



Ochieng & another (Suing as Legal Representatives of the Estate of Dominic Nyamema Gor, Deceased) v Asila & 2 others (Environment and Land Case Civil Suit 171 of 2017) [2024] KEELC 5157 (KLR) (11 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5157 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT 171 OF 2017
SO OKONG'O, J
JULY 11, 2024**

BETWEEN

**SAMUEL OCHIENG 1ST PLAINTIFF
DOMNIC MSAFIRI 2ND PLAINTIFF
SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF DOMNIC
NYAMEMA GOR, DECEASED**

AND

**ELKANA ASILA 1ST DEFENDANT
HESBORN OPUKO 2ND DEFENDANT
EDWARD OMONDI MOLA 3RD DEFENDANT**

JUDGMENT

1. During the land adjudication and demarcation at Pandpieri Adjudication Section, the parcel of land known as parcel No 385 measuring approximately 0.05 of a hectare was recorded in the name of Njer Ogada Wadhare, deceased (hereinafter referred to only as “the deceased”). From the Adjudication Record, a lady by the name of Agnes Andeyo objected to the adjudication and recording of the said parcel of land in the name of the deceased. The objection was dismissed on 30th November 1983.
2. The said parcel of land No 385 was registered in the name of the deceased as Kisumu/Pandpieri/385 (hereinafter referred to only as “Plot No 385”) on 2nd January 1987. Plot No 385 was subdivided by the deceased on 15th February 1990 into two portions, namely, Kisumu/Pandpieri/1460 and 1461(hereinafter referred to only as “Plot No 1460” and “Plot No 1461” respectively). Plot No 1460 and Plot No 1461 were upon creation registered in the name of the deceased.



3. The deceased died on 26th November 1991 and an application for Grant of Letters of Administration in respect of his estate was made by Onyango Ogada Njer (hereinafter referred to only as “the administrator of the deceased’s estate”) in his capacity as the deceased’s brother in Kisumu High Court Succession Cause No 128 of 1992. The administrator of the deceased’s estate was issued with a Grant of Letters of Administration in respect of the deceased’s estate on 4th October 1992.
4. Plot No 1460 was registered in the name of the administrator of the estate of the deceased by transmission on 12th February 1993. On the same date, Plot No 1460 was registered in the name of the said administrator of the estate of the deceased as the owner thereof and he subsequently transferred it to one, Cephania Ouma Orawo. Cephania Ouma Orawo was issued with a title deed for Plot No 1460 on 24th May 1993. Cephania Ouma Orawo held the property as the absolute proprietor thereof until 6th August 1996 when he sold and transferred the property to the 2nd defendant, Hesborn Odhiambo Bengo Opuko who was issued with a title deed on the same date.
5. With regard to Plot No 1461, the deceased transferred the same to one, Nashon Liyengwah Asila on 15th February 1990 while he was still alive. Nashon Liyengwah Asila was issued with a title deed on the same date. Nashon Liyengwah Asila held the property as the absolute owner thereof until 5th January 2017 when he sold and transferred the same to Edward Omondi Mola, the 3rd defendant herein who was issued with a title deed on the same date.
6. This suit was brought by Domnic Nyamema Gor, deceased (hereinafter referred to only as “Gor”) on 17th May 2017. Gor averred that Plot No 385 was registered in the name of Njer Ogada Wandhare, deceased (the deceased) to hold in trust for Gor who was not around during the land adjudication in the area where the land is situated. Gor averred that the defendants fraudulently subdivided Plot No 385 into two portions, Plot No 1460 and Plot No 1461 without following the due process. Gor averred that the said subdivision was carried out after the death of the deceased and before a Grant of Letters of Administration had been issued in respect of his estate.
7. Gor sought judgment against the defendants jointly and severally for;
 - a. An order that the titles for Plot No 1460 and Plot No 1461 be cancelled and the title for Plot No 385 be restored pending the institution of Succession proceedings in respect of the estate of the deceased.
 - b. A declaration that Gor was the sole beneficiary of Plot No 385.
 - c. Costs of the suit.
8. Before filing this suit, Gor had filed a complaint against the defendants at the defunct Land Disputes Tribunal in 2010. In his complaint to the Tribunal, Gor had contended that he was the only son of one, Gor Njer who died in 1958. He averred that the father of Gor Njer (his grandfather) had three wives and before his death, he distributed his land to the houses of his three wives. He stated that his grandmother was Airo Njer, deceased.
9. Gor averred that he left Kenya to go and look for a job in Tanzania. He averred that the land adjudication took place while he was away. He averred that in his absence, Plot No 385 which was his ancestral land was adjudicated and registered after which the same was subdivided and transferred to people who were not related to him. Gor stated that the 1st defendant had written to him demanding that he vacate his home on Plot No 385. It appears that the Land Disputes Tribunal was disbanded following the repeal of the Land Disputes Tribunals Act, 1990 before the hearing of Gor’s complaint.



