



REPUBLIC OF KENYA



**Onyoni & 3 others v Makuabe & 4 others (Environment & Land Case
181 of 2015) [2024] KEELC 6872 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6872 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 181 OF 2015**

M SILA, J

OCTOBER 16, 2024

BETWEEN

**ROBERT OMARI ONYONI 1ST PLAINTIFF
RICHARD NYAMBANE ONYONI 2ND PLAINTIFF
RONALD ONSERIO ONYONI (SUING AS PERSONAL REPRESENTATIVES OF
THE ESTATE OF KEFA ONYONI) 3RD PLAINTIFF
KEMIL LIMITED 4TH PLAINTIFF**

AND

**CHRISTOPHER ONSONGO MAKUABE 1ST DEFENDANT
SIMON ABUKI OMBOTO 2ND DEFENDANT
PAMELA KEMUNTO KEENGWE 3RD DEFENDANT
AGNES KERUBO OSANO 4TH DEFENDANT
ATTORNEY GENERAL (SUED FOR AND ON BEHALF OF KISII CENTRAL
DISTRICT/COUNTY LAND REGISTRAR) 5TH DEFENDANT**

JUDGMENT

(Plaintiffs representing estate of deceased and being beneficiaries thereof; plaintiffs urging that the deceased was the registered proprietor of the suit land having a leasehold interest; plaintiffs asserting that the deceased was issued with a lease which was registered in the Kisii District Land Registry and he was also recognized as the rate payer; present records in the District Land Registry indicating that title was first to the 1st defendant then later transferred to the 1st – 4th defendants; defendants contending that this is the correct position and that a lease was issued to the 1st defendant who later sold to the 2nd and subsequently to the 4th defendant; evidence presented indicating that no genuine



lease was ever issued to the 1st defendant but that there was indeed a lease issued to the deceased which was duly registered; clear that the defendants engaged in a ‘pluck and plant’ fraud, by plucking out the genuine documents of the plaintiffs and planting fake documents in favour of the defendants; purported title of the 1st – 4th defendants nullified; court upholding the title held by the deceased and directing rectification of the land registry documents)

1. The 1st plaintiffs are the legal representatives of the late Kefa Onyoni (deceased). The 2nd plaintiff is a limited liability company which avers to be a beneficiary of the estate of Kefa Onyoni (deceased) pursuant to a confirmed grant issued on 27 November 2012 by the High Court in Succession Cause No 1570 of 2011. In their plaint, filed on 12 May 2015, they plead that the land parcel Kisii Municipality/Block 3/27 was registered in the name of the deceased having been issued with a lease registered on 7 September 1992 being a leasehold interest for a 99 year term commencing 1 May 1983. They aver that the deceased was in possession of the suit land until his death on 21 June 1998 and thereafter possession was continued by the plaintiffs. They plead that on 30 January 2012, they conducted a search at the Kisii Land Registry which confirmed ownership by the deceased. On 15 March 2013, they applied for a copy of the register but it showed a different owner. That register showed the first proprietor of the suit land to be one Christopher Onsongo Makuabe (1st defendant) who got registered on 3 July 1992; thereafter transfer to one Simon Abuki Omboto (2nd defendant) registered on 10 July 2000; and subsequently registration in name of Pamela Kemunto Keengwe and Agnes Kerubo Osano (3rd & 4th defendants) on 19 April 2004. It is the contention of the plaintiffs that the genuine register bearing the name of the deceased was removed and substituted with a fraudulent register bearing these entries, and that this was a product of fraud undertaken by the defendants. They plead that on 5 May 2013, the 3rd & 4th defendants entered the suit property, demolished the plaintiffs’ buildings and structures and evicted the employees of the plaintiff. They claim to have suffered loss in the sum of Kshs 300,000/= for the demolished structures. In the suit, they more or less seek orders for a declaration that this register bearing the names of the 1st – 4th defendants is fraudulent, and null and void; rectification of the register to reflect the lease registered on 7 September 1992 in name of the deceased; damages for demolition and destruction of the plaintiffs’ property; a permanent injunction to restrain the 3rd & 4th defendants from the suit land; costs; interest and any other relief the court may deem fit.
2. The 2nd, 3rd and 4th defendants appointed counsel and filed a joint statement of defence on 6 August 2015. They denied that the Mr. Onyoni (deceased) was ever registered as proprietor of the suit land. They contended that any Certificate of lease issued in favour of the deceased was procured through fraud, inter alia that the letter of allotment and lease were forged. They asserted that the current register reflecting them as proprietors is the correct register. They pleaded that the destruction of property on the suit property was legitimate and lawful to the extent that it was mounted by the 4th defendant as owner of the suit property. They further pleaded that the suit is barred by Section 4 of the *Limitation of Actions Act*, Cap 22, Laws of Kenya and Section 13A of the *Government Proceedings Act*, Cap 13A, Laws of Kenya, and further that it does not disclose any cause of action. The 4th defendant, Agnes Kerubo Osano, filed a counterclaim against the plaintiffs where she asked for the cancellation of the Certificate of Lease held by the plaintiffs in name of the deceased together with the register containing that name; a permanent injunction to restrain the plaintiffs from the suit property; general damages for trespass together with interest; costs and any other relief the court may deem fit to grant. No defence was filed by the 1st defendant despite the same counsel appearing for the 2nd – 4th defendants being on record.
3. The plaintiffs filed a reply to defence and defence to counterclaim which more or less joins issue.



