



**Mwenda & another (Suing as the Guardian Ad litem of the Estate of Simon Muriungi  
(Person Suffering from Mental Disorder) v Munyua & 2 others (Environment &  
Land Case E013 of 2022) [2024] KEELC 6435 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6435 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E013 OF 2022  
CK YANO, J  
OCTOBER 3, 2024**

**BETWEEN**

**SILAS MWENDA ..... 1<sup>ST</sup> PLAINTIFF**

**JEREMIAH M'NTHAKA KUNGANIA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE GUARDIAN AD LITEM OF THE ESTATE OF SIMON  
MURIUNGI (PERSON SUFFERING FROM MENTAL DISORDER**

**AND**

**REUBEN MUKARIA MUNYUA ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR MERU CENTRAL ..... 2<sup>ND</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**Plaintiff's case**

1. The plaintiff commenced this suit *vide* a plaint dated July 14, 2022 and filed on July 18, 2022 seeking for orders that:-
  1. It be declared that the Land Parcel No. Kiamuri "A" 392 now registered in the name of the 1<sup>st</sup> defendant, is fraudulent and thus illegal, null and void ab initio.
  2. An order be issued, empowering the Land Registrar at Meru to cancel or revoke or expunge the title issued on 30<sup>th</sup> July, 2015 in the names of 1<sup>st</sup> defendant, one Reuben Mukaria Munyua and the non-existent person Silas Muthengi M'Maria as the registered owners of L.R No. Kiamuri "A" 392 Measuring 2.8 Hectares.



3. A permanent injunction be issued, restraining the 1<sup>st</sup> defendant and his family members, representatives, employees, servants, agents and anybody else acting at his behest, direction or instructions from entering into trespassing onto, taking possession of any part of or whatsoever interfering with the plaintiffs' quiet, peaceful, uninterrupted undisturbed, continuous and exclusive possession, occupation, cultivation, development, user and enjoyment on the ground of L.R No. Kiamuri "A" 392 measuring 2.8 Hectares.
4. Costs of the suit and interest thereon at the court rate of 12% from the date of assessment till payment in full against the defendant jointly and severally.
2. The plaintiffs aver that at all material times, Simon Muriungi (a person suffering from a mental disorder) was the recorded/registered owner of Land parcel Kiamuri "A" 392 measuring approximately 20.8 hectares (herein after referred to as the suit land) having acquired it on 12<sup>th</sup> November, 1992. That the said Simon Muriungi and his family (the plaintiffs herein) utilized the suit land by carrying out farming activities from 1992 to date without any objection or complaint from anybody. That on or about 11<sup>th</sup> May 2021, Simon Muriungi was diagnosed with a mental disorder called Schiziphrenia which is a chronic relapsing illness and is currently of unsound mind.
3. The plaintiffs state that they were appointed as the Guardians of the said Simon Muriungi vide a court order issued at Meru on 20<sup>th</sup> January, 2022 in Meru HCC Petition No. E 027 of 2021. That on 24<sup>th</sup> February, 2022 the plaintiffs made an application for issuance of title deed in respect of title of the suit land which had never been issued to Simon Muriungi to hold in his trust and that upon perusal of the green card in respect to the aforesaid land at the Meru Lands office, they discovered that the 1<sup>st</sup> defendant secretly colluded and fraudulently, without the knowledge and/or consent of the plaintiffs and/or Simon Muriungi took undue advantage of Simon Muriungi's mental condition and fraudulently transferred or caused transfer of the same to his name through a non-existent Meru HCC Succession cause No. 67 of 2014 and was issued with a title deed on 30<sup>th</sup> July, 2015. The plaintiffs further state that the 1<sup>st</sup> defendant also took undue advantage of Silas Mwendu's illiteracy and lied to him and obtained registration of the suit land in his name in a mysterious and questionable circumstances in the non-existent Succession cause No. 67 of 2014.
4. The plaintiffs further state that they sought the services of the DCI at Meru police station and the investigating officer discovered that the 1<sup>st</sup> defendant was part of several criminal proceedings at Githongo Law courts being Githongo SPMC Criminal case No. 320 of 2019 which was consolidated with Githongo SPMC Criminal case no. 847 of 2019 where he was charged with the offence of obtaining money by false pretense contrary to Section 313 of the *Penal Code* for selling the suit land to unsuspecting purchasers and that he is currently in prison.
5. The plaintiffs aver that the 1<sup>st</sup> defendant is a perennial offender having been charged with the same offence in Criminal case No. 1325 of 2016 where he was sentenced to a fine and imprisoned at Uruku Prison and transferred to Meru Main prison for 3 years.
6. The plaintiffs enumerated particulars of alleged collusion, fraud and illegality on the part of the 1<sup>st</sup> defendant as secretly and purporting to have filed a non-existent Meru HCC Succession Cause No. 67 of 2014 when the owner of the parent parcel of land was alive, using a forged confirmation of grant in Meru HCC Succession cause No. 67 of 2014 to transfer the suit land, failing to notify Simon Muriungi who was alive then or his family members and/or the plaintiffs herein about the illegal transaction, illegally transferring Simon Muriungi's land and obtaining the resultant title issued on 30<sup>th</sup> July, 2015 creating a fake name of a non-existent person (Silas Muthengi M'Maria) in the succession cause in order



to be issued with the fraudulent title deed and failing to notify Silas Mwenda and/or Simon Muriungi of his intention to transfer and/or the actual transfer of the suit land to him.

