



**Mbagu (Suing on Her Behalf and as the Administrator of the Estate of the Late David Mbagu Kingeche - Deceased) & 4 others v Karura Farmers Company Limited & 8 others (Environment and Land Case Civil Suit 3017 of 1990) [2024] KEELC 6550 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6550 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND CASE CIVIL SUIT 3017 OF 1990**  
**LN MBUGUA, J**  
**OCTOBER 3, 2024**

**BETWEEN**

**HANNAH NYAMBURA MBAGU (SUING ON HER BEHALF AND AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE DAVID MBAGU KINGECHE - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**  
**AGNES NYAMBURA MUGO (SUING ON HER BEHALF AND AS ADMINISTRATOR OF THE ESTATE OF THE LATE JAMES MUGO WAWERU - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**  
**KARUTHI KARANJA ..... 3<sup>RD</sup> PLAINTIFF**  
**HANNAH NYAMBURA MBAGU ..... 4<sup>TH</sup> PLAINTIFF**  
**SUSAN NJERI WAINAINA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE HENRY WAINANINA KARIUKI) ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**KARURA FARMERS COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**SAMUEL KUNGU ..... 2<sup>ND</sup> DEFENDANT**  
**FESTUS KADENGE ..... 3<sup>RD</sup> DEFENDANT**  
**GRACE GATHURI ..... 4<sup>TH</sup> DEFENDANT**  
**PETER MUGO MBUTHIA ..... 5<sup>TH</sup> DEFENDANT**  
**PETER MARERI ..... 6<sup>TH</sup> DEFENDANT**  
**FLORENCE WANGUI ..... 7<sup>TH</sup> DEFENDANT**  
**BENJAMIN MATHINGI ..... 8<sup>TH</sup> DEFENDANT**  
**PETER MUNGAI ..... 9<sup>TH</sup> DEFENDANT**



## JUDGMENT

### Background

1. The litigation odyssey in this matter presents a classic case of “Murphy’s law” where “ anything that can go wrong will go wrong anyway”. From the death of several plaintiffs, dismissal of the suit at one time or another to the case marking time in the corridors of justice for the last 33 years!.
2. The genesis of the dispute is associated with the 1<sup>st</sup> defendant, a land buying company owning a swath of land consisting of parcels L.R. No. 8469/4 and L.R No. 12406 in Njiru-kasarani area in Nairobi County. The plaintiffs claim to have been the original allottees of various parcels within the huge chunk of land where they settled on their respective parcels on the basis of the aforementioned allotments. On the other hand, some defendants like the 5<sup>th</sup> defendant hold titles to the various parcels.
3. On case management, I find that the lethargic conduct of all the parties in the prosecution of this case has been rather astounding, where by the issue of filing paginated trial bundles, service of documents and court attendances appeared to be an extremely laborious task, so much so that as at 30.9.2021 when the first witness in this matter took to the stand, it emerged that service of summons upon 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants could not be ascertained. Thus the matter could not proceed and the plaintiffs were directed to effect service via substituted service within 7 days. Two months down the line and counting on 16.12.2021, a date scheduled for hearing, it emerged that service had not been effected!
4. Eventually the aforementioned defendants were served and on 3.11.2022, the matter was by consent fixed for hearing on the dates of 10.5.2023, 11.5.2023 and 21.6.2023. Come the date of 10.5.2023 and there was no representation for the 2<sup>nd</sup> and 9<sup>th</sup> defendants. The matter thus proceeded in their absence. But the said defendants filed an application to set aside the proceedings of 10.5.2023 averring that their advocate mis-diarized their diary. In a ruling delivered on 19.10.2023, the court allowed the application on the following terms;

“

- “i. i. That the proceedings of 10.5.2023 are hereby set aside on condition that the applicants pay throw away costs to the respondents totaling to ksh.120,000 within 30 days from the date of delivery of this ruling.
  - ii. In the event of none compliance, the court will proceed to give directions on the delivery of the judgment.
  - ii. That the applicants are granted an opportunity to cross examine the witnesses who testified on 10.5.2023 and thereafter, they will be at liberty to tender their evidence.
  - ii. That the case shall not be adjourned at the instance of the applicants.”
- The matter was then set down for hearing on 29.4.2024.

