



**Muchiri (Suing on behalf of Hura Farmers Self-Help Group) & another
v Murenga & 2 others (Environment & Land Case 270 & 317 of 2014
(Consolidated)) [2023] KEELC 458 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 458 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 270 & 317 OF 2014 (CONSOLIDATED)
JO OLOLA, J
FEBRUARY 2, 2023**

BETWEEN

**MAINGI MUCHIRI (SUING ON BEHALF OF HURA FARMERS SELF-HELP
GROUP) 1ST PLAINTIFF**

IHITHE COMPANY LIMITED 2ND PLAINTIFF

AND

LUCY WANGARI MURENGA 1ST DEFENDANT

**GRACE MUTHONI KIHARA (BOTH SUED AS ADMINISTRATORS OF THE
ESTATE OF JOSEPH NDIRANGU KAIGWA ALIAS JOSEPH NDIRANGU
ALIAS JOSEPH NDIRANGU) 2ND DEFENDANT**

CATHERINE NGIMA NDEGWA 3RD DEFENDANT

JUDGMENT

1. The genesis of this suit is Nyeri HCCC No. 140 of 2010. By a Complaint dated 13th October 2010, one Joseph Ndirangu (now deceased) instituted the said suit against the Chief Land Registrar, the District Land Registrar Laikipia County and Catherine Ngima Ndegwa (the 3rd Defendant herein) seeking the following:
 - (a) A declaration that the sub-division already done (on LR No. 2760/41) is illegal;
 - (b) An order directing the 1st Defendant to resurvey land parcel No. 2760/41 which is the subject matter of this suit, sub-divide (it) into 11 new in equal proportions to the eleven rightful proprietors (sic);
 - (c) An order directing the 1st and 2nd Defendants to issue a Certificate of Title to the Plaintiff for his portion;



- (d) An order directing the 1st and 2nd Defendants to cancel the title unlawfully issued to the 3rd Defendant;
 - (e) General damages for fraud and denial of the Plaintiff's rights; and
 - (f) Costs of the suit.
2. Those prayers arose from the said John Ndirangu's contention that the suit property had been acquired by his father one Kaigua Munyira together with 10 other Partners as Partners in common and equal shares. Later John Ndirangu's father passed away in 1984 and he was in the year 1996 issued with a Certificate of Confirmation of Grant.
 3. It was John Ndirangu's case that following the issuance of the Grant, the Chief Land Registrar did issue him with a Letter to take to the District Land Registrar Laikipia County to enable him to be issued with a title for his share of the father's land. He accused the District Land Registrar of thereafter illegally proceeding to sub-divide the land into 10 portions instead of 11 portions and thereby denying him his entitlement.
 4. In the said initial suit, John Ndirangu further accused the defendants named therein of colluding to register the 10 portions of land in the name of his father's partners and thereafter transferring one portion to the 3rd Defendant herein whom he stated had no right to inherit from his father's estate and hence the orders sought in the suit.
 5. While the said Nyeri HCCC No. 140 of 2010 was later on 27th November, 2014 transferred to this Court as ELC No. 247 of 2014, it was apparent from the record herein that the Claimant John Ndirangu passed on in June, 2012 some two years after instituting the suit.
 6. Subsequently and by a Plaint dated 9th August 2012, Maingi Muchiri (the 1st Plaintiff herein) instituted the second suit herein being Nyeri HCCC 177 of 2012. By the said suit expressed to be brought on behalf of Hura Farmers Self Help Group and filed herein on 10th August 2012, the 1st Plaintiff sought orders against the two widows and the administratixes of the Estate of John Ndirangu being Lucy Wangari Mukenga (the 1st Defendant) and Grace Muthoni Kihara (the 2nd Defendant). The 1st Plaintiff also sought orders against the same Catherine Ngima Ndegwa (the 3rd Defendant). The 1st Plaintiffs' prayers were lumped as follows:
 - (a) A declaration that the sub-division, transfer, registration and issuance of title documents in the name of the 3rd Defendant was fraudulent and hence are of no legal consequence (worthless); cancellation of her said title documents reversal of the transactions in the Green Cards and a new title for the 400 acres may be issued in the name of the 1st and 2nd Defendant in place of the deceased and it may be re-surveyed afresh so that the Plaintiff group get their 200 acres accordingly, and the original titles of the 3rd Defendant may be dispensed with in the processing of the new title documents; specific performance for transfer to the Plaintiff group of 200 acres and the original titles may also be dispensed with as aforesaid. The Deputy Registrar of this Honourable Court may be authorized to execute the necessary documents in place of the 3rd Defendant to facilitate valid, legal and successful transfer of 200 acres out of the suit premises in the name of the Plaintiff's group and also mesne profits for loss of user thereof with effect from the 25th August, 2000 and also general damages for trespass and delivery of vacant possession of the land by the 3rd Defendant, and if need be, by her forcible eviction by Court bailiff with the assistance of Police to pave way for distribution and possession to the members (sic);