10. The 1st defendant died on 6th December 2016 before the filing of this suit and as such he did not defend the suit. The 2nd defendant filed a defence on 15th June 2017 in which he denied Gor's claim in its entirety. The 2nd defendant averred that he acquired Plot No 1460 lawfully from Zephania Ouma Orawo who was the lawful registered owner thereof.
11. The 3rd defendant filed a defence on 11th October 2017. The 3rd defendant also denied Gor's claim in its entirety. The 3rd defendant averred that Plot No 385 was subdivided by Njer Ogada Wadhare, deceased and not by the 3rd defendant as claimed by Gor. The 3rd defendant averred that he purchased Plot No 1461 from Nashon Liyengwa Ashila(sic) who had himself purchased the property from Njer Ogada Wadhare, deceased (the deceased) while he was still alive. The 3rd defendant averred that it was unnecessary to carry out succession in respect of the estate of the deceased in respect of Plot No 1461 since the same was transferred by the deceased to Nashon Liyengwa Ashila(sic) during the lifetime of the deceased. The 3rd defendant averred that he was an innocent purchaser of Plot No 1461 for value from Nashon Liyengwa Ashila(sic) on 27th September 2016.
12. Gor died on 14th January 2019 and was substituted by the plaintiffs herein who were his sons. At the trial, the 1st plaintiff gave evidence on his behalf and on behalf of the 2nd plaintiff. He adopted his witness statement dated 10th November 2020 as part of his evidence in chief and produced the documents in the plaintiffs' bundles of documents filed on 17th May 2017, 8th March 2018 and 30th May 2018 as plaintiffs' exhibits 1, 2 and 3 respectively.
13. In his statement, the 1st plaintiff stated as follows: His father Gor was the son of one, Gor Audi and Agnes Andeyo. His grandfather Gor Audi had no brother. Gor Audi's mother was Nyaumudha Njer. His great-grandfather was Njer Ogada. Njer Ogada was the father of Ogada Njer and Gor Njer. Gor Njer was given land at Pandpieri while Ogada Njer was given land at Nyalenda "B", Parcel No 828. His father, Gor was not around during land adjudication and registration. The land that belonged to Gor was registered in the names of other family members to hold in trust for Gor. Plot No 1461 belonged to them as sons and grandsons of Gor Audi.
14. The 2nd defendant who gave evidence as DW1 adopted his witness statement filed in court on 15th June 2017 as his evidence in chief and produced the documents attached to his list of documents also filed on 15th June 2017 as exhibits. In his witness statement, the 2nd defendant explained in detail how he acquired Plot No 1460 from Zephania Ouma Orawo who was the registered proprietor thereof.
15. The 3rd defendant testified as DW2 and adopted his witness statement filed on 11th October 2017 as his evidence in chief. He told the court that he acquired Plot No 1461 from Nashon Liyengwah Asila in 2016. The 3rd defendant produced the documents attached to his list of documents filed on 11th October 2017 as exhibits. He stated that he had occupied the property since 2016. In his witness statement, he explained in detail how he acquired the property from Nashon Liyengwah Asila.
16. After the close of evidence, the parties made closing submissions in writing. The plaintiffs filed two sets of submissions; one in respect of Plot No 1460 and the other in respect of Plot No 1461. Both submissions were dated 20th November 2023. In their submissions in respect of Plot No 1460, the plaintiffs submitted as follows: Njer Ogada was a cousin to their father Gor. Njer Ogada got Plot No 827 during the land adjudication. Njer Ogada Wadhare was not related to them. Onyango Ogada who applied for a Grant of Letters of Administration in respect of the estate of Njer Ogada Wadhare was given Plot No 830 during the land adjudication.
17. In the absence of their father who was in Tanzania, his cousin Njer Ogada was the one who was responsible for land demarcation and registration during the land adjudication. Plot No 385 which