5. There was no compliance with the aforementioned orders. The 2<sup>nd</sup> and 9<sup>th</sup> defendants filed yet another application seeking a stay of proceedings herein pending the hearing of an intended appeal against the ruling of 19.10.2023. That application was dismissed paving way for the delivery of this judgment.



6. On pleadings, the case of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> plaintiffs has been prosecuted separately from the case of the 2<sup>nd</sup> plaintiff, but all the plaintiffs share the same pleading, a plaint dated 11.6.1990 which was further amended on 28.2.2018.
7. The 1<sup>st</sup> Defendant filed a defence dated 5.12.1994 and amended on 4.3. 2003 averring that the Plaintiffs are no longer allottees of the respective plots having lost their plots after they blatantly refused to make extra payments of ksh. 2,452/= per plot to save the land from being repossessed. On 30.9.2021, a Mr. Joseph Njuguna Kamau was in court as the current Chairman of the 1<sup>st</sup> defendant, but was never seen again. Thus no evidence was proffered to support the pleading of the 1<sup>st</sup> defendant.
8. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 9<sup>th</sup> defendants filed a statement of defence date 20.2.1997. However, by the time of the trial only the 2<sup>nd</sup> defendant appeared to have been active in the matter. But even the said 2<sup>nd</sup> defendant didn't tender any evidence.
9. The defence of the 5<sup>th</sup> defendant is dated 23.3.1997. He is the only defendant who gave evidence at the trial.
10. I did not see any statements of defences by the 6<sup>th</sup>-8<sup>th</sup> defendants.

#### **Case for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> plaintiffs**

11. The above named parties commenced this suit vide a plaint dated 11.6.1990 and further amended on 28.2.2018. They claim that they are shareholders of the 1<sup>st</sup> Defendant and that by virtue of their shareholding they were allotted respective plots by the 1<sup>st</sup> Defendant which they paid for.
12. They contend that by a communication dated 10.3.1990, the 1<sup>st</sup> Defendant threatened to revoke their membership and have them refunded their share capital by purporting to have their plots either resold and/or their shares reallocated to the 2<sup>nd</sup>-9<sup>th</sup> Defendants.
13. The particulars and status of the suit parcels is tabulated at paragraph 8A of the plaint as follows;
  - I. 1<sup>st</sup> Plaintiff - Plot No. 190 now registered as Nairobi /Block/141/310 in the name of the 1<sup>st</sup> Defendant and Plot No. 398, now designated as Nairobi/Block/141/1, Nairobi /Block /141/2 and Nairobi Block 141/3 and now allegedly registered to Menge Nthitu Mutiso.
  - II. The 2<sup>nd</sup> Plaintiff - Plot No. 114, now registered as Nairobi Block 141/589 and Nairobi Block 141/590 to Bernard Keiroh Kamau and Plot 99A now registered as Nairobi/Block 141/585 in the name of Samuel N. Kungu 2<sup>nd</sup> defendant and Peter Mungai.
  - III. 3<sup>rd</sup> Plaintiff - Plot No.528, now registered as Nairobi/Block/141/753 and fraudulently registered in the name of the 5<sup>th</sup> Defendant (Peter Mugo Mbuthia).
  - IV. 4<sup>th</sup> Plaintiff - Plot Nos. 83A, 84A, 85A, 96A, 97A and 98A now designated as Nairobi / Block /141/607, 141/610, 141/611, 141/612, 141/609 and 141/608 allegedly registered in the names of the 4<sup>th</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 1<sup>st</sup> and the 7<sup>th</sup> Defendants respectively.
  - V. 5<sup>th</sup> Plaintiff -Plot No.356, now fraudulently designated as Nairobi/Block/141/938, and allegedly registered in the name of the 2<sup>nd</sup> Defendant.
14. The Plaintiffs aver that in contravention of various orders issued in the matter, the 1<sup>st</sup> Defendant has fraudulently and in conspiracy with the other Defendants proceeded to re-allocate the plots originally allocated to them to the Defendants, thereby depriving them of their right to ownership. They pray for judgment against the Defendants jointly and severally for;



