



REPUBLIC OF KENYA



**Karanja v Mungai & 5 others (Environment & Land Case 573 of 2017)
[2023] KEELC 15747 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15747 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 573 OF 2017
LN GACHERU, J
FEBRUARY 9, 2023**

BETWEEN

ISABELLA WANJIKU KARANJA PLAINTIFF

AND

GICHIA A. MUNGAI 1ST DEFENDANT

GICHIA B. MUNGAI 2ND DEFENDANT

KABEBE JOHN MUNGAI 3RD DEFENDANT

WAMUTI MUNGAI 4TH DEFENDANT

KABEBE GEORGE MUNGAI 5TH DEFENDANT

THE REGISTRAR OF LANDS, KIAMBU 6TH DEFENDANT

JUDGMENT

1. The Plaintiff is an Administrator of the Estate of Charles Karuga Koinange (deceased), who was an alleged purchaser of Land Parcel no. Kiambaa/Kanunga/376, (the suit property) while the 1st, 2nd, 3rd, 4th, and 5th Defendants are the children of Mungai Gichia (deceased), the alleged seller of the said suit property.
2. By a Plaint dated 18th April 2017, the Plaintiff sought for the following Orders against the Defendants herein Jointly and Severally; -
 - a. THAT a declaration do issue that the Plaintiff is the lawful and rightful owner of the land parcel known as Kiambaa/Kanunga/376, (the suit property);
 - b. THAT a permanent injunction do issue to restrain the Defendants herein either by themselves, their servants and/or agents from transferring, charging, subdividing, selling, alienating, entering into, constructing upon, farming and/or in any other way interfering in any manner;



whatsoever or howsoever with the Plaintiff's quiet use and possession of the suit property, Kiambaa/ Kanunga/376.

- c. THAT the Defendants be compelled by an order of this Honourable Court to deposit within 14 days from the date hereof to either the Plaintiff's Advocate or the Deputy Registrar of this Honourable Court the original title for Kiambaa/ Kanunga/376;
 - d. THAT the OCS and Chief of the area do oversee the due execution of this Court Order;
 - e. THAT the 1st Defendants do execute a transfer of the suit property Kiambaa/Kanunga/376, in favour of the Plaintiff within the next 30 days from the date hereof and in default the 6th Defendant be ordered to cancel the title in favour of the said Defendants and issue a title in favour of the Plaintiff;
 - f. THAT further and/or in the alternative the Deputy Registrar of this Court do execute the documents necessary to transfer the suit property;
 - g. THAT further and/or in the alternative, this Honourable Court do cancel the title in favour of the Defendants and issue a vesting Order of the suit property Kiambaa/Kanunga/376, in favour of the Plaintiff;
 - h. THAT the Defendant be condemned to pay the costs of this suit.
2. In her claim, the Plaintiff averred that vide a Judgement delivered in H.C.C No. 1183 of 1983, Justice Osiemo declared that Land Parcel No. Kiambaa/Kanunga/376, (the suit property) held by Mungai Gichia (deceased) which was subsequently transferred to the Defendants had been initially sold to and fully paid for by Charles Karuga Koinange (deceased).
 3. The Plaintiff contended that Marion Wambui Gitau Koinange, who is her sibling, was gifted inter vivos, the suit property by Charles Karuga Koinange (deceased), and is in occupation of the property. She further contended that the Defendants failed to disclose that Marion Wambui Koinange had an interest in the suit property in Succession Cause No. 6 of 1976. The Plaintiff's claim is therefore for orders to compel the Defendants jointly and severally to relinquish the title deed of the suit property and the same to be transferred to the names of Marion Wambui Gitau Koinange being the rightful owner.
 4. In response to the Plaintiff's claim, the 1st – 5th Defendants filed a Statement of Defence dated 16th June 2017, and contended that the Judgement in H.C.C.C. No. 1183 of 1983, was not as stated by the Plaintiff and that the Court had not in fact held that the suit property was transferred to Charles Karuga Koinange (deceased). They further denied that Marion Wambui Koinange, was in possession of the suit property and averred that if indeed she had possession, it was through trespass. They also averred that there is no valid sale agreement between Charles Karuga Koinange (deceased) and Mungai Gichia (deceased), and if there was one, the later failed to execute and complete the same before his demise.
 5. However, on 15th June 2017, the Plaintiff filed a Notice of Withdrawal of the case against 1st Defendant – Gichia A. Mungai. Consequently, the suit is against 2nd – 6th Defendants.
 6. The matter proceeded by way of viva voce evidence wherein the Plaintiff gave evidence for herself and called two (2) witnesses. The 2nd – 5th Defendants called one (1) witness who testified on behalf of 2nd – 5th Defendants. The 6th Defendant did not participate in the proceedings, since despite being served with Summons, he did not enter appearance nor file any defence.