4. The State Law Office on behalf of the Attorney General, the 5th defendant, filed a defence on 7 November 2019. In that defence, it is pleaded that the suit property has never been registered in the name of the plaintiffs and it is insisted that all entries (in the register) were genuinely entered.
5. I need to state, at this juncture, that on 9 November 2023, when the matter was proceeding, counsel for the 1st – 4th defendants stated from the bar that the 1st defendant had died before the suit was filed, and that the 3rd defendant died on 20 July 2022.
6. Hearing commenced on 30 May 2022 before my predecessor Onyango J, when the plaintiff's first witness, one Fredrick Maranga, the Director Land Administration, Kisii County Government, commenced his evidence. He was however stood down during examination in chief and he did not complete his evidence.
7. PW2 was Robert Omari Onyoni, the 1st plaintiff. He produced the grant of letters of administration and various documents in support of the claim that the suit land belonged to the deceased. His evidence was more or less to the effect that the suit property was allotted to the deceased through a letter of allotment dated 19 April 1983. The deceased was at that time serving as Ambassador of Kenya in Japan. The plot was unsurveyed and identified as Plot B Kisii Town. Subsequently a lease was prepared on 29 April 1985 and signed by the then Commissioner of Lands, Raymond Njenga. It was then registered on 7 September 1992. He had the original lease with him in court bearing printing ref No GPK 1554-10m-7/82. His late father was then issued with a Certificate of Lease on 7 September 1992. He had with him in court this original Certificate of Lease. He also referred to various rates demands from the Municipal Council of Kisii to his late father seeking settlement of pending rates. On the title relied upon by the 1st – 4th defendants, he could see that they hold an allotment letter dated 7 March 1983 in favour of Christopher Onsongo Makuabe, the 1st defendant; and a lease dated 23 June 1992, purportedly signed by Raymond Njenga, was then issued to him. He faulted this lease inter alia for reason that by this time Mr. Njenga had already ceased to be in office.. He testified that James Raymond Njenga was appointed Commissioner of Lands through Gazette Notice No 1571 and he was in office from 1 April 1975 till 20 January 1989 when he ceased holding office pursuant to Gazette Notice No 233 that appointed Wilson Gacanja in his place.
8. Regarding possession of the suit property, he testified that his father had taken possession and had built a small mabati (iron sheet) structure where some people operated a cyber café. He stated that they had uninterrupted possession till 5 May 2013 when some people forcefully entered the suit land, destroyed the computers in the cyber café, and roughed up the occupants. He produced photographs showing remnants of the structure that was there. After their eviction the new occupants put up temporary structures.
9. He was cross-examined on whether he had a receipt indicating payment of Stand premium by his late father but he stated that he could not find it. On why the lease that his father held was registered on 7 September 1992 despite an allotment letter dated 29 April 1985, his explanation was that his father was out of the country for long periods as he was an Ambassador. He could see that the letter of allotment relied upon by the defendants predated that of the deceased as it showed that it was issued on 7 March 1983. The Certificate of Lease that they held is dated 3 July 1992 thus also predating the plaintiffs' which is dated 7 September 1992. He could also see that the allotment letter of the defendants showed a Plot A while that of his father showed a Plot B. He stated that they discovered in 2000 that the 4th defendant held title though he clarified that this was incorrect during re-examination.
10. PW3 was Justin Ameyia Nyakenucha. He works with the County Government of Kisii in the Rates Department. He came to court armed with the original manual rates register. His evidence was that



the suit property was entered in their system in 1988. They charged rates using this manual register until 2007 when they went digital. He testified that the property was rated at Kshs 4,310/= and rented at Kshs 720/= per annum. He testified that the register shows Kefa Onyoni as the rateable owner. He made payment up to the year 2000 which was indicated in the register. He testified that they used to advertise those in default of rates. He affirmed that Kefa Onyoni was the rate payer and that his name had been advertised as among the rates defaulters in the Daily Nation newspaper of 6 December 1993, 5 June 1997, and 2 December 2005. He had no record of one Christopher Onsongo Makuabe being a rate payer for the suit property. Neither had he come across the names of the 2nd – 4th defendants in the rates records.