- a. A declaration that the Plaintiffs are the bonafide original registered members of the Defendant company and lawful allottees of their respective plots as described herein in the plaint to the exclusion of all Defendants and/or anyone acting through them.
  - b. An injunction to restrain the 1<sup>st</sup> Defendant company by themselves, their servants or agents from interfering with the continued membership of the 1<sup>st</sup> to 5<sup>th</sup> Plaintiffs in the 1<sup>st</sup> Defendant company or in any other way from interfering with the particulars in the membership of the register.
  - c. An injunction to restrain the 1<sup>st</sup> Defendant company by itself, its servants or agents together with the other Defendants either by themselves, their servants or agents and /or employees from alienating and/or allocating the Plaintiffs' plots to any other party or in any other way interfere with the Plaintiffs' continued enjoyment of the same.
  - d. An order revoking the title deeds issued in Nairobi Block 141/589, 141/590, 141/588, 141/753, 141/938, 141/310, 141/610, 141/607, 141/612, 141/609, 141/611, 141/1, 141/2, 141/3 and /or any such changes in the Plaintiffs' ownership register held by the 1<sup>st</sup> Defendant.
  - e. Damages.
  - f. Costs of this suit.
  - g. Any other relief that this Honourable Court may deem fit to grant.
15. PW1 was Hannah Nyambura Mbagu who is the 4<sup>th</sup> plaintiff and also the 1<sup>st</sup> plaintiff, having been substituted in place of her deceased husband who was the initial 1<sup>st</sup> plaintiff. She adopted her witness statement dated 27.3.2018 as her evidence in Chief. She produced the 50 documents in their list running from page 23 of their bundle as the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Plaintiffs' Exhibits 1-50.
  16. She contends that she is the legal representative of the estate of her deceased husband, David Mbagu Ngeche. That prior to her husband's demise, he was a founder member, shareholder, chairman of the 1<sup>st</sup> Defendant and original allottee of Plot Number 190B in phase "B" Njiru-Kasarani, a subdivision of parcel LR No. 8469/4 which had been bought by the 1<sup>st</sup> Defendant for allocation to its members / shareholders in line with their respective share contribution but the parcel has since been designated as Nairobi/Block 141/310 and purportedly re-allocated to the 1<sup>st</sup> Defendant.
  17. That her late husband was also the allottee of Plot No. 398A in phase "A" Njiru Kasarani which was a subdivision of LR No. 12406 but it has fraudulently been designated as Nairobi /Block 141/1, Nairobi Block 142/2 and Nairobi Block 141/3 and allegedly registered and /or re-allocated to Joshua Wainaina Gitau, Menge Nthitu Mutiso and Lydia N. Njoroge but the purported owners are fictitious and /or no-existent members of the 1<sup>st</sup> Defendant since official searches conducted with the ministry of lands did not yield any information to collaborate their alleged ownership of the same.
  18. That upon allocation of the 2 plots, her husband took possession with the view of commencing developments thereon but on 25.3.1989, together with his fellow directors of the 1<sup>st</sup> Defendant, they were forcefully ejected from office by an illegal caretaker committee with the assistance of police and the area chief Kasarani location who had taken sides in the management affairs of the 1<sup>st</sup> Defendant.
  19. That vide minutes of an alleged special general meeting held at the office of the then District Officer Kasarani on 10.6.1989, the then office bearers of the 1<sup>st</sup> Defendant passed a resolution requiring members to pay an additional sum of ksh. 2,454/= which figure had been passed through a resolution of the former office towards assisting in clearing of the purchase price.