PLAINTIFF'S CASE

7. PW1, Isabella Wanjiku Karanja testified that she was the daughter of late Charles Karuga Koinange (deceased), and an Administrator of his Estate. She adopted her witness statement, and further testified that the suit property was sold to her late father by Mungai Gichia (deceased). It was PW1's testimony that Mungai Gichia called their father Charles Karuga Koinange, and they entered into a contract for the sale of the suit property at the price of Kshs. 36,000/= which was paid in installments and completed in full in 1983. She further stated that there were witnesses to the said transaction.
8. It was PW1's further testimony that the matter was in Court because the Defendants failed to transfer the suit property to her late father. She also stated that the Plaintiff has been in possession of the suit land since 1982, but does not have title to the said land, because the land was never transferred to the father, after purchase – the late Charles Karuga.
9. PW2, Marion Wambui Gitau, testified that she was a beneficiary of Charles Koinange (deceased). She adopted her witness statement and further testified that she was given the suit property by her late father, and she has been in possession of it since 1983. That she cultivates on the said piece of land, and that Charles Karuga Koinange (deceased), purchased the suit property from Mungai Gichia (deceased). That before the suit property could be transferred to the name of the Charles Karuga Koinange (deceased), after payment of the full purchase price, Mungai Gichia died. PW2 also testified that part payment was received by Gichia Mungai (deceased), and the balance by his sons. Lastly, she testified that despite her father purchasing the suit property, and gifting it to her, title for the suit property was yet to be transferred to her.
10. PW3, Stephen Mbugua Karanja, a (retired) Senior Chief in Kiambaa Location from 1983 to 2007, stated that he knew Charles Karuga Koinange (deceased), and Mungai Gichia (deceased). He also testified that the suit property belonged to Mungai Gichia (deceased), who later sold it to Charles Karuga Koinange (deceased). Further that he was aware of the transaction because Charles Karuga Koinange (deceased), showed him the signed transaction documents between himself, Charles Karuga Koinange(deceased) and Mungai Gichia (deceased) and Green Card. Lastly, he testified that PW2 had been in possession of the suit property all along.

DEFENSE CASE

11. DW1, John Kabebe Mungai, the 3rd Defendant testified that he had authority from his Co-Defendants to testify on their behalf in Court. He relied on his witness statement. He further testified that the suit property was in the names of five (5) persons, who are the 1st – 5th Defendants, who are his siblings. That they acquired the suit property after the demise of their father. That their father died before selling the said land. He denied hearing of any sale by his father to Charles Karuga Koinange (deceased).
12. DW1 further testified that he filed a suit in Nairobi being HCC No. 1183 of 1983, over the suit property and that the outcome was that he should not have filed the said suit alone and the Court gave orders that he had no capacity to institute the suit. However, the Defendant in the case – Charles Karuga Koinange was not declared a purchaser of the suit property, since the suit was dismissed.
13. Further that there were agreements by the Plaintiff for the purported sale of the suit property, but his father had stated that he did not sell the property. He also testified that his father died in 1974, and that the sale agreement is dated 1982, which is after the death of his father and that at the date of his death, his father had not sold the property nor transferred it to the Defendants. DW1 further testified that the Green Card shows the 1st – 5th Defendants were owners of the suit land in 1983, and neither of



them could sell the land alone. He further stated that he had planted coffee on the suit land. He urged the Court do dismiss the Plaintiff's case, with costs.