11. PW4 was Ojwang Omolo Patroba, an Assistant Director of Land Administration in the Ministry of Lands, Public Works, Housing and Urban Development. He identified the letter of allotment relied upon by the plaintiffs and its reference number 31002/XIX/117. He traced this file No 31002/XIX/117 which he identified as an alienation of plots file. He elaborated that it was a general file used for processing allocations and alienations for Kisii Town between October 1981 and April 1984. This file had minutes and correspondences related to the allocation of the suit land all pointing at an allocation to Kefa Onyoni. He could see that the allotment letter of the defendants had the reference number 31002/XXVI. He traced this file but it did not have any correspondence related to allocation of the suit property. He could see that the allotment letter indicates some fees payable but he pointed out that these were not the fees payable at that time. This, he contrasted with the allotment letter of Mr. Onyoni, which indicated the properly prescribed gazetted fees. He also referred to the receipt for payment of Kshs 7,810/= displayed by the 1st – 4th defendants as payment upon allotment. He could see that it bore a reference number 166401 which he explained was the correspondence file reference. He traced this file but discovered that it refers to property situated in Garissa Municipality and not Kisii. The allotment letter of Kefa Onyoni referred to a correspondence file No 110902/4. This file, he testified, was missing in their records. What he could trace was a Card at the Plan Records Office which had survey details. This card corresponded with the reference number shown in Mr. Onyoni's allotment letter. On the allotment letter of Christopher Onsongo Makuabe, he could see the signature of one S.H Mwirembua but this signature did not correspond with what they had in their alienation file. He further testified that the allotment letter of Mr. Makuabe was made on 7 March 1983 and payment would need to be done in 30 days. It was purportedly done on 27 April 1983 outside the 30 days. On the Lease instrument of the plaintiff, he could see that it was signed by James Raymond Njenga who was then Commissioner of Lands on 29 April 1985. That lease has the printing number GPK 1554-10m-7/82. He elaborated that this number '82' means that the Certificates were printed in 1982 and used thereafter. The payment for this allotment letter was done on 22 April 1983 within 30 days of allocation as the allotment letter was dated 19 April 1983. Regarding the lease issued to the 1st defendant, he could see it had the printing identification GPK (L) 117-200m-2/2001 which would be a document to be used from 2001. He testified that the Lease to the 1st defendant could not therefore purport to have been issued in 1992. He could also see that the lease was purportedly executed on 23 June 1992 by James Raymond Njenga but at this time, Mr. Njenga was no longer Commissioner of Lands, having ceded office to Wilson Gacanja on 18 January 1989. He testified that they have no situation of a Commissioner of Lands signing in advance or coming back after retirement to sign leases. He also referred to many other inconsistencies with the purported lease of the 1st defendant.
12. He was cross-examined on the PDP in the file and he was categorical that the original PDP indicated allocation of a Plot No B, but there was an overwriting to show plot 'A'. He explained the process of allocation and affirmed that all this would be by way of documentation put in the correspondence file. The correspondence file for the suit property was missing or tampered with but he had no doubt that from the other documents that the process of allocation of the suit land and issuance of title to Kefa



Onyoni must have been followed as this was supported by the other files in their records. He contrasted the payments indicated in the allotment letter of Mr. Onyoni as compared to those of the 1st defendant. His evidence was that it is the amounts in the allotment letter of Mr. Onyoni that are correct. On the Lease in name of the 1st defendant, he was categorical that it never emanated from their office. On the Lease to Mr. Onyoni, his evidence was clear that this was the proper lease for the suit property and it consistently matched their other records.