20. That having been aware of the said increment by virtue of it having been passed when her late husband was in office, she went to the 1<sup>st</sup> Defendant's offices to make payments of the same on 15.6.1989 but on reaching there, the caretaker committee informed her that they had already sold her late husband's plot and terminated his membership with the 1<sup>st</sup> Defendant.
21. She avers that there has been deliberate attempts to re-designate the 2 plots with new numbers different from the earlier ones allocated to her late husband as a way of trying to cover up the dispossession of her late husband's rightfully obtained plots.
22. That after filing the instant suit, as an afterthought and in an effort to sanitize its illegal activities, the then office bearers of the 1<sup>st</sup> Defendant started sending out notices /letters to its members in respect of the alleged refunds of the share capital. She points out that one such letter is dated 10.3.1990 purportedly directed to her husband.
23. In support of her case as the 4<sup>th</sup> Plaintiff, PW1 avers that she was allotted Plot Nos. 83, 84, 85, 96, 97 and 98 which were original subdivisions of LR No.12406 situate in Njiru-Ksarani Phase 1 "A" now fraudulently designated as Nairobi /Block /141/607, 141/610, 141/611, 141/612, 141/1609 and 141/1608 allegedly registered in the names of the 4<sup>th</sup> and 3<sup>rd</sup> Defendants respectively for the 1<sup>st</sup> 2 plots and the rest to the 1<sup>st</sup> Defendant.
24. She states that just like what was done to her husband, the 1<sup>st</sup> Defendant threatened to revoke her membership and refund her share capital but no such forfeiture was effected as she still occupies and utilizes her plots.
25. She avers that though the High Court vide the orders of justice Couldrey (as he then was) had restrained the 1<sup>st</sup> Defendant from interfering with the ownership of their plots, it purported to transfer them to the Defendants in contempt of the said orders.
26. In cross-examination by counsel for the 5<sup>th</sup> Defendant, PW1 stated she had documents showing that she was a member of the 1<sup>st</sup> Defendant. That her plot number is indicated in the certificates issued by the 1<sup>st</sup> Defendant as she has no title though some people got titles.
27. She stated that there is a time they were told to pay some money, and she heard that a notice was put up in that regard as an advert but by then, the time frame within which to pay had lapsed. When referred to the said notice of 20.4.1990, she stated that she did not know about it. Nevertheless, she personally went to pay and the chairman of the 1<sup>st</sup> Defendant who is now deceased told her that her plot had been repossessed as the time frame within which to pay had lapsed. She also stated that she had no claim against the 5<sup>th</sup> Defendant.
28. In re-examination, PW1 stated that when she heard that some money was being demanded by the 1<sup>st</sup> Defendant, she did a harambee and took the money to the 1<sup>st</sup> Defendant's directors who told her; "you have no plot or money."
29. PW2 is the 3<sup>rd</sup> Plaintiff, Karuthi Karanja. He adopted his witness statement dated 27.3.2018 as his evidence. He avers that he is a bonafide member, shareholder of the 1<sup>st</sup> Defendant and original allottee of Plot No. 528B which was a subdivision from LR No. 8469/4 Njiru-Kasarani Phase II "B" which had been bought from contributions of the 1<sup>st</sup> Defendant's members. That on 1.5.1992, he took up possession of his plot and has resided thereon for the past 26 years uninterrupted to date and though he occupies and utilizes it, the plot is purported to have been re-designated as Nairobi/Block 141/753 and allegedly registered and /or re-allocated to the 5<sup>th</sup> Defendant without his consent and he believes that the 5<sup>th</sup> Defendant does not even know its physical location.



30. Just like PW1, he avers that the plot was allegedly repossessed by the 1<sup>st</sup> Defendant on the basis that he did not pay ksh.2,454 demanded by the 1<sup>st</sup> Defendant.
31. In cross-examination by counsel for the 5<sup>th</sup> Defendant, PW2 stated that he is a member and shareholder of the 1<sup>st</sup> Defendant though he did not attend some meetings called by the 1<sup>st</sup> Defendant. That he holds a share certificate no. 840 and balloting paper No. 528. That LR No. 8469/4 where his plot was hived from was very big, thus plots were allocated to many people and some have titles including the 5<sup>th</sup> Defendant.
32. He stated that the 5<sup>th</sup> Defendant was shown a portion by a vendor, but he does not know if that vendor had documents from the 1<sup>st</sup> Defendant. That he (Pw2) is the one who built on the suit land though the 5<sup>th</sup> Defendant had placed his construction materials at his gate.
33. He stated that he had an advocate called Prit O. Akuteko, but he never heard about the notice issued by the 1<sup>st</sup> Defendant and for the notice placed in the nation newspaper, in April 1990, he never got it or heard about it and he did not pay ksh.2454/= which was required of him because when he took the money to the 1<sup>st</sup> Defendant's office, it was rejected.
34. In re-examination, PW2 stated that he knows that the 5<sup>th</sup> Defendant has a title but he does not know how he got it since there was an order issued herein stopping further dealings with the suit plots.
35. PW3, Njoroge Wainaina, Is the legal representative of Susan Njeri Wainaina who in turn was the legal representative of the original 5<sup>th</sup> Plaintiff. He adopted the witness statement of his late mother, Susan Njeri dated 27.3.2018 as his evidence. In the said statement, Susan Njeri (now deceased) claimed that her late husband, Henry Wainaina Kariuki also deceased, was a shareholder of the 1<sup>st</sup> Defendant and was the absolute proprietor of Plot No. 356B share certificate no.705 in Njiru-Ksarani Phase II "B" being a subdivision of LR No. 8469/4 which had been bought by the 1<sup>st</sup> Defendant for subsequent allocation to its members based on their respective shares.
36. That initially, the said plot was owned by Njambi Nga'ng'a who transferred her share number 68 to Henry Wainaina Kariuki (deceased) vide transfer form dated 2.6.1983.
37. She stated that on 25.1.1989, her then late husband was unwell and he sent her to the 1<sup>st</sup> Defendant's offices to inquire about his plot. While there, she met one of the 1<sup>st</sup> Defendant's directors being the 2<sup>nd</sup> Defendant herein Samuel Kungu who informed her that the 1<sup>st</sup> Defendant was repossessing plots whose members had not complied by paying an additional ksh.2,454/= within the specified period given by the 1<sup>st</sup> Defendant.
38. That in the month of March 1989, her late husband sent her again to pay the additional sum of ksh. 2,454/=. She met the 2<sup>nd</sup> Defendant who asked her to surrender the original share certificate and all attendant relevant receipts as a condition before payments could be accepted. She did surrender the original share certificate and receipts together with the ksh. 2,454/= which he acknowledged by a letter dated 15.5.1989 but did not issue her with a receipt.
39. That she was shocked to discover that the 2<sup>nd</sup> Defendant had taken possession of her husband's plot and was living there with his family and when she sought assistance from the 1<sup>st</sup> Defendant, her plea did not yield anything since the 1<sup>st</sup> Defendant was in cahoots with the 2<sup>nd</sup> Defendant.
40. PW3 was not cross-examined.