14. In cross-examination, DW1 testified that the suit property was registered under five owners of the 1st – 5th Defendants herein. He also stated that he did not know how his brothers allowed Charles Karuga Koinange (deceased), to get on the suit land. Further that in HCCC No. 1183 of 1983, the Court held that he could not sue alone as the land was not registered in his name alone. That he did not know why his brothers declined to join in the suit. He admitted that Charles Karuga Koinange's family had possession of the suit property since 1982, when they took possession. He also stated that he had tried to evict the Plaintiff to no avail. Lastly, he testified that the 1st -5th Defendants were the registered owners of the suit property.
15. DW1 also testified that he did not know how much money his brothers had received for the sale, nor did he ask them why they had received that money. Further that, he did not know if any of his brothers had sold the land to Charles Karuga Koinange (deceased).
16. DW1 denied receiving any money from the sale of the suit land. That he did not know the ruling that the Court delivered in the Succession Cause, nor did he appeal the said decision. He also testified that the Defendants were registered owners of the suit land as his father did not sell the suit property to anyone and in particular to Charles Karuga Koinange.
17. On re-examination, he stated that if his brothers received any money, it was after the death of their father.
18. The parties later filed their written submissions as directed by Court.
19. The Plaintiff through the Law Firm of Gatheru Gathemia & Co. Advocates, filed her written submissions dated 5th September 2022, and submitted that Mungai Gichia (deceased), sold the suit property to Charles Karuga Koinange(deceased), in 1973, and thereby arose a constructive trust. The Plaintiff relied on the case of Juletabi African Adventure Limited & Another Vs. Christopher Michael Lockley (2017) eKLR, which made reference to the case of Twalib Hatayan, Twalib Hatayan & Another Vs Said Saggar Ahmed Al-Heidy & Others (2015) eKLR, wherein the Court held as follows regarding constructive trusts.

“That constructive trusts are equitable remedies imposed by the Court against one who has acquired property by wrong doing. It arises where the intention of parties cannot be ascertained and is meant to guard against unjust enrichment. Most importantly the general rule here is that a trust will automatically arise in favour of the person who advances the purchase money whether or not the property is registered in his name or that of another.”
20. On the issue of whether the Consent of the Land Control Board is required, the Plaintiff relied on the Court of Appeal decision in the case of Willy Kimutai Kitilit Vs. Michael Kibet (2018) eKLR, wherein the Court held that the lack of the consent of the Land Control Board does not preclude the Court from giving effect to equitable remedies, in particular the doctrine of constrictive trust, and further held that the trial Court reached the correct decision and therefore the appeal had no merit.
21. On the issue of indefeasibility of title, the Plaintiff submitted that the Defendants title was acquired illegally, unprocedurally or through a corrupt scheme. She relied on Section 26 of the [Land Registration Act](#), which states;
 - (1) (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner,



subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except— (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original”.
22. The Plaintiff submitted that there was proof of payment of the purchase price of Kshs.36,500/=, a he-goat and a jerrycan of honey by Charles Karuga Koinange (deceased) to Mungai Gichia (deceased).
23. The 2nd – 5th Defendants through the Law Firm of Waweru Nyambura & Co. Advocates, filed their written submissions dated 6th October 2022, and reiterated their opposition to the claim. They submitted that they are the rightful owners of the suit property, being the registered owners and having inherited it from their late father Mungai Gichia. They relied on the case of Dr. Joseph Arap Ngok Vs. Justice Moijo Ole Keiwua & 4 Others Civil Appeal No. 60 of 1997(unreported), wherein the Court held that absolute and indefeasible title to the owner of property can only be subject to challenge on the grounds of fraud or misrepresentation to which the owner is proved to be party. They further placed reliance on Section 26(1) of the *Land Registration Act*, which provides that Certificate of title is held as conclusive evidence of proprietorship, but can be challenged where there is evidence of Fraud or Misrepresentation.
24. The Defendants contended that Charles Karuga Koinange (deceased), did not purchase the property from Mungai Gichia (deceased), by virtue of lack of a valid written agreement and lack of consent from the Land Control Board. The Defendants further contended that there is no grant of probate of alleged Will gifting Marion Wambui Koinange the suit property. The Defendants further contended that Charles Karuga Koinange, failed to establish his interest in the suit property by taking possession. Lastly, the 2nd – 5th Defendants contended that the suit property was never held in trust for the Plaintiff.
25. On the final issue of whether the Plaintiff has capacity to sue, the 2nd – 5th Defendants submitted that only one administrator of the estate of Charles Karuga Koinange (deceased), was joined in the suit, and that the Plaintiff was not Marion Wambui Koinange, and that the Plaintiff and Marion Wambui Koinange were not privy to the alleged sale agreement, and that the suit property never formed part of the estate of Charles Karuga Koinange.
26. On these issues they relied on the case of Simon Kamau Muhindi (Suing as the administrator to the Estate of Esther Muhindi) Vs. Monica Wambui Ngugi & Another (2014) eKLR. The Grant of Letters of Administration Intestate to the Estate of Charles Karuga Koinange (deceased), and the appointed administrators include the Plaintiff and three others. The grant was issued on 27th February 2014.
27. The above being the evidence adduced in Court, and the rival Written Submissions, the Court has now carefully read and considered the pleadings by the parties, the said evidence adduced and the relevant provisions of law and finds that the issues for determination are;
1. Whether there was a valid sale agreement between Mungai Gichia and Charles Karuga Koinange?
 2. Whether the Plaintiff is entitled to the orders sought?
28. The Plaintiff before this Court seeks orders that title to the suit property be transferred to the Plaintiff as an Administrator of the estate of Charles Karuga Koinange(deceased). The grounds for the Orders are that the suit property formed part of the estate of Charles Karuga Koinange (deceased), who allegedly