13. PW5 was Joshua Ratemo, a Senior Printer in the Proof Reading Department employed by the Government Printer. He testified that it is the Government Printer that prints Gazette Notices and also Leases and Certificates of Lease. He identified Gazette Notice No 233 of 20 January 1989 as the Gazette Notice that appointed Wilson Gacanja to be the Commissioner of Lands with effect from 18 January 1989. On the leases and Certificates of Lease, he elaborated that they have security features and can be identified from the imprint number. He explained the plaintiffs' lease bearing the number GPK 1554-10m-7/82. GPK would mean Government Printer Kenya; 1554 would be the work order; M would mean one thousand, in this instance 10,000 copies of this order were printed; 7/82 would be the 7th month, i.e July, and 82 the year, i.e 1982. He was positive that the lease of Mr. Onyoni was printed by the Government Printer. On the Lease in name of the 1st defendant, he found the font extraordinary and the layout not one that they used. On the print number he could see GPK (L) – 117 200M2001 which would mean that it for a batch in use from February 2001. It could not therefore have been issued in 1992.
14. With the above evidence, the plaintiffs closed their case.
15. DW1 was Simon Abuki Omboto, the 2nd defendant. He testified that he is a teacher. His evidence was that he wished to purchase land in Kisii town and he was introduced to the 1st defendant. He did his due diligence and the 1st defendant showed him minutes of the Council, payment receipts, and the allotment letter. They entered into an agreement for him to buy the property at Kshs 600,000/= which he paid in three instalments of Kshs 200,000/=. He (the 1st defendant) then transferred the lease to him with the transfer being registered on 10 July 2000. He was subsequently issued with a Certificate of Lease on the same day. He later sold the property to Agnes Kerubo Osano, the 4th defendant. He denied backdating the Certificate of Lease.
16. Cross-examined, he testified that he did a search but he did not have a copy of it. Neither did he have the minutes of allocation of the land to the 1st defendant. He asserted nevertheless that the 1st defendant was properly allotted the land as he saw the allotment letter, the payment receipts, and the lease. He acknowledged not having produced any consent to transfer the property to his name issued by the Municipal Council of Kisii. On the transfer instrument, he testified that he did not appear before an advocate but before the Land Registrar. He stated that he paid registration fees for the transfer but he did not have the receipt. He claimed to have been paying rates but did not have the rate payment receipts. Neither did he have any rate payment receipts done by the 1st defendant. He testified that he took possession of the land in 2000 upon purchase and he sold it in 2004 to the 4th defendant. He stated that he does not know the 3rd defendant. While he held possession he stated that he developed the property by putting a wall and a structure in it. He sold the land in 2004 for Kshs 1,500,000/=. He did not have the transfer of lease or the documents of transfer. Asked where the 1st defendant was, he stated that he does not know his whereabouts as it has been a long time. He was aware that at the time of transfer one is required to have the ID card and PIN of the seller. He did not have either document belonging to Christopher Onsongo Makuabe. He refuted that Christopher Onsongo Makuabe was a figment of his imagination and that such person does not exist. He testified that he inquired about his whereabouts and he was told by a friend that he is deceased. On payment of the



purchase price, he stated that he paid in cash to Mr. Makuabe. No acknowledgement was ever signed and there was no record of such payment having been made. He could see that the transfer instrument showed consideration of Kshs 600,000/= but the register showed Kshs 500,000/=. He was referred to the transfer instrument which indicated that he appeared before Waitthaka Wachira & Company Advocates for execution and he now changed his evidence to affirm that he indeed appeared before such advocate and not the Land Registrar. He claimed that the law firm used to have offices in Kisii opposite the Catholic Church but the offices have since closed. On whether he paid stamp duty, he testified that he paid about Kshs 20,000/=. The transfer however showed 300 pounds which would be Kshs 6,000/=. Whatever the case, he had no receipt for payment of stamp duty nor any receipt for the registration of the transfer to him. He also claimed to have paid rates upto 2004 though he had no receipts. On the sale to the 4th defendant he testified that he was paid Kshs 1,500,000/= in two instalments. The money was banked into his account but he had nothing to show this. He did not have the documents of transfer to the 4th defendant nor her documents. He was pressed on whether he knew Pamela Kemunto Keengwe (3rd defendant) and this time, he stated that he knows her and that she is a teacher, though he never sold the land to her.

