendant had acquired a title deed for their land. In re-examination, PW 3 said she was present when the plaintiff bought the land from the seller.
 16. Mugambi Ntiririmi testified as PW 4. As a neighbor, he told the court that the plaintiff started utilizing the land in 2009 by planting crops. He said the plaintiff would occasionally hire farm produce storage facilities from him. Similarly, he said the defendant's land was two hundred meters away from the plaintiff's. He was unable to confirm when the plaintiff bought his land.
 17. Stephen Muchui M'Ndene testified as PW 5 and confirmed that the plaintiff was his neighbor after acquiring the land sometime in 2009. PW 5 said he visited the land in 2013 with the surveyors who erected beacons on the plaintiff's portion. PW 5 said the plaintiff, after that, contracted him to erect a fence around his portion, which he did. During the site visit with the two surveyors, PW 5 said the deceased, his two wives, and his sons were all present. He also said the land was subdivided into three portions, and Parcel No. 2754 was allocated to the plaintiff.
 18. Stanley Murerwa M'Igweta testified as D.W. 1 and adopted his witness statement dated 13.3.2023 as his evidence in chief. He told the court that he purchased L.R No. Nyambene/Old Kiare/2754 in 2014, from the late Zakayo Ekabu M'Ekabu after establishing by way of an official search dated 26.6.2014, that he was the registered owner and that the land was vacant.
 19. DW 1 also said that after the purchase, the deceased applied for and obtained a land control board consent to transfer the land to him and executed a land transfer form accompanied by all the completed documents. Further, D.W. 1 said he lodged the documents with the land registrar for registration purposes and paid stamp duty assessed at Kshs.16000/= . He said that after the land was registered under his name, he acquired a title deed, took vacant possession, and has been in an exclusive open and apparent use of the land. DW 1 denied any alleged fraud or collusion with land officers to acquire the land since he bought it in 2014, completed the transactions on 1.4.2015, and acquired the title deed on 23.4.2015, almost a month before the seller passed on on 25.5.2015.
 20. D.W. 1 said the plaintiff did not claim the land during the deceased's lifetime and further that the documents produced by the plaintiff to stake a claim were forgeries and tailor-made for the suit and that if anything, the plaintiff's claim lay against the deceased's estate. DW 1 produced a copy of the official search dated 1.8.2014 as D. Exh No. 1 (a), the official search dated 25.5.2020 as D. Exh No. 1 (b), receipt dated 26.6.2014 as D. Exh No. 1 (c), application for land control board dated 26.6.2014 as D. Exh No. (2), land control board consent dated 26.6.2014 as D. Exh No. (3), transfer form dated 27.8.2014 as D. Exh No. (4), Kenya Revenue Authority for payment of stamp duty as D. Exh No. (5), a receipt for stamp duty payment as D. Exh No. (6) and copy of his title deed dated 23.4.2015 as D. Exh No. (7). He termed the plaintiff as a stranger and documents for payment of the stamp duty on 9.5.2019 as strange since the land was then already under his name and the former owner was also dead.
 21. In cross-examination, DW 1 said that at the scene visit date, he was in complete occupation of the land, and the report showed otherwise; the report must be erroneous. Regarding any sale agreement and an acknowledgment of the payment of consideration for the land, DW 1 said he had no such documents before the court, but the deceased had D. Exh No. 3 and that the deceased or his estate have never disputed the sale or challenged his title deed and occupation of the land for non-payment or forgery.



22. With the close of the defendant case, parties were directed to file and exchange written submissions by 19.12.2023. The plaintiff relied on written submissions dated 6.12.2023. It was submitted that the deceased sold six acres of land to the plaintiff for Kshs.400,000/=, between 2007 and 2013 out of L.R Nyambene/Old Kiare/53 and subdivided it into three portions just before he passed on after a land control board meeting where the Parcel No.2754 was to be transferred to the plaintiff. Given this, the plaintiff submitted that the title held by the defendant could not be absolute, for it was acquired while the deceased and his family were aware of the earlier sale and granting of vacant possession to him. Reliance was placed on *Gitwany Investment Ltd vs Tajmal Ltd & others* [2006] eKLR and *Harrison Kiambuthi Wanjiru & another v District Land Registrar Nairobi & 3 others* [2022] eKLR.