purchased the said land from Mungai Gichia (deceased), who then gifted it to Marion Wambui Koinange, during his lifetime. The 2nd – 5th Defendants opposed the claim, stating that they were the lawful owners of the suit property having inherited it from their late father Mungai Gichia (deceased).

i. Whether there was a valid sale agreement between Charles Karuga Koinange and Mungai Gichia?

29. The Plaintiff as the Administrator of the estate of Charles Karuga Koinange (deceased), presented a duly executed sale agreement between Charles Karuga Koinange and Mungai Gichia (deceased) executed in 1974, for the sale of the Kiambaa/Kanunga/376, (the suit property) with the purchase price of Kshs. 36,000/= paid in full. The Plaintiff similarly provided evidence that Mungai Gichia's sons received the instalments of the purchase price.
30. PW1 testified that the suit property was sold to her late father by Mungai Gichia (deceased). It was PW1's testimony that Mungai Gichia called Charles Karuga Koinange, and they entered into a contract for the sale of the suit property at the purchase price of Kshs. 36,000/= which was paid in instalments and completed in full in 1983. This was corroborated by PW2 and PW3.
31. Part V of the *Land Act* deals with the administration and management of private land. Section 38 of that Act as amended by Section 55 of the Land Laws (Amendment) Act No. 28 of 2016, deals with the validity of a contract for sale of land. Section 38 (1) provides, in essence, that no suit shall be brought upon a contract for disposition of an interest in land unless the contract on which the suit is founded is in writing, is signed by all parties, thereto and the signature of each party has been attested by a witness who was present when the contract was signed.
32. The *Law of Contract Act*, Kenya provides in Section 3 that:
 - No suit shall be brought upon a contract for the disposition of an interest in land unless-
 - a. The contract on which the suit is founded –
 - i. Is in writing;
 - ii. Is signed by all parties thereto; and
 - b. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.
33. The Plaintiff presented a signed written agreement between Charles Karuga Koinange (deceased), and Mungai Gichia (deceased) for the sale of the suit property. The agreement is in Kikuyu language, but nevertheless contains all the essential ingredients of a contract for the sale of land. This Court finds that there was indeed a valid sale agreement between Charles Karuga Koinange (deceased) and Mungai Gichia (deceased), for the sale of the suit property.
34. The Court of Appeal in the case of Macharia Mwangi Maina & 87 others Vs Davidson Mwangi Kagiri (2014) eKLR, held as follows; upon payment of the full purchase price and survey fees, and putting the purchasers in possession, despite lack of consent from the Land Control Board;
35. The possession of the land by purchasers was an overriding interest in favour of the purchasers and further at paragraph 20 that:

In the instant case, there was common intention between the appellants and the respondent in relation to suit property. Nothing in the *Land Control Act* prevents the claimants from relying upon the doctrine of constructive trust created by the facts of the case.”