17. DW2 was Calvin Monari Kenani. He is son of the 4th defendant and holds a power of attorney donated to him by her. His evidence was that in 2003, his mother was approached to buy the suit property and was connected to the 2nd defendant who was the seller. He was involved in the purchase. He stated that a search was done which showed the 2nd defendant as owner and he was also given the PDP, the RIM and survey plan. She bought the property for Kshs 1.5 million and a sale agreement was drawn. He testified that in the course of their due diligence they never came across the name of Kefa Onyoni as proprietor of the suit property and that whatever was handed to them showed that the property was originally owned by Mr. Makuabe.
18. Cross-examined, he did not have the transfer documents in favour of the 4th defendant. Neither did he have a search done prior to the purchase. He acknowledged that if the 4th defendant became proprietor in 2004 then she needed to be paying rates but he did not have rate payment receipts. Regarding occupation of the suit property he testified that the 4th defendant took possession in the year 2004 and extended the perimeter wall and some structures, and put up a car wash. He was taken through the documents of title of the 1st defendant and his general answer was that the discrepancies and shortfalls therein are best explained by an officer from the Ministry of Lands. He was asked whether they are related with the 2nd defendant and his answer was that he is a stranger to them, and they only had a buyer/seller relationship. He could not however explain how come they shared an address in the sale agreement. He did not have the banking slips to show payment of the purchase price to the 2nd defendant. Neither did he exhibit the transfer forms. He did not have any document to show payment of stamp duty nor any application form for registration of the transfer. Neither did he have a Presentation Book number. He did not have any receipt to show payment for registration of the transfer and no consent to transfer. He testified that he did not know the 3rd defendant and did not know how she was also named as proprietor in one of the registers. He denied that the 4th defendant took possession of the land in 2013 and insisted that it was in 2004. He did not have any building plans to show that they did any development. He denied being part of the fraud and in the creation of a non-existent person by name of Christopher Makuabe.
19. DW3 was Oswera Cecilia Harriet, the Land Registrar, Kisii. She testified that she joined the Kisii Land Registry in the year 2021 and she was therefore giving evidence based on the records in the Lands Registry. She produced the leasehold register (White Card) and the freehold register (Green Card). She testified that the White Card in her records show that it was opened on 3 July 1992 in name of Christopher Onsongo Makuabe and Entry No 2 is issue of a Certificate of Lease to him on the same



- day. Entry No 3 is transfer to Samuel Abuki Omboto on 10 July 2000 and Entry No 4 is issue of Certificate of Lease to him on the same day. Entry No 5 is transfer to Agnes Kerubo Osano entered on 19 April 2004 and Entry No 6 is issue of a Certificate of Lease to her on the same day. Entry No 7 is registration of Power of Attorney in favour of DW2. She testified that despite these entries there was no document to support them save for the Power of Attorney. The Green Card in her possession shows that a Lease was issued to Christopher Onsongo Makuabe on 3 July 1992 for a period of 99 years from 1 March 1983 at an annual rent of Kshs 720/=. She could not explain how come there is another register that bears the names of the 3rd and 4th defendants as proprietors. She did not have any document indicating Kefa Onyoni as proprietor.
20. Cross-examined, she testified that a White Card is opened once a Lease instrument is received for registration. She affirmed that there was no documentation to support the opening of the White Card in favour of Mr. Makuabe and no documentation to support the subsequent transfers. She testified that where there is discrepancy between documents in the District Registry and the Department of Land Administration it is the documents from the Department of Land Administration that take precedence and they align with that position. She was taken through the documents of the defendants and she affirmed that Raymond Njenga could not sign a lease in favour of the 1st defendant in 1992 as he was no longer Commissioner of Lands. She also testified that the form of registration produced in favour of the 1st defendant was not one that they used under the Registered Land Act. In essence, she could not vouch for the registration of the 1st – 4th defendants as proprietors. She acknowledged that what ought to be in her records are the documents supporting the proprietorship of Kefa Onyoni. She could not however confirm whether the documents of Kefa Onyoni were removed from the record.
 21. With the above evidence the defence closed its case.
 22. I invited counsel to file submissions and I have taken note of the submissions filed.
 23. What I need to determine is who between the plaintiffs and the 1st – 4th defendants have exhibited good title to the suit land. I have analysed the root of title of both the plaintiffs and 1st – 4th defendants and I have absolutely no doubt that it is the plaintiffs who have exhibited good title.
 24. I have seen that there was intention by the Kisii Municipal Council to allocate Mr. Kefa Onyoni (Mr. Onyoni) two plots in Kisii Town. That intention is apparent in the Minutes of the Plot Allocation Committee held on 1 March 1974. It is discernible from the said minutes that it was resolved to allocate Mr. Onyoni two plots, one residential and one commercial. There is correspondence dated 11 March 1976 from the Commissioner of Lands querying why he was being allocated two plots and a reply thereto from the Kisii Town Council dated 26 March 1976 giving reasons. There appears to have been delay in issuance of the Allotment Letter which led to Mrs. Onyoni writing to the Commissioner of Lands on 29 December 1982 requesting to be issued with the allotment letter. There is evidence of Mr. Onyoni visiting the office of the Commissioner of Lands on 5 April 1983 and I have no reason to doubt that it was in pursuance of the Allotment Letter. The Letter of Allotment under File No 31002/XIX/117 was eventually issued on 19 April 1983 with the letter indicating that Mr. Onyoni was allocated an unsurveyed Plot B within Kisii Town. The letter had an accompanying PDP showing the exact plot being allotted. He was required to pay certain fees for the allotment including Stand Premium of Kshs 3,600/=; Land Rent of Kshs 480/= (revised to Kshs 720/=) ; Conveyancing fees of Kshs 350/=; Registration fees of Kshs 50/=; Stamp Duty of Kshs 126/=; and Survey Fees of Kshs 970/=. The title was to issue under the Registered Land Act (Cap 300) (repealed). These charges, as was explained by PW3, tally with the fees set out in The Government Land (Fees) Rules outlined in Legal Notice No 172/1976 and The Government Lands (Conveyancing Fees) Rules in Legal Notice No 173/1976, which were copied in the Schedule of fees in the Government Lands Act (Cap 280)