7. The plaintiffs state that they discovered the alleged fraud, collusion and illegality on the part of the 1<sup>st</sup> defendant between 24<sup>th</sup> February, 2022 and 6<sup>th</sup> May 2022, upon conducting due diligence and obtaining some documents, including the green card over the suit land.
8. The plaintiffs further state that the foregoing fraudulent and illegal acts of the 1<sup>st</sup> defendant are fashioned to deprive the estate of the person suffering from mental disorder and the heirs of the said suit land and unjustly enrich the 1<sup>st</sup> defendant at the expense and to the detriment of the said estate and the heirs thereof.
9. At the hearing Silas Mwenda testified as P.W. 1. He stated that he is a resident of Kiamuri sub-location Kiagu location. That Simon Muriungi is his brother.
10. P.W. 1 stated that they were authorized by the court to represent the estate of Simon Muriungi who is of unsound mind. That the suit land belongs to their brother, Simon Muriungi. P.W. 1 testified further that when they applied to be issued with title deed of the land, they were directed to come to court.
11. P.W. 1 reiterated that the 1<sup>st</sup> defendant had unlawfully taken title over the land in his name and that is why they come to court.
12. P.W. 1 adopted his statement dated 14<sup>th</sup> July, 2022 as his evidence in chief. He also produced the documents dated 14<sup>th</sup> July, 2022 as P. Exh 1- 6 respectively. He urged the court to grant the reliefs sought.
13. Jeremiah M’Nthaka Kungania testified as P.W 2. He stated that he comes from Katwene sublocation. That Simon Muriungi and the 1<sup>st</sup> plaintiff are his brothers. He adopted his statement dated 14<sup>th</sup> July, 2022 as his evidence in- chief. The evidence of P.W 2 basically mirrored that of P.W 1. He however, added that Simon Muriungi is currently using the land. P.W 2 stated that he got to know from the area chief that the 1<sup>st</sup> defendant had gotten title to the land.
14. The defendants were duly served with the summons to enter appearance. The 1<sup>st</sup> defendant never entered appearance nor filed defence. Although the Honourable Attorney General appeared in court on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, they too never filed defence.

### **Analysis And Determination**

15. Having considered the plaintiff’s case and having taken into consideration that the defendants neither entered appearance nor filed defences, the suit was undefended. Nevertheless, although the suit was undefended the plaintiffs have a duty to formally prove their case on a balance of probabilities as is required by law.
16. In the case of *Kirugi and another v Kabiya & 3 others* (1987) KLR 347, the Court of Appeal held that-

“The burden was always on the plaintiff to prove his case on a balance of probabilities even if the case was head as formal proof. Likewise, failure by the defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standards.”
17. Similarly, in the case of *Gichinga Kibutha v Caroline Nduku* (2018) eKLR the court held that;

“It is not automatic that instances where the evidence is not controverted the claimants shall have his way in court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”



18. I find that the following issues are for determination.
  - i. Whether fraud was proved.
  - ii. Whether the plaintiffs are entitled to the orders sought.

### **Whether fraud was proved**

19. The plaintiffs have pleaded that at all material times, their brother Simon Muriungi is a person suffering from a mental disorder and was the registered owner of the suit land. That the said Simon Muriungi acquired the said land in November, 1992. The plaintiffs have enumerated alleged particulars of collusion, fraud and illegality on the part of the 1<sup>st</sup> defendant as secretly purporting to have filed a non-existent Meru HCC Succession cause No. 67 of 2014 when the owner of the parent parcel of land was alive, using a forged confirmation of grant in Meru HCC succession cause No. 67 of 2014 to transfer the suit land, failing to notify Simon Muriungi who was alive then or his family members and/or the plaintiffs herein about the illegal transaction, illegally transferring Simon Muriungi's land and obtaining the resultant title issued on 30<sup>th</sup> July, 2015, creating a fake name of a non-existent person namely Silas Muthengi M'Maria in the succession cause in order to be issued with the fraudulent title deed and failing to notify Silas Mwenda and/or Simon Muriungi of his intention to transfer and/or the actual transfer of the suit land to himself.
20. *Black's Law dictionary*, 9<sup>th</sup> edition defines fraud thus-;