36. The Court stated further at paragraph 25 thus:

The transaction between the parties is to the effect that the respondent created a constructive trust in favour of all persons who paid the purchase price. We are of the considered view that a constructive trust relating to land subject to [Land Control Act](#) is enforceable.”

37. The second issue for determination is in regards to the indefeasibility of the title held by the 1st – 5th Defendants. This Court makes reference to Section 26(1) of the [Land Registration Act](#) which provides that:

38. The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions, and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except –

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

39. Section 25 of the [Land Registration Act](#) provides for the rights of a proprietor of land whether acquired on first registration or subsequently for valuable consideration or by an order of a Court shall not be liable to be defeated except as provided in the Act. However, Section 25 (2) of LRA provides that the provisions of the section does relieve a proprietor from any duty or obligation to which the proprietor is subject to as a trustee.

40. Under Section 28 of the [Land Registration Act](#), all registered land is subject to overriding interests, without being noted on the register specified therein which includes trusts, including customary trusts, rights acquired or in the process of being acquired by virtue of any written law relating to Limitation of Actions or by prescription and any other rights provided under any written law.

41. The Court while contemplating indefeasibility of title in the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR wherein Justice Sila Munyao stated as follows:

42. It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation. However, where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, my view has been, and still remains, that it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part. I had occasion to interpret the above provisions in the case of *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another*, Eldoret ELC Case No. 609 B of 2012 where I stated as follows :-

“...it needs to be appreciated that for Section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not



have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions. "I stand by the above words and I am unable to put it better than I did in the said dictum."

Furthermore, Section 80 (2) of the [Land Registration Act](#) provides:

'The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.'

43. Based on the evidence before this Court and considering the legal provisions cited above as well as the quoted authorities; this Court finds that the Mungai Gichia (deceased) and Charles Karuga Koinange (deceased), indeed signed a sale agreement. A purchase price was paid amounting to Kshs. 36,500/=, a he-goat and a jerrycan of honey following the sale agreement.
44. Despite the validity of the sale agreement, the transfer, payment of the purchase price and taking possession, the registration of the suit property was not completed due to the demise of Mungai Gichia. At this point, the 1st – 5th Defendants misrepresentation led to the suit property being transferred to them in the Succession Cause over the estate of Mungai Gichia. No mention was made of Charles Karuga Koinange's (deceased), interest in the suit property. The fact of the matter is that the suit property did not form part of the Mungai Gichia's estate to be inherited by his beneficiaries and ought instead to have been transferred to the Plaintiff who is the Administrator of the estate of Mungai Gichia's (deceased) estate.
45. DW1 testified that he had no knowledge of the sale. However, the same cannot be said of his Co-Defendants who received instalment payments of the purchase price. The law on indefeasibility of title ends on the grounds of fraud or misrepresentation to which the person is proved to be a party; or where the Certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The title acquired by the 1st – 5th Defendants was acquired unprocedurally and illegally and is therefore its indefeasibility is inapplicable herein.
46. The penultimate issue for consideration is whether the transfer of the suit property was void for lack of consent from the Land Control Board. The Courts have, in a number of cases, considered the effect of a failure to obtain Land Control Board's Consent on a transaction. There has, however, been no consensus on the issue, and therefore, the question is still unsettled. In *Macharia Mwangi Maina & 87 others Vs Davidson Mwangi Kagiri* (2014) eKLR, the Court of Appeal sitting in Nyeri held, inter alia, that the possession of the land by purchasers was an overriding interest in favour of the purchasers. It stated further as follows:
47. The other critical issue for our consideration is the lack of consent of the Land Control Board. The trial Court held that the suit property being agricultural land was subject to the [Land Control Act](#), Chapter 302, Laws of Kenya; Section 6 (1) of the said [Land Control Act](#) required the Land Control Board consent to be obtained in respect of the sale transactions; the failure of such consent made the said agreements void and unenforceable against the respondent. It is our considered view that the Honourable Judge erred in failing to appreciate the evidence given by the respondent as to how he intended to complete the sale transaction. The respondent testified that he did not obtain the Land Control Board consent for the sale transactions because he preferred obtaining the consent once he had sold all the 240 plots.
48. Pending the sale of all 240 plots by the respondent, the question that comes to mind is what was to be the legal status and relationship between the respondent and the appellants as purchasers who had



paid the purchase price for individual plots? It is our considered view that the respondent created an implied or constructive trust in favour of those persons who had paid the purchase price pending the sale of all the 240 plots.”