(repealed). The Rules provide for Registration Fees of Kshs 50/= and Conveyancing Fees of Kshs 350/= . The evidence of payment was not provided with PW2 explaining that he could not trace the payment but in the circumstances of this case I am not in doubt that the said fees were duly paid. I have seen that a Lease instrument was drawn and it bears a receipt No A691073 as paid on 22 April 1983. The Lease instrument shows a Lease to the suit land issued to Mr. Onyoni for a period of 99 years from 1 May 1983 at an annual rent of Kshs 720/=. The lease instrument was executed by James Raymond Njenga on 29 April 1985 and Mr. Onyoni also executed his part. The Lease was registered on 7 September 1992 and was entered in Presentation Book No 46 of 1992. A Certificate of Lease was subsequently issued on 7 September 1992. These documents are not in doubt. Indeed, PW2 had the original of the Lease and Certificate of Lease in court and he exhibited them when he testified. The two instruments were also confirmed by PW5 to have been instruments printed by the Government Printer.

25. This was a Lease from the County Council of Kisii and the rents and rates were payable to the Municipal Council of Kisii. PW3 confirmed that the recognized rate payer was Mr. Onyoni. PW3 produced the original manual rates register and it is as clear as day that the rate card was opened in 1988 under the name of Mr. Onyoni. He at times fell into arrears and when the Municipal Council advertised rate defaulters, his name is that which appeared as the rate payer for the suit property. In the Daily Nation newspaper of 6 December 1993, his name appeared as owing Kshs 54,052/70/=. On 5 June 1997, his name appeared in the Daily Nation newspaper as owing Kshs 20,550/=. In the Daily Nation newspaper of 2 December 2005, his name appeared as owing Kshs 185,934/=.
26. What have the 1st – 4th defendants displayed on the other hand ? They have displayed an allotment letter purportedly issued on 7 March 1983 for a Plot -A Kisii Municipality to Christopher Onsongo Makuabe. The PDP attached is the same as that which allotted Mr. Onyoni his plot only now it is written Plot 'A' instead of Plot 'B' but the letter 'A' is actually overwritten and imposed over the letter 'B'. That allotment letter required payment of some fees being Stand Premium of Kshs 3,600/=; Rent of Kshs 600/=; Conveyancing Fees of Kshs 500/=; Registration Fees of Kshs 100/=; Stamp Duty of Kshs 90/=; and Survey Fees of Kshs 2,290/=. Now it was demonstrated by PW4 that as at 1983, Registration Fees was not Kshs 100/= but Kshs 50/= and Conveyancing fees was Kshs 350/- not Kshs 500/=. It was claimed that these monies were paid vide a receipt No G116400 but PW3 discounted this receipt since it showed payment in respect of a file No 166401 which file he traced as being for a plot in Garissa Municipality. It was purported that pursuant to the Allotment Letter issued to Mr. Makuabe, a lease was issued and executed on 23 June 1992 by James Raymond Njenga, the Commissioner of Lands. It is blatantly obvious that this Lease is a fake one for the sole reason that James Raymond Njenga was not Commissioner of Lands in 1992. Mr. Njenga was appointed Commissioner of Lands through Gazette Notice No 1571 of 16 May 1975 with effect from 1 April 1975. His service as Commissioner of Lands ended when Wilson Gacanja was appointed Commissioner of Lands with effect from 18 January 1989 vide Gazette Notice No 233 of 20 January 1989. There was exhibited a letter dated 18 January 1990 indicating that Mr. Njenga retired from public service with effect from 11 September 1989 and had cleared with the Ministry. Thus, as at 1992, it was Mr. Gacanja who was the Commissioner of Lands, and not Mr. Njenga. There is no lease that Mr. Njenga signed in 1992.
27. It was further purported that Mr. Makuabe's (1st defendant) lease got registered on 3 July 1992 at the Lands Registry, Kisii and he was issued with a Certificate of Lease on the same day. It was claimed that he later sold his interest to Simon Abuki Omboto (2nd defendant) through a sale agreement dated 25 February 2000, and that subsequently, Mr. Omboto sold his interest to Agnes Kerubo Osano (4th defendant) vide the sale agreement dated 12 January 2004. I am not persuaded that there were ever any genuine sales. First, there was never produced any transfer instruments duly registered at the Lands Registry. Secondly, there was never produced any receipts for stamp duty or registration of these purported transfers. Thirdly, there was never produced any payment or acknowledgment of money