### **Case for the 2<sup>nd</sup> Plaintiff**

41. PW4 is one Agnes Nyambura Mugo, a legal representative of the original 2<sup>nd</sup> Plaintiff, her husband who is now deceased. She adopted her witness statement dated 20.9.2021 as her evidence. She produced 7 documents contained in her list of documents dated 11.7.2019 as P. Exhibit 1-7.
42. Her case is that her husband, James Mugo Waweru (deceased) was a shareholder in the 1<sup>st</sup> Defendant and a beneficial owner of Plot Number 114A which was further subdivided into 2 plots by the 1<sup>st</sup> Defendant and are now registered as Nairobi Block 141/589 and Nairobi Block 141/590.
43. That further, her late husband is also the allottee, legal and beneficial owner of a 2<sup>nd</sup> plot from the 1<sup>st</sup> Defendant being Plot No. 99A now registered as Nairobi Block 141/588 in Njiru/Kasarani Phase 1 "A" being s subdivision of LR 12406.
44. She avers that by a communication dated 10.3.1990, the 1<sup>st</sup> Defendant threatened to revoke her deceased husband's membership and have him refunded his share capital by purporting to have either resold /re allocated his respective shares to the 2<sup>nd</sup> Defendant for plot 99A (Block 141/588), to Bernard Keiro Kamau for plot 114A ( Block 141/590) and to Paul K. Ndungu for parcel 141/589.
45. Just like the PW1-PW3, she stated that her husband attempted to pay the requested sum of Ksh. 2,452, but he was told that he did not owe the 1<sup>st</sup> Defendant and that he was not its member.
46. She states that the 1<sup>st</sup> Defendant purported to have actually sent out notices on Daily Nation Newspaper dated 20.4.1990 informing members who had not paid the Ksh 2,454 that their plots had been repossessed and sold in accordance with the aforementioned special resolution. That further, on 10.3.1990, the 1<sup>st</sup> Defendant purported to write a letter to her husband alleging that pursuant to the special resolution and owing to default, he had ceased being a member and his plots had been disposed off.
47. PW4 was not cross-examined.