“Fraud consists of some deceitfully practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.
21. Fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. The court cannot infer fraud from the pleadings. It must be pleaded in a particularized manner and proven by leading evidence.
22. In the case of *Koinange & 13 others v Koinange* [1968] KLR 23 the Court of Appeal held that allegations of fraud must be specifically pleaded and strictly proved on a standard below beyond reasonable doubt but above the usual standard in civil proceedings, that is on the balance of probabilities.
23. The plaintiffs pleaded that they were appointed as the guardians of Simon Muriungi vide a court order issued at Meru on 20<sup>th</sup> January, 2022 in Meru HCC Petition No. E 027 of 2021. That on 24<sup>th</sup> February, 2022, they made an application for issuance of title deed in respect of the suit land which had never been issued to Simon Muriungi to hold it in his trust and that upon perusal of the green card in respect to the aforesaid land at the Meru Lands registry, they discovered that the 1<sup>st</sup> defendant secretly colluded and fraudulently without the knowledge and or consent of the plaintiffs and or Simon Muriungi took undue advantage of Simon's terminal mental condition and fraudulently transferred or caused transfer of the land to his name through an non-existent Meru HCC Succession cause No. 67 of 2014 and was issued with a title deed on 30<sup>th</sup> July, 2015.



24. The Court of Appeal in Mombasa Civil appeal No. 312 of 2012 *Emfil Limited v Registrar of Titles Mombasa & 2 others* [2014] eKLR stated;
- “Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities.”
25. In the instant case, the plaintiffs pleaded that they reported the matter to the directorate of Criminal Investigations at Meru Police station and the investigations revealed that the 1<sup>st</sup> defendant was part of several criminal proceedings at Githongo Law Courts in Criminal case Nos. 320 of 2019 and 847 of 2019 which were consolidated. That the 1<sup>st</sup> defendant was charged with the offence of obtaining money by false pretence contrary to Section 313 of the *Penal Code* for selling the suit land to unsuspecting purchasers and was convicted and is serving sentence in prison.
26. Among the documents that were produced by the plaintiffs as exhibits 1 – 6 are a copy of a court order issued on 20<sup>th</sup> January, 2022 in Meru High court constitutional petition No. E 027 of 2021, a copy of the green card for the suit land, copies of proceedings and ruling in Githongo SPMC Criminal case no. 320 of 2019 (*Republic v Reuben Mukaria and Anthony Mwenda*) copies of the proceedings and ruling in Githongo SPMC Criminal case no. 874 of 2019 and copies of Community Service Order dated 16<sup>th</sup> June 2021 issued in Meru High court.
27. The court has perused the said exhibits. Entry number 1 in the green card that was produced as P exhibit 3 indicates that Simon Muriungi Kungania was registered as proprietor of the suit land on 12<sup>th</sup> November, 1992. Entry number 2 of 30<sup>th</sup> July 2015 indicates that Silas Muthengi M’Maria was registered as proprietor and the consideration/remarks were “Succession Cause No. 67 of 2014 under Form RL – 19. Entry Number 3 of the same date shows that Silas Mwenda and Reuben Mukaria Munyua (the 1<sup>st</sup> defendant herein) were registered as proprietors pursuant to form RL – 7 and a title deed issued to them on the same date under entry number 4.
28. In this case the plaintiffs have testified that their brother Simon Muriungi is still alive, although he is suffering from a mental disorder. For the reason that the 1<sup>st</sup> defendant purported to transfer the suit land by transmission whereas the registered owner was still alive, it is clear to me that the said transfer was fraudulent, and thus illegal, null and void. Further, the proceedings and rulings in Githongo SPMC Criminal case No. 320 of 2019 and No. 874 of 2019 reveal that the 1<sup>st</sup> defendant herein and others were charged with offences of obtaining money by false pretenses contrary to Section 313 of the *Penal Code*. The offences emanated from the alleged sale of the suit land by the 1<sup>st</sup> defendant and one Silas Muthengi M’Maria. The evidence on record further reveal that the 1<sup>st</sup> defendant herein pleaded guilty to the charge and was convicted on his own plea of guilty. He was sentenced to 3 years imprisonment. From the evidence on record, it is clear to this court that the manner in which the 1<sup>st</sup> defendant acquired title to the suit land was fraudulent. This is because he purported to acquire the land through transmission when the owner was still alive. The 1<sup>st</sup> defendant also admitted the criminal charges that faced him and which related to the illegal sale of the suit land and was convicted and sentenced to imprisonment.
29. A certificate of title is conclusive evidence of ownership and is *prima face* evidence that the registered proprietor is the owner. Section 24 of the *Land Registration Act* 2012, gives the registered proprietor absolute rights over land and it provides-;
- 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 agreement, liabilities or incidences of the lease.
30. Further the title is protected under Section 26 of the same *Act* which provides;
- (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; (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
31. It is clear from the above provisions of law that a title can be challenged. Having established that the 1<sup>st</sup> defendant registered himself as the owner of the suit land fraudulently, his title is hereby cancelled and the same reverts to Simon Muriungi as prayed. I am therefore persuaded on a balance of probabilities that the plaintiffs have proved their case on a balance of probabilities. Consequently, the plaintiffs' case is allowed as prayed. The plaintiffs are also awarded costs of the suit to be borne by the 1<sup>st</sup> defendant.
32. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024**

In The Presence Of

Court Assistant – Tupet

Mrs Maheli holding brief for HKM advocates for plaintiffs

**C.K YANO**

**ELC JUDGE**