ever having exchanged hands. I am persuaded that these were just fake agreements displayed to purport that there was transfer of title. It is no wonder that when the Land Registrar testified, she stated that despite having registers bearing the names of these individuals, her file has no documentation of any transaction between them. Moreover, it was demonstrated by PW5 that the Lease and Certificate of Lease could not have been printed on genuine Government paper. They are fake documents prepared somewhere in an anonymous backstreet.

28. As far as I can see, what happened is that there were documents registered in favour of Mr. Onyoni at the Lands Registry, and that is how he was issued with a Certificate of Lease. It is apparent to me that the 1st – 4th defendants either individually or in collaboration, wished to grab Mr. Onyoni's plot. They did their investigation at the Lands Registry, perused and got hold of Mr. Onyoni's documents, and tried as much as they could to clone them including cloning the issuance of a Lease by Mr. Njenga. They however forgot that Mr. Njenga had ceased being Commissioner of Lands in 1989. Once they replicated the documents, they caused Mr. Onyoni's documents to disappear from the Lands Registry and they planted their fake documents. They then caused the genuine Green Card (freehold register) and White Card (Leasehold Register) to disappear; in place, a new Green Card showing a Lease to Mr. Makuabe and a White Card indicating him as leasehold proprietor was prepared and planted in place of the genuine one. The register was then populated with entries to show that there were sale transactions to the 2nd – 4th defendants when in reality there was never any transaction. All this was done in order to purport that the 2nd – 4th defendants were innocent purchasers for value when in fact they were not purchasers at all.
29. It is regretful that we have this kind of fraud in our Lands Registries. For lack of a better term, let me simply moniker it as 'the pluck and plant' fraud. This fraud is so simple yet so effective and it should have all of us very worried. This is how it works : A fraudster eyes a particular parcel of land. He then identifies rogue personnel in the Lands registry. The rogue personnel pluck out the genuine title supporting documents from the records in the Lands registry. In place he plants fake documents depicting the fraudster as the land owner. This is made complete by also plucking out the genuine register, be it Green Card or White Card, and in place a new register depicting the fraudster as the registered proprietor is planted. If anyone goes to the Lands Registry to do a search or due diligence on the documents, the ones he will find are those of the fraudster. Even the Land Registrar may very well defend the fake documents either because he/she is part of the fraud, or there is nothing else that points at a different proprietor. In extreme cases, particularly in leasehold titles, even the file/s at the Department of Land Administration will be tampered with, or will be made to disappear. If you call the Land Registrar or Land Administrator to testify, they may very well tell the court that so far as their records are concerned, it is the fraudster who is the genuine proprietor of the disputed land. This leaves the genuine title holder grasping at straws and facing an uphill battle. He will be hoping that there will be a loophole in the fraud which he can exploit, or hope that he can find some honest personnel in the Department of Land Administration and/or District Land Registry who can come to his aid and vouch for his documents. He will be praying and hoping that God will be on his side. If he fails to find documents that portray the genuine transaction and find honest staff that are ready to stand by his genuine documents, his goose is cooked, and he will lose his land to fraudsters. Paradoxically, he may in fact now be the one being accused of fraud particularly where rogue Land staff decide to switch allegiance in favour of the fraudsters. With this kind of fraud, one can literally walk into the Land registry with nothing and walk out with title to land having done no transaction at all. We must call out this 'pluck and plant' fraud and end it once and for all.
30. It is indeed sad that in Kenya today, our Land records are potentially subject to manipulation and tampering. It is time that we came up with a fool proof system that secures and keeps safe our land records. It is clear that whatever system we use in our lands registries falls short of what a good land



title security system should have. I don't know whether digitization will help for you can as well put in the digital registers the fake titles. I actually have no solution at the moment only to call out for an overhaul in our lands records management system. If we do not do something now, we are staring at a collapse in the land management system which will make investors shy away from investing in land and genuine proprietors at risk of losing their investment.