### **Case for the 5<sup>th</sup> Defendant**

48. The 5<sup>th</sup> Defendant opposed the suit vide his statement of defence dated 23.3.1997 averring that he purchased Plot No. 528B within LR 8469/4 from the 1<sup>st</sup> Defendant who was its registered proprietor after the plot was validly repossessed. He (Peter Mugu Mbuthia) testified as DW1 adopting his witness statement dated 21.9.2017 as his evidence with amendments that any reference to the 3<sup>rd</sup> Defendant be amended to reflect the 3<sup>rd</sup> Plaintiff. The amendment was allowed. Dw1 also produced the 12 documents in a list dated 1.9.2017 from page 9-25 of his bundle as D. Exhibit 1-12.
49. His testimony is that he is the owner of parcel Title Nairobi Block 141/753 which he acquired from the 1<sup>st</sup> Defendant in 1989, paid all the requisite fees and charges, entered the land and commenced development. That the plot was formerly allocated to the 3<sup>rd</sup> Plaintiff who failed to pay the required fees and charges and hence the allocation was revoked and the land allocated to him.
50. In cross-examination by counsel for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> plaintiffs, DW1 stated that he purchased his plot from the 1<sup>st</sup> Defendant in early 1990 and that he has receipts to that effect though not in his bundle of documents. That he has a share certificate for Plot No. 528 and has obtained a certificate of lease but he has not availed a transfer from the lands office. Adding that his title has never been challenged as it was lawful.



51. He states that he purchased the suit plot via officials of the 1<sup>st</sup> Defendant who indicated that they had plots which they were selling because some members were unable to pay for the plots. He however had no proof of revocation of previous allottees' plots by the 1<sup>st</sup> Defendant.
52. Referred to his averments in his statement that the sale had legal complications, he clarified that due to changes in officials of the 1<sup>st</sup> Defendant, there were complications. He pointed out that he had taken possession of his plot but he is not in possession anymore.
53. As earlier noted in this judgment, the 1<sup>st</sup>-4<sup>th</sup> and the 6<sup>th</sup>-9<sup>th</sup> Defendants did not tender any evidence despite being given an opportunity to advance their case.

### Submissions

54. The submissions of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Plaintiffs are dated 22.5.2024 where they address the following issues; (i) Whether the Plaintiffs have proved the question of fraud against the Defendants (ii) whether the Plaintiff's case has been controverted (iii) Whether the alleged title and/or new land parcels numbers were or have been legally processed? (iv) whether the Plaintiffs have proved their case on a balance of probability and therefore the alleged titles ought to be cancelled (iv) who should be liable for the costs of the suit?
55. On the 1<sup>st</sup> issue, the Plaintiffs argue that they have discharged their obligation in proving the same due to the unexplained inconsistencies regarding the alleged refund of shares, re-allocation of the plots and subsequent designation and alleged processing of new title numbers. They rely on the case of *Kirinyaga Kamau v George Kamau* [2015] eKLR.
56. On the 2<sup>nd</sup> issue, the Plaintiffs argue that their case against the Defendants has not been controverted / substantiated and that the pleadings of the defendants remain mere allegations.
57. On the 3<sup>rd</sup> issue, the Plaintiffs submit that the alleged certificates of lease and/or new designated title numbers are either fictitious and/or a forgery since this court had barred the Defendants from interfering with ownership of their plots. The case of *Richard Odual Opole v Commissioner of Lands & 2 Others* [2015] eKLR where the court held that where there is a tainted and irregular procedure leading to registration of title, one cannot be a bonafide purchaser for value without notice is relied upon to submit that the 5<sup>th</sup> Defendant's unexplained procedure of acquisition of the alleged certificate of lease is tainted with an irregular procedure leading to its registration given the lack of production of the attendant accompanying registration documents.
58. On the 4<sup>th</sup> issue, it is argued that the plaintiffs have proved their case on a balance of probabilities. And that by didn't of Section 80 (2) of the *Land Registration Act*, the tainted alleged certificates of leases and/or new title numbers are amenable for cancellation. The plaintiffs also pray for costs of the suit.
59. The 2<sup>nd</sup> Plaintiff's submissions are dated 28.5.2024 where he argues that the fraudulent conduct by the Defendants has been distinctively proved as per the standards set in the cases of *Rosemary Wanjiku Murithi v George Maina Ndinwa* [2014] eKLR and *Koinange & 13 Others v Koinange* [1986] KLR.
60. On the strength of the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, it was submitted that the 5<sup>th</sup> Defendant has failed to discharge the burden of proof in respect of ownership of Nairobi Block 141/753 allegedly acquired from the 1<sup>st</sup> Defendant company and that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants have also failed to show how they acquired their titles which confirms that the said titles were illegally obtained.



61. The 2<sup>nd</sup> Plaintiff relies on the case of Kitelo & 2 others v County Government of Bungoma & Another (Environment & Land Case 10 of 2020) [2022] KEELC 409 (KLR) (26 September 2022) (Judgement) and Hardware Trading Stores Ltd v Christopher Orina [2020] eKLR, to submit that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> Defendants having not called any evidence, the claims in their statement of defence are unsubstantiated and constitute mere statements.