was registered in his name was the Plaintiff's father's share of family land. The Plaintiffs submitted that the registration of Plot No 1460 in the name of the 2nd defendant was fraudulent. The Plaintiffs submitted that the succession proceedings that led to the registration of the person from whom the 2nd defendant acquired the property were also fraudulent and the Grant of Letters of administration that was issued pursuant to those proceedings should be revoked. The Plaintiffs submitted that the administrator of the estate of Njer Ogada Wadhare transferred Plot No 1460 to himself and thereafter to the person from whom the 2nd defendant purchased the property before the Grant of Letters of Administration issued to him was confirmed. The Plaintiff submitted that the said transactions were illegal. The Plaintiffs submitted that since the root of the title that was transferred to the 2nd defendant was illegal and fraudulent which fraud the 2nd defendant was a party to, the 2nd defendant's title was similarly illegal. The Plaintiffs submitted that a perusal of the register (Green Card) for the suit property would have alerted the 2nd defendant of the apparent irregularities relating to Plot No 1460. The plaintiffs prayed that the reliefs sought in the plaint be granted.

18. With regard to Plot No 1461, the plaintiffs submitted that the person from whom the 3rd defendant claimed to have purchased the property was not known to them and did not seek to be made a party to the suit or to testify on behalf of the 3rd defendant. The Plaintiffs submitted further that there were inconsistencies in the Identity Card numbers that were used by the person from whom the 3rd defendant acquired the property which pointed to an illegality in the transaction taking into account the fact that the person was not called by the 3rd defendant to give evidence. The plaintiffs submitted that the 3rd defendant who destroyed their Posho mill held an invalid title to Plot No 1461. The plaintiffs urged the court to order the 3rd defendant to give them vacant possession of the property.
19. The 2nd defendant filed submissions dated 3rd April 2024. The 2nd defendant cited Sections 24(a) and 26(1) of the [Land Registration Act](#) 2012 and a number of authorities and submitted that he was a *bona fide* purchaser and owner of Plot No 1460. The 2nd defendant submitted that the plaintiffs had failed to prove that the 2nd defendant acquired the property illegally and as such were not entitled to the reliefs that they had sought in the plaint. The 2nd defendant urged the court to dismiss the plaintiffs' suit with costs.
20. The 3rd defendant filed submissions dated 8th March 2024. The 3rd defendant submitted that the transfer of Plot No 1461 to the 3rd defendant followed due process and as such was valid. The 3rd defendant submitted that the plaintiffs did not prove the allegations of fraud pleaded against the 3rd defendant. The 3rd defendant submitted that Nashon Liyengwah Ashila(sic) was the registered owner of Plot No 1461 when he purchased the same from him. The 3rd defendant averred that he placed documentary evidence before the court in proof of the fact that he acquired the property lawfully which evidence was not challenged by the plaintiffs.
21. The 3rd defendant submitted that the plaintiffs did not prove the fraud pleaded against the 3rd defendant. The 3rd defendant submitted that he was an innocent purchaser of the suit property for value. The 3rd defendant averred that the plaintiffs' suit was not proved and urged the court to dismiss the same with costs.