31. Luckily for the plaintiffs, in the case herein, there were glaring loopholes. The fraudsters managed to pluck out the proper land records and even caused disappearance of the correspondence file from the Land Administration office. But there were other sufficient records to demonstrate that Mr. Onyoni was truly the person holding the genuine title and that the title of the 1st – 4th defendants was fake. There is even doubt as to whether there is or ever was any person bearing the name Christopher Onsongo Makuabe or whether such person was a virtual creation of the 2nd – 4th defendants. I certainly did not see any document depicting his existence. There was no ID, no PIN, simply nothing to show that he roamed the earth at some point. You would expect that the 2nd defendant would have some documents showing that Mr. Makuabe actually existed and that he transacted with him, but he had nothing. It doesn't however matter whether he existed or not and it is not necessary to spend too much time on this debate. Whether he exists or existed, is irrelevant. What is relevant is that it has been demonstrated that the suit land was never allocated to one Christopher Onsongo Makuabe, and that being the case, there could be nothing to transfer from him. The 2nd – 4th defendants never obtained any good title to the suit land.
32. There is controversy as to whether the land records have the current proprietorship jointly in the name of the 3rd and 4th defendants or only in name of the 4th defendant. Again it doesn't matter because whatever is depicted is a reflection of a fraudulent register.
33. I will proceed to declare that it is Kefa Onyoni who was the genuine registered proprietor of the suit land. I declare the Green Card and White Card bearing the names of the 1st – 4th defendant as fake and fraudulent and hereby nullify the same. I proceed to order the Land Registrar, Kisii, to cancel these registers. No transaction should be registered following these fake registers. I further order the Land Registrar, Kisii, to reconstruct the land records in the registry, using the documents produced in this case in favour of the plaintiffs, and have registers indicating that proprietorship is in name of Kefa Onyoni (deceased). These orders should clean up the registers and documentation.
34. There is of course the issue regarding possession of the land and damages which I now get into. Having no title, the 4th defendant has no right to be on the suit land. From the time of pronouncement of this judgment the 4th defendant to give immediate vacant possession of the suit property. From the time of pronouncement of this judgment, the 1st – 4th defendants and/or their servants/agents or anyone claiming under their title, are hereby permanently enjoined from entering, being upon, utilizing, or in any way interfering with the plaintiffs' use and occupation of the suit land. The plaintiffs upon pronouncement of this judgment are at liberty to take possession of the suit land and to continue in possession.
35. In the plaint, the plaintiffs asked for damages for demolition and destruction of property. In as much as no receipts were produced to show the extent of damage, it is apparent from the photographs produced that there was some damage and I am persuaded to award the sum of Kshs 300,000/= against the 4th defendant. That sum is very reasonable and not exaggerated at all. This sum to attract interest at court rates from the date of this judgment.
36. Moreover, so as to send a message that fraudsters will not benefit, I will make an order in exemplary damages, payable jointly and/or severally by the 1st – 5th defendants in the sum of Kshs 1,000,000/



= (One Million) to the plaintiffs for fraudulent preparation of title to the 1st – 4th defendants. This sum to attract interest from the date of this judgment till settlement in full. I am also persuaded to make a further award in damages in the sum of Kshs 1,000,000/= (One Million) as general damages for trespass specifically against the 4th defendant. The 4th defendant undertook an illegal eviction and has benefited from the suit property from the year 2013 to date which is unfair to the plaintiffs.

37. There is no substance in the counterclaim and it is hereby dismissed.

38. The plaintiffs will have the costs of both the main suit jointly and/or severally against the defendants, and also the costs of the counterclaim against the 4th defendant, and the same shall attract interest at court rates till settlement in full.

39. Judgment accordingly.

DATED AND DELIVERED THIS 16 DAY OF OCTOBER 2024.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of :

Ms. Awori h/b for Mr. Kefa Ombati, instructed by M/s Kefa Ombati & Company Advocates, for the plaintiffs;

Mr. Odero h/b for Mr. Mulisa instructed by M/s Oguttu Mboya, Ochwal & Partners Advocates, for the 1st – 4th defendants;

Mr. Rana h/b for Mr. Wabwire, State Counsel, for the 5th defendant;

Court Assistant – David Ochieng.’