### Determination

62. This suit is among the oldest cases in this court, being about 3 decades old and counting. Only the 2<sup>nd</sup> Plaintiff is an original plaintiff, the rest passed away and have been substituted even more than once. This is without a doubt, a testament of the negative impact of both case backlog as well as lethargy in prosecution of the matter. The end result is that some of the initial parties are no more. And the physical file itself is in bad shape.
63. Nevertheless, I have considered the pleadings, the evidence and the submissions so far proffered herein. The question falling for determination is; who owns the suit plots, seeing that the plaintiffs claim to have been allotted the land of which some defendants have titles to the said plots.
64. From the evidence tendered, it is apparent that land buying companies are not just a craze of the millennium, they have been around as far back as the 80's. There seems to be no controversy that the 1<sup>st</sup> Defendant is a land buying company which owned the two chunks of land identified as LR No. 12406 and LR No. 8469/4. It was the case of the plaintiffs that the company collected money from their members for purposes of allocation of plots to them within these two huge chunks of land.
65. PW1-PW4 all testified that they are legitimate members and shareholders of the 1<sup>st</sup> Defendant as evidenced by their share certificates issued by the 1<sup>st</sup> Defendant. They led evidence that they were issued with respective plots corresponding to their shareholding in the 1<sup>st</sup> Defendant.
66. For the 1<sup>st</sup> plaintiff, his allocation of plots 398 and 190 are reflected in the share certificates at page 53 and 54 of plaintiff's bundle. For the 4<sup>th</sup> plaintiff, her share certificates run from page 56- 60 for plots 83, 84, 85, 96, 97 (I however did not see share certificate for plot 98).
67. For the 3<sup>rd</sup> plaintiff, his share certificate for plot 528 is at page 61. For the 5<sup>th</sup> plaintiff, the document at page 67 confirms that he bought the plot from Njambi Nganga and the transfer was effected through the 1<sup>st</sup> defendant in the 80s. Then he was issued with his own share certificate on 29.5.1985 as per the document at page 99 of their bundle.
68. As for the 2<sup>nd</sup> plaintiff, his share certificates for the plots 99A and 114A are to be found at page 20 and 21 of his bundle. The receipts at page 22 indicates that he had been paying for the land to the 1<sup>st</sup> defendant throughout year 1982.
69. The aforementioned documents are ordinarily the primary documents of acquisition of rights and interests in land when it comes to land buying companies. In the case of Betha Nduba M'Itwaruchiu v Wachira Wambugu [2018] eKLR, I stated as follows in regard to acquisition of such rights and interests in a land buying company.

“What is apparent in disputes of this nature is that the land buying companies acquire large parcels of land, subdivide the same and allot to various members through a process of balloting. Share numbers or certificates are then issued”.

70. It appears that all was well until 10.6.1989 when the then office bearers of the 1<sup>st</sup> Defendant allegedly passed a resolution requiring members to pay an additional sum of ksh. 2,454/= for each plot issued.



PW1-PW4 were unanimous that the aforementioned resolution was not brought to the notice of members, it was just 'heard' as rumors. And by a communication dated 10.3.1990, members who allegedly did not comply with the said resolution were required to produce payment receipts, share certificates and balloting paper and they were advised that their money would be refunded to them. In essence, their membership with the 1<sup>st</sup> Defendant had been revoked and their plots repossessed.

71. What followed was a newspaper advert dated 20.4.1990 informing members who did not pay by 6.9.1989 that their plots had been sold by the 1<sup>st</sup> Defendant. 2 months later, the Plaintiffs filed this suit, and on 4.2.1992, the court (Justice Couldrey sitting) issued an order that:

“The Defendant/Respondent be and is hereby restrained from depriving the Applicants/ Plaintiffs of membership of the Company and interference with their ownership of the plots allocated to them.”