22. Analysis and determination

23. I have considered the pleadings, the evidence tendered by the parties in proof of their respective cases and the submissions on record. The plaintiffs' case is that Njer Ogada Wadhare, deceased was registered as the proprietor of Plot No 385 to hold in trust for the plaintiffs' father, Gor and as such Njer Ogada Wadhare, deceased (the deceased) was not supposed to deal with the said property in breach of the said trust. The plaintiffs contended that the subdivision of the said property and the registration of the



portions thereof in favour of the 2nd and 3rd defendants were illegal and fraudulent. The burden was on the plaintiffs to prove the alleged trust and the illegality and fraud in the subdivision and transfer of the portions of Plot No 385 to the 2nd and 3rd defendants.

24. Plot No 385 and the subdivisions thereof were registered under the [Registered Land Act](#), Chapter 300 Laws of Kenya (now repealed) which was subsequently repealed by the [Land Registration Act](#) 2012. I agree with the submissions by the 2nd and 3rd defendants that their registration as the proprietors of the subdivisions of Plot No 385 namely, Plot No 1460 and Plot No 1461 conferred upon them absolute ownership of the said properties together with all the rights and privileges associated with such ownership and that such rights were not liable to be defeated save as was provided in the [Registered Land Act](#), Chapter 300 Laws of Kenya and the [Land Registration Act](#) 2012. That argument is anchored on Sections 27 and 28 of the [Registered Land Act](#) and Sections 24 and 25 of the [Land Registration Act](#) 2012. The provisos to Sections 28 of the [Registered Land Act](#) and Section 25 of the [Land Registration Act](#) provide however that the rights of a proprietor of land are subject to any duty or obligation such proprietor may have as a trustee.

25. In [Kanyi v Muthiora](#) [1984] KLR 712, Chesoni, Ag JA stated as follows at page 723:

“Section 143 of the [Registered Land Act](#) did not apply as there was no question of rectification of the register but a transfer by a trustee to a beneficial owner. The registration of the suit land in the name of Kanyi under the [Registered Land Act](#) did not extinguish Nyokabi’s rights under Kikuyu customary law. Kanyi was not relieved from her duty or obligation to which she was a trustee to Mathiora’s land: see proviso to section 28 of the Act and [Gatimu Kinguru v Muya Gathangi](#) [1976] KLR 253. There was overwhelming evidence of a trust in favour of Nyokabi.”

26. In [John Gitiba Buruna & another v Jackson Rioba Buruna](#), Court of Appeal at Kisumu, Civil Appeal No 89 of 2003, the court stated as follows:

“Although the rights of a registered proprietor of land are indefeasible under section 28 of the [Registered Land Act](#), such registration does not as the proviso to section 28 states relieve a proprietor or from any duty or obligation to which he is subject as a trustee.”

27. In [Isack M’inanga Kiebia v Isaaya Theuri M’lintari & another](#) [2018] eKLR, the Supreme Court stated as follows on customary trusts:

“(52) Flowing from this analysis, we now declare that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor, is subject under the proviso to Section 28 of the [Registered Land Act](#). Under this legal regime, (now repealed), the content of such a trust can take several forms. For example, it may emerge through evidence, that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses, such as construction of houses and other amenities by youths graduating into manhood. The categories of a customary trust are therefore not closed. It is for the court to make a determination, on the basis of evidence, as to which category of such a trust subsists as to bind the registered proprietor. Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as



a customary trust. In this regard, we agree with the High Court in *Kiarie v Kinuthia*, that what is essential is the nature of the holding of the land and intention of the parties. If the said holding is for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are:

1. The land in question was before registration, family, clan or group land.
2. The claimant belongs to such family, clan, or group.
3. The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous.
4. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances.
5. The claim is directed against the registered proprietor who is a member of the family, clan or group.