23. On the legality of his land acquisition, the plaintiff submitted his sale agreements were in line with Section 3 (3) Law of Contract and Sections 44 and 46 of the [Land Registration Act](#), unlike those of the defendant. Reliance was placed on *Elias Njue Ileri v Kubu Benson Nderi and others* [2019] eKLR.
24. On an innocent purchaser for value without notice, the plaintiff submitted that he conducted due diligence before entering into the sale agreements and paid consideration for the land. Reliance was placed on *Katende v Haridar and Col Ltd* [2008] 2 E. A 173 *Weston Gitonga & others v Peter Rugu Gikanga & another* [2017] eKLR, *Harrison Kiambuthi Wanjiru & another v District Land Registrar NRB & others (supra)*, *Republic vs Minister for Transport and Communication & 5 others ex parte Waa Shop Garbage Collector & 15 others* [2006] 1 KLR (E & L) 563. The plaintiff submitted he was an innocent purchaser who should enjoy protection under Article 40 of [the Constitution](#) and had undertaken due diligence before he bought the land and took vacant possession as to the circumstances in which the defendant was issued a title deed while there was a land transaction, which was first in time and underway the plaintiff termed the same as tainted with irregularities and fraud. Reliance was placed on *Sai Office Supplies Ltd v Rosemary Alivista Luseno & another* [2014] eKLR and *Samuel Odhiambo Oludhe and others v Jubilee Jumbo Hardware Ltd & another* [2018] eKLR.
25. As to the power to cancel a title deed, the plaintiff submitted under that Section 79 (2) of the [Land Registration Act](#) since he was not given any notice or reasons for the same, and therefore, the court should find it was irregularly done. Reliance was placed on *Republic v Kisumu District Land Office and another* [2010] eKLR and *Super Nova Properties Ltd & another v District Land Registrar Mombasa & 2 others (Kenya Anti-corruption Authority) & 2 others (Interested Parties)* [2018] eKLR.
26. The defendant relied on written submissions dated 11.12.2023. On whether the plaintiff proved fraud against the defendant's title to the suit land, it was submitted that every legal procedure or process to obtain title was followed up to the issuance of the title deed on 23.4.2015, which, as per Sections 24 (a) & 26 (l) of the [Land Registration Act](#) was prima facie evidence of proprietorship. It was submitted that the plaintiff's evidence fell short of proving any fraud, more so after failing to join the land registrar to the suit.
27. Further, the defendant submitted that the plaintiff failed to adduce any evidence to show that he was once a registered owner of the suit property by way of an official search, copy of the title, and or a green card, with an entry of his name, which was allegedly fraudulently or erroneously removed in collusion with the land registrar, without notice or reasons.
28. On the sale agreements between the plaintiff and the late Zakayo Ekabu M'Ekabu, the defendant submitted there were glaring irregularities, misdescriptions, and anomalies in the documents, as pointed out during the hearing, including the late submission of the transfer forms to the land registrar on 9.5.2019, which the plaintiff was unable to explain satisfactorily before the court.



29. The defendant further submitted that the plaintiff referred to a mutation form in his written submissions, which was never produced at the hearing; hence the court should disregard such unpleaded facts. On the scene visit report, the defendant submitted evidence of any land developments by the plaintiff or occupation was never produced. Given the root trail of the documents produced, the defendant urged the court to find the certificate of title issued to him as above board in the absence of any evidence by the plaintiff to impeach it. Reliance was placed on *Kinyanjui Kamau v George Kamau* [2015] eKLR.
30. The court has carefully reviewed the pleadings, evidence tendered by the parties written submissions, and the law. I find the following issues calling for my determination:
- i. If the plaintiff bought and was legally registered as the owner of L.R No. Nyambene/Old Kiare/2754 measuring 1.55 ha.
 - ii. If the plaintiff has proved fraud or illegality in the manner the defendant acquired the title deed on 2.3.2018.
 - iii. If the plaintiff took vacant possession of the suit land in 2007 and 2013.
 - iv. If the defendant fraudulently and through collusion acquired the suit land on 23.4.2015.