72. The Plaintiffs having proved that they were members of the 1<sup>st</sup> Defendant and that they were duly issued with their respective plots, the 1<sup>st</sup> Defendant was obligated to demonstrate that they ceased being its members.
73. If indeed there was a resolution of 10.6.1989 providing for repossession of plots as a consequence of non –payment, then it was incumbent upon the 1<sup>st</sup> Defendant to demonstrate the following; That there were minutes of the meeting approving such a resolution, notices to the affected persons, approval of repossession as well as minutes approving reallocation of the repossessed plots to the new alleged allottees. As it were, the 1<sup>st</sup> defendant never gave any evidence. And it appears that the new allottees were cherry picked where some were even officials of the 1<sup>st</sup> Defendant.
74. The 1<sup>st</sup> - 4<sup>th</sup> Plaintiffs are in possession of their respective plots. There is no basis upon which their plots could be repossessed by the 1<sup>st</sup> Defendant without a resolution unless there was fraud. There is also no basis as to why the 5<sup>th</sup> Plaintiff's land was allocated to the 2<sup>nd</sup> Defendant who was a director of the 1<sup>st</sup> Defendant and after clearly tricking him to surrender his original share certificate which he (2<sup>nd</sup> defendant) used to fraudulently generate a title for himself.
75. Once land is allocated, it is not available for allocation to any other party. See Republic v City Council of Nairobi & 3 Others (2014) eKLR. And in the case of the allocations of plots to the plaintiff by the 1<sup>st</sup> defendant, any revocation thereof ought to have been adequately explained.
76. This far, it is clear that the purported revocation of the plots of the plaintiffs was tainted with fraud and irregularity, hence unlawful.
77. The 5<sup>th</sup> Defendant admits that the land he was allocated was plot 528 previously allocated to the 3<sup>rd</sup> plaintiff. His share certificate issued by the 1<sup>st</sup> defendant is dated 20.3.1990, while that of the 3<sup>rd</sup> plaintiff is dated July 1983. The 5<sup>th</sup> defendant contends that he was allocated the plot in question because the allocation to the 3<sup>rd</sup> plaintiff had been revoked. However, the court has already made a pronouncement on the issue to the effect that any revocation was irregular, fraudulent hence unlawful.
78. In any event, DW1 did not produce any document to prove how he acquired the certificate of lease for Nairobi Block 141/773, he did not produce any transfer documents, payment of stamp duty or any documents showing that the 1<sup>st</sup> Defendant had revoked the allocation to PW2.



79. In the case of *Munyu Maina v Hiram Gathiba Maina, Civil Appeal number 239 of 2009*, the Court of Appeal stated that:

“When a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and 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”.

80. In the case at hand, the roots of the titles of the 5<sup>th</sup> defendant as well as for the other defendants too were under challenge and were not adequately explained.

81. In a case associated with a land buying company, *Beatrice Wambui Maina v Embakasi Ranching Company Ltd & another [2022] eKLR*, the court stated thus;

“The court is alive to the fact that there are circumstances where a property in dispute has no title. This does not however mean that no rights can accrue therefrom. In such circumstances the court will set out to establish whether the documentary evidence establishes an unbroken chain leading to the root of the title..”.

82. From the discourse above, I come to the conclusion that the plaintiffs are the lawful owners of the suit properties. That being the case, what are the appropriate orders to give?. It has emerged that way back on 4.2.1992, an order was issued by the court restraining the defendants from interfering with the suit plots. However, titles were thereafter issued which means that the registration of the suit plots to the defendants was done in defiance of the court order (the one at page 64 of plaintiffs bundle). It follows that such titles ought to be cancelled in tandem with the provisions of Section 80 of the *Land Registration Act* (LRA). See; *Peter Kamau Mwangi (Suing as the Administrator of the Estate of the Late Mwangi Kamau) v Esther Chelagat Nyangweso [2020] eKLR*;

83. On damages, it has emerged that all the plaintiffs have apparently been in possession of their respective parcels of land save the 5<sup>th</sup> plaintiff whose plot was occupied by the 2<sup>nd</sup> defendant. None of the plaintiffs have adequately articulated the claim on damages either in evidence and or in submissions. The court will hence not award any damages.

### **Final orders**

84. The claim of the plaintiffs is hereby allowed in terms of prayers a, b, c, and d in the plaint. The plaintiffs are also awarded costs of the suit as against the defendants jointly and severally.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Matwere for 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Plaintiffs

Jane Okoth for 2<sup>nd</sup> Plaintiff

Njiraini for 5<sup>th</sup> Defendant



Oyugi Advocates 2<sup>nd</sup> and 9<sup>th</sup> Defendants

Court assistant: Joan