(57) With the repeal of the *Registered Land Act* (Cap 300), Parliament enacted the *Land Registration Act* No 3 of 2012. The provisions of Section 28 of the former, including the proviso thereto, were re-enacted as Section 25 of the latter; while the provisions of Section 30 of Cap 300 were re-enacted as Section 28 of the *Land Registration Act...* However, Parliament introduced two new categories of overriding interests, the first category is what are now called “spousal rights over matrimonial property”; while the second category is what are, rather curiously called “trusts including customary trusts”. Even more curious, is the fact that “the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation,” as earlier provided for under Section 30 (g) of the *Registered Land Act*, are no longer on the list of overriding interests under Section 28 of the *Land Registration Act*.

(58) What are we to make of these changes? Several interpretations are plausible. It is now clear that customary trusts, as well as all other trusts, are overriding interests. These trusts, being overriding interests, are not required to be noted in the register. However, by retaining the proviso to Section 28 of the *Registered Land Act* (now repealed), in Section 25 of the *Land Registration Act*, it can be logically assumed that certain trusts can still be noted in the register. Once so noted, such trusts, not being overriding interests, would bind the registered proprietor in terms noted on the register. The rights of a person in possession or actual occupation of land, as previously envisaged under Section 30 (g) of the *Registered Land Act*, have now been subsumed in the “customary trusts” under Section 25 (b) of the *Land Registration Act*. Thus under the latter Section, a person can prove the existence of a specific category



of a customary trust, one of which can arise, although not exclusively, from the fact of rightful possession or actual occupation of the land.”

28. I have found it difficult to create the plaintiffs’ family tree due to the inconsistent information that was provided by the plaintiffs’ father Gor and the plaintiffs. Whereas the plaintiffs have claimed that their father Gor was the son of Gor Audi, Gor had stated in the affidavit that he filed in support of the complaint he had filed at the Land Disputes Tribunal that he was the son of Gor Njer. I would take the statement by the plaintiffs’ father Gor to be the correct one as concerns the name of his father. The plaintiffs’ father, Dominic Nyamema Gor (Gor) was the son of Gor Njer with his wife Agnes Andeyo. Gor Njer was the son of Njer Ogada with his wife Airo Njer. Njer Ogada had other sons including, Ogada Njer and Onyango Ogada. According to the plaintiffs, Plot No 385 belonged to the house of Airo Njer, the wife of Njer Ogada and as such should have been registered in the name of her son Gor Njer during the land adjudication and in his absence, his only son, Dominic Nyamema Gor, the plaintiff’s father.
29. The plaintiffs have contended their grandfather, Gor Njer died in 1958 before the land adjudication exercise and that their father Dominic Nyamema Gor (Gor) was away in Tanzania during the said exercise. The plaintiffs have contended that it was as a result of the absence of their grandfather and father during land adjudication that Plot No 385 was registered in the name of Ogada Njer, a brother to their grandfather, Gor Njer who was to hold the same in trust for his father Gor.
30. In his witness statement and oral evidence tendered in court, the 1st plaintiff stated that their grandmother who was the wife of Gor Njer was known as Agnes Andeyo. From the evidence on record, the plaintiffs’ said grandmother was alive during the land adjudication exercise at Pandperi Adjudication Section in the 1980s. The Adjudication Record produced in evidence by the 2nd defendant shows that Agnes Andeyo claimed Plot No 385 during the land adjudication exercise and lodged an objection No 120/82-83 to the recording of the same in the name of Njer Ogada Wadhare, deceased (whom the plaintiffs have referred to as “Ogada Njer”). Agnes Andeyo’s objection was considered and dismissed on 30th November 1983. There is no evidence that Agnes Andeyo lodged an appeal to the Minister under the provisions of the *Land Adjudication Act*, Chapter 284 Laws of Kenya following the dismissal of her objection. Following the dismissal of that objection and there being no appeal against the same, Plot No 385 was registered in the name of Njer Ogada Wadhare, deceased (the deceased) on 2nd January 1987. I am of the view that the plaintiffs’ grandmother having been present during the land adjudication and having raised an objection to the registration of Plot No 385 in the name of Njer Ogada Wadhare, deceased who was her brother in law and the objection having been considered and dismissed and no appeal having been filed as per by law provided, the plaintiffs’ claim over the property based on customary trust cannot be sustained as it has no merit.
31. The plaintiffs also took issue with the manner Plot No 385 was subdivided and transferred to the administrator of the estate of Njer Ogada Wadhare, deceased and subsequently to the 2nd and 3rd defendants. Having held that the plaintiffs have no proprietary interest in Plot No 385, they have no locus standi to challenge any dealings with the same. Their deceased father had no interest in the land and they are not beneficiaries or administrators of the estate of Njer Ogada Wadhare, deceased who was the registered owner of the property. They have no legal capacity to question the subdivision of the property and transfer of the portions thereof to the 2nd and 3rd defendants.
32. In any event, I have noted that the plaintiffs did not join Onyango Ogada Njer, the administrator of the estate of Njer Ogada Wadhare, deceased to the suit. The court has been urged to find the entire process of succession in respect of the estate of Njer Ogada Wadhare, deceased illegal and fraudulent and to proceed to revoke the Grant that was issued by the Probate and Administration Court. The