 - v. If the defendant was privy to the sale and transfer of the suit land to the plaintiff when he entered into a sale agreement with the deceased in 2014 and subsequently became the registered owner on 23.4.2015.
 - vi. If the defendant was an innocent purchaser for value without notice of the plaintiff's interests in the land.
 - vii. Whether the plaintiff is entitled to the reliefs sought.
31. In trite law, parties are bound by their pleadings, and issues flow from them. In *Raila Odinga & others v IEBC* [2017] eKLR, the court observed that in an adversarial system, it is the parties who frame the issues through their pleadings and advance their evidence based on those issues or pleadings and that evidence tendered in the absence of pleadings would be inconsequential. See *David Sironga Ole Tukai v Francis Arap Muge and 2 others* [2014] eKLR and *IEBC & another v Stephen Mutinda Mule and others* [2014] eKLR.
32. In this suit, the primary pleadings are the plaint dated 5.10.2020, the statement of defense dated 13.3.2023, and the reply to the defense dated 11.4.2023. Following directions, the plaintiff filed issues for determination dated 15.2.2023. One of the issues listed was whether the sale agreements with the deceased were valid. In the statement of claim, the plaintiff pleaded that he bought L.R No. Nyambene/Old Kiare/2754, by a sale agreement dated 16.7.2013 for Kshs.400,000/=. He averred that the subdivisions were carved out of the initial L.R No. Nyambene/Old Kiare/53; that he attended a land control board with the deceased; that the defendant and family members of the seller were aware of the transaction, but on 23.4.2015, unknown to him, the defendant colluded with the land registrar to fraudulently transfer the land to himself while aware he had taken possession of the land and threatened him with eviction and repossession in total breach of the terms and conditions of the sale agreements. The plaintiff urged the court to invalidate the land transfer to the defendant, rectify the register and direct that he be registered as the land owner. He also sought a permanent injunction against the defendant.



33. In support of his pleadings, the plaintiff called five witnesses and produced the sale agreement dated 3.7.2007 and the one amended on 16.7.2013, transfer dated 26.11.2014, land control board consent dated 1.8.2014 receipts for stamp duty dated 9.5.2019 and a certificate of official search dated 1.8.2014.
34. The law relating to the sale of land as of 3.7.2007 and 2013 was the [Law of Contract Act](#). The contract for the sale of land has to be in writing and signed by the parties, with the signature of each of the parties witnessed or attested to by a witness who was present when the contract was made. This law was informed by uncertainty before 2003.
35. In the sale agreement dated 3.7.2007, the sale agreement was subject to the [Land Control Act](#). No evidence was produced that the plaintiff complied with the law and obtained a land control board consent for the subdivisions and transfer within six months. The amended sale agreement dated 16.7.2013 referred to a sale agreement dated 23.11.2009. No such sale agreement was produced before the court, yet paragraph (3) refers to clauses in the said sale agreement.
36. The amended sale agreement was silent on critical ingredients such as the timelines, handover of vacant possession of the subject land sold, manner of transfer date of the transfer, and who was to undertake what in the transfer process. It is trite law that no parole evidence is admissible to contradict, vary, or alter the terms of a deed or any written instructions. See *Twiga Chemicals Industries Ltd v Allan Stephen Reynolds* [2015] eKLR.
37. Parties have the freedom to contract. Courts do not rewrite contracts. See Sections 97 and 98 of the [Evidence Act](#). In the case of *Housing Company of E. A Ltd vs NSSF Board of Trustees National Social Security Fund and others* [2018] eKLR, the court cited with approval *Njamunya v Nyaga* [1983] KLR 282, that before an agreement is rescinded, a party in default should be notified of the default and given reasonable time to rectify it.
38. In this suit, the plaintiff sought to introduce extrinsic evidence that the closure, transfer, and re-opening of a land registry at the Tigania sub-registry caused the delay in completing the sale and transfer. The plaintiff relied on a transfer form as P. Exh No. 2 and a land control board consent as P. Exh No. (3) dated 1.8.2014. Similarly, he relied on P. Exh No. 4 (a) (b) (c) to show that he lodged transfers for and paid for it on 9.5.2019. The consideration indicated in P. Exh No. (3) in Kshs.100,000/= details of when the transfer form was received for registration are missing. The signature of the land registrar and the date of registration is also missing. The land control board consent for the initial L.R. No.53 subdivision is also missing.