49. The Court went on to cite the decision in *Mwangi & another v Mwangi* (1986) KLR 328, in which it had been held that the rights of a person in possession or occupation of land are equitable rights which are binding on the land and the land is subject to those rights; the absence of any reference to the existence of a trust in the title documents does not affect the enforceability of the trust since the reference to a trustee under Section 126 (1) of the Registered *Land Act* (now repealed) is merely permissive and not mandatory. (See the Court of Appeal decision of *Aliaza v Saul* (Civil Appeal 134 of 2017) [2022] KECA 583 (KLR) (24 June 2022) (Judgment)).
50. Having found that there was indeed a valid and executed sale agreement between Charles Karuga Koinange (deceased) and Mungai Gichia (deceased), that there was full payment of the purchase price, this Court finds that a constructive trust was created in favour of Charles Karuga Koinange (deceased).
51. The final issue for determination is whether the Plaintiff has capacity to sue in this matter. The Plaintiff herein is the Administrator of the estate of Charles Karuga Koinange, as stated in the Grant of Letters of Administration Intestate issued on 27th February 2014.
52. It is trite law that for one to institute a legal action and proceedings in the estate of a deceased person, an application should be clothed with proper legal capacity (*Locus Standi*) to do so. In order to attain the said *Locus Standi*, the applicant has to apply for either a Limited Grant or the Special Ad Litem Ad Colligenda bona under the provisions of Sections 54 and 55 of Laws of Succession Cap. 160 or full Grant of Letters of Administration under the provisions of the Laws of Succession. Contrary to that, the proceeding would be susceptible to revocation under the provisions of Section 74 (1) (a) (b) and (c) of the Cap 160 Laws of Kenya.
53. There are several authorities to support this legal substratum which include but not limited to Otieno – Versus - Ougo & Another (1986-1989) earl 468; and in *Rajesh Pranjiran Chudasama –versus- Sailesh Pranjivan Chudasama* (2014) eKLR where the Court addressed itself on the issue of *Locus Standi* in succession matters as follows: -

..... But in our view the position in law as regards locus standi in succession matter is well settled. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant of Letters of Administration in cases of Intestate Succession.”
54. In the case of Otieno –versus Ougo (Supra) this Court rendered itself thus: -

....an Administrator is not entitled to bring any action as administrator before he has taken out Letters of Administration. If he does, the action is in competent as the date of inception To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the Court, but to say he has no locus means he cannot be heard, even on whether or not he has a case worth listening to
55. In the present case, the Plaintiff filed for Letter of Administration which were duly granted and attached in the present suit. The Court finds that the Plaintiff had capacity to pursue this claim on behalf of the Estate of Charles Karuga Koinange (deceased).
56. Having considered the evidence and the issues above, this Court holds as follow:
 - a. That there was a valid sale agreement between Charles Karuga Koinange (deceased) and Mungai Gichia (deceased).



- b. That the 1st – 5th Defendants title was acquired unprocedurally.
57. Having carefully considered the available evidence and the relevant provisions of Law, the Court finds that the Plaintiff has proved her case against the Defendants herein on the required standard of balance of probabilities.
58. For the above reasons, the Court dismisses the Defendants Defence and enters Judgement for the Plaintiff against the Defendants herein Jointly and Severally as prayed in the Plaint dated 18th August 2017, in terms of prayers No. (a) (b) (c) (d) (e) (f) (g) and (h).
59. For avoidance of doubt, the Plaintiff is entitled to costs of this suit.
60. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 9TH DAY OF FEBRUARY 2023.

L. GACHERU

JUDGE

In the presence of;

Mr MC Ronald for the Plaintiff

1st Defendant – Withdrawn

Waweru Nyambura for the 2nd – 5th Defendants

6th Defendant – Absent

Joel Njonjo - Court Assistant

L. GACHERU

JUDGE

9/2/2023