plaintiffs cannot challenge the manner in which the Grant of Letters of Administration in respect of the estate of Njer Ogada Wadhare, deceased was obtained and used by the said administrator in a suit in which the said administrator is not a party. It would be against the rules of natural justice to condemn the said administrator unheard. It is only the said administrator who can explain whether the Grant of Letters of Administration issued to him was confirmed or not before he transferred Plot No 1460 to his name and subsequently sold it. This court cannot assume that because Plot No 1460 was sold and transferred before the expiry of 6 months from the date the said administrator was issued with Grant of Letters of Administration, the said Grant was not confirmed by the court.

33. On the Plaintiffs' claim that the 2nd and 3rd defendants acquired the suit property fraudulently and illegally, I agree with the 2nd and 3rd defendants that the alleged fraud and illegality were not proved. Sections 24, 25, and 26 of the [Land Registration Act](#) 2012 provide as follows:

“24. 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.

25.

- (1) 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 this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26.

- (1) 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, unprocedurally or through a corrupt scheme.

- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

34. In *Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd* [2004] 2 E.A KLR 269, the Court of Appeal held that:

“Fraud is a serious quasi-criminal imputation and it requires more than proof on a balance of probability though not beyond reasonable doubt”.

In *Kampala Bottlers Ltd. v Damanico (UG) Ltd.* East Africa Law Reports [1990-1994] E.A141(SCU), the Supreme Court of Uganda stated that:

“To impeach the title of a registered proprietor of land, fraud must be attributable to the transferee either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of some act by somebody else and taken advantage of such act. The burden of proof must be heavier than a balance of probabilities generally applied in civil matters.”

35. The evidence that was adduced by the plaintiffs fell short of proving the particulars of fraud pleaded against the 2nd and 3rd defendants. The plaintiffs did not also prove that the 2nd and 3rd defendants knew or had a way of knowing that the root of the titles for Plot No 1460 and Plot No 1461 was tainted by the alleged illegalities and fraud that was not even proved.

Conclusion

36. In conclusion, I find no merit in the plaintiffs’ claim. The suit is dismissed with costs to the 2nd and 3rd defendants.

DATED AND DELIVERED AT KISUMU ON THIS 11TH DAY OF JULY 2024

S. OKONG’O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

The Plaintiffs in person

Mr. Odhiambo D. h/b for Mr. S.M.Onyango for the 2nd Defendant

Mr. Odhiambo D. h/b for Mr. Ochuka for the 3rd Defendant

Ms. J.Omondi-Court Assistant