39. The burden of proof under Section 107 – 112 of the [Evidence Act](#) was on the plaintiff to prove that he followed every step and procedure to purchase and transfer the land to his name. He had to prove all the pleaded facts, including whether he appeared before the land registrar with the deceased to lodge the transfer documents. The plaintiff had the onus of proving that he was first on time to purchase the suit land and became the registered owner in a regular, lawful, and procedural manner. The plaintiff failed to call evidence from the deceased's family, the land control board membership and the land registry to show that his acquisition of the land was first in time, that the documents were lodged before the death of the seller, and that therefore, the land registrar should not have processed those of the defendant on the same land title.
40. The plaintiff failed to call the land control board members to show that the one by the defendant, dated 19.8.2014, was invalid or was processed after the one he had obtained earlier. There was need to call the land control board members to show which of the two parties first applied for the land control board consent. The land control board form by the defendant shows that a land control board meeting



- occurred on 19.8.2014. In the absence of a land control board consent and evidence thereof, the court cannot find that the plaintiff was the first to obtain a land control board consent for the suit property.
41. Moreover, in the absence of a clause in the amended sale agreement that time was of the essence, the court can still not find a nexus between the land control board application form and transfer forms of L.R No. 2754, which was missing in the amended sale agreement. See *Beatrice Awino Wotsembo v Dancan David Odekeyo* [2020] eKLR. *David Ntirika M'Baracha v Mutuerandu Mungatia Timothy* [2022] eKLR and *Aliaza vs Saul* 9 C.A 134 of 2017) [2022] KECA 583 (KLB) (24th June 2022) (Judgement).
 42. The plaintiff has alleged fraud in how the defendant acquired his title deed. Fraud must be pleaded and proved on a balance of proof higher than in ordinary suits. See *Arithi Developers v West End Butchery* [2015] eKLR.
 43. It was upon the plaintiff to impeach the title held by the defendant through cogent and tangible evidence. He had to bring the land registrar to the suit or produce evidence of collusion in the title's registration. The plaintiff had to show that the land registrar was seized of valid documents and proceeded to register him as the owner. No official search, copy of the title, and copy of the records were produced to show that after P. Exh No's. (1) – (5), the plaintiff was registered as the owner. Evidence alleging the title's cancellation in favor of the plaintiff and the referral of the dispute to court was never pleaded and material produced to support the assertion. Under Section 20 of the [Land Control Act](#), a land registrar can refuse to register an instrument lacking land control board consent. See *Fredrick Ochieng Ochanjo & another vs Maritha Odera Ochanjo & another* (2009) eKLR. The failure to join the land registrar or the deceased's family to the suit or, at the very least, call any of the two as witnesses was fatal to the plaintiff's case. See *Njihia & another vs Njoroge* (ELCA 15 of 2021) 2023 KEELC 17424 KLR 15th May 2023 (Judgment) and *Samuel Kamere v Land Registrar Kajiado* [2015] eKLR.
 44. It is trite that when a title deed is under dispute, every paper trail towards its acquisition must be demonstrated. A claimant must go beyond the instrument of ownership and prove the legality of the acquisition of the title through a formal and legal process, free of any encumbrances. See *Munyu Maina vs Hiram Gathiha Maina* C.A No. 259 of 2009.
 45. The defendant produced all the documents showing that the critical steps in acquiring the title were followed. The plaintiff did not impeach those documents by either calling for their forensic audit or examination, production by their makers, or demonstrating that they were subject to pre-existing documents already lodged with the land registrar over the same land duly signed by the deceased.
 46. It was not enough for the plaintiff to allege that the documents and title by the defendant were forged or illegally obtained, without demonstrating the fraud, irregularities, illegalities, and unprocedural means used to acquire them. D. Exh No. 1 (a) shows the registered owner of the suit land by 16.10.2013 was the late Zakayo Ekabu M'Ekabu and not the plaintiff. D. Exh No. 1 (b) shows the defendant became the registered owner on 23.4.2015 during the deceased's lifetime. The plaintiff did not dispute the contents of D. Exh No. 2 and 3 by calling the makers of the land control board to disown it.
 47. D. Exh No. 5 was duly witnessed, received, signed, and stamped by the land registrar, Meru North. D. Exh No. 7 was issued by the land registrar on 23.4.2015.
 48. Between 2015 and the filing of this suit on 9.10.2020. The plaintiff did not explain why the inordinate delay in challenging the title. The plaintiff failed to produce a single letter of complaint, which he had sent to the land registrar, complaining that the defendant was irregularly and illegally registered as the land owner. The documents lodged by the plaintiff and payment made on 9.5.2019, with the land registrar and stamp duty payments were coming too late after the seller had passed on in 2015, and



- the suit property was registered in favor of the defendant. Had the plaintiff conducted due diligence before paying for the stamp duty, he would have known the suit land was no longer in the name of the seller, who was also deceased. The plaintiff cannot, therefore, blame the defendant or the land registrar without evidence that his rights, if any, to the suit land were protected by law.
49. The plaintiff averred that he had paid valuable consideration for the suit land and hence he was an innocent purchaser for value without notice. The amended sale agreement was silent on the particulars of the suit land and the consideration paid, as alluded to above. The application form for the Land Consent Board consent talks of Kshs.100,000/=, as consideration paid. It leaves doubt to the court whether the plaintiff paid anything to acquire the suit land.
 50. It is also instructive to note that the plaintiff has not imputed any fraud or collusion on the seller's part, who was at the center of the documents produced by the defendant. The defendant cannot answer for what transpired between the seller and the plaintiff before and after he bought and acquired the land. Even though the plaintiff pleaded that the defendant and the seller's family were privy to the sale he had made in 2007 and 2013, evidence to back that assertion was not tendered. Therefore, the defendant cannot answer on behalf of the seller's estate. He does not represent them. See *Isaya Masira Momanyi v Daniel Omwoyo & another* [2017] eKLR.
 51. An innocent purchaser for value without notice is one who was not privy to or aware of adverse interests or rights over the title. In *Dina Management Ltd vs County Government of Mombasa & others* (Petition 8 (E010 of 2021) [2023] KESC 30 (KLR) 21st April 2023 (judgment), the court cited Black Law Dictionary 9th Edition that a bonafide purchaser was one who buys something for value without notice of another's claim and without actual or constructive notice of any defects or anomalies, claims or equities against the seller's title, in good faith and for valuable consideration. The court said it could not sanction irregularities and illegalities in land allocation. The court cited with approval *Funzi Island Development Ltd & 2 others v County Council of Kwale* [2014] eKLR and Article 40 (6) of *the Constitution* that one cannot benefit from the doctrine of bonafide purchaser if the end product of the process is not procured in compliance with the law or was irregularly obtained.
 52. In this suit adverse interests of the plaintiff were not known to the defendant. Evidence has not been produced that the plaintiff had placed a caution on the suit land or made substantial developments which the defendant was privy to.
 53. In *Torino Enterprises Ltd vs. Attorney General* (Petition 5 (E006 of 2022) (2023) KESC 79 (KLR) (22nd September 2023) (Judgement), the court said there was no question as to the regularity and legality of the process or alienation. Further, the court observed that since the allottee had not completed the process of registration and if the appellant was a diligent purchaser, it ought to have been aware of what it was buying by inspecting the suit premises; otherwise, it would have established that the suit premises were already occupied hence the concept of buyer be aware.
 54. In this suit, PW 2, 3, 4, and 5's evidence was contradictory, disjointed, and unclear on the nature, size, and status of the plaintiff's developments on the land. The plaintiff failed to call the land surveyor and members of the seller's family, who were present at the time of the alleged subdivision, and or handover of vacant possession.
 55. Therefore, my finding is that the plaintiff had not made any profound developments on the land, which the defendant would have noticed on the ground when he bought the land in 2015. Similarly, from the exhibits provided by the plaintiff, it is unclear what portion of the land the plaintiff had bought in 2013 and whether vacant possession of the whole or part of the suit land had taken place. The upshot is that I find the plaintiff has failed to prove his case to the required standard. The same is dismissed with costs.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 7TH DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Ngumato for the plaintiff

M.D Maranya for the defendant

HON. CK NZILI

JUDGE