- (b) Alternatively, a refund of the purchase-money paid by the Plaintiff group together with the survey fees paid and other related expenses incurred in pursuance thereto with interest at 14% from 25th August 2000; and
- (c) Costs of the suit.
7. Those numerous prayers arise from the 1st Plaintiff's contention that by a land Sale Agreement dated 25th August, 2000 between the 1st Plaintiff and the 1st and 2nd Defendant's deceased husband – Joseph Ndirangu, the 1st Plaintiff purchased one half of the deceased's rightful share out of the parcel of land known as LR No. 2760/41 – Kimuri at a consideration of Kshs.4,200,000/=.
 8. The 1st Plaintiff avers that pursuant to the said agreement, the deceased undertook to transfer to the Plaintiff group the said portion of land but the same was instead illegally sub-divided and the deceased's entitlement was registered in the name of the 3rd Defendant.
 9. A third near – similar suit was filed in regard to the same land around the same period of time. By a Plaint dated and filed herein on 13th August 2012, Messrs Iithe Company Limited (the 2nd Plaintiff herein) instituted Nyeri ELC No. 179 of 2012 against the same three Defendants sued in ELC 177 of 2012 seeking against them the very same orders as sought in Nyeri ELC 177 of 2012.
 10. Following the transfer of the said suits from the High Court to this Court in November 2014, Nyeri HCCC No. 177 of 2012 filed by the 1st Plaintiff became ELC No. 270 of 2014 while Nyeri HCCC No. 179 of 2012 filed by the 2nd Plaintiff herein became ELC No. 317 of 2014.
 11. Subsequently and by an order issued herein on 23rd February 2015, the three suits, Nyeri HCCC No 140 of 2010 (ELC No. 247 of 2014), HCCC No 177 of 2012 (now ELC No. 270 of 2014) and HCCC No. 179 of 2012 (now ELC No. 317 of 2014) were consolidated into one for hearing and determination. However following an application and by a Ruling herein dated 22nd March 2017, the Honourable Lady Justice L. Waithaka declared ELC 247 OF 2014 to have abated on 7th June, 2013. Consequently ELC No. 270 of 2014 and 317 of 2014 remain the only consolidated suits herein with the Plaintiff in ELC 270 of 2014 treated as the 1st Plaintiff while the Plaintiff in ELC 317 of 2014 was made the 2nd Plaintiff.
 12. I was unable to trace any Statement of Defence filed by the 2nd Defendant to the two claims. Lucy Wangari Murenga (the 1st Defendant) however did file a Statement of Defence to the 1st Plaintiff's claim on 29th January, 2019. In the said pleading; the 1st Defendant denies the 1st Plaintiff's claim and asserts that the 1st Plaintiff Group were mere tenants on the suit land.
 13. The 1st Defendant further avers that the Agreement of Sale relied on by the 1st Plaintiff was not valid as the 1st Plaintiff Group have not provided any evidence of spousal consent to the sale. The 1st Defendant denies being part of any dishonest and fraudulent transaction and invites the 1st Plaintiff to strict proof.
 14. Catherine Ngima Ndegwa (the 3rd Defendant) has filed two Statements of Defence to the two claims. In response to the 2nd Plaintiff's case, the 3rd Defendant has filed a Statement of Defence dated 22nd October, 2012 in which she asserts that she is a stranger to the allegations that the deceased sold any land to the 2nd Plaintiff.
 15. The 3rd Defendant asserts that her father Ephraim Kaigwa Munyuiria alias Kaigua Manyuiria and 10 others jointly purchased LR No. 2760/41 Kimuri measuring approximately 4,800 acres. The 3rd Defendant avers that other than her father and one Mathai Ndikwe Mungatu who were jointly allocated one share, the other partners were each allocated one share of the land.



16. The 3rd Defendant avers further that prior to her father's death, he had transferred to her his share in the said Kimuri Farm and hence John Ndirangu (the deceased) had no rightful title to transfer as alleged.
17. That is also the same position taken by the 3rd Defendant in her Statement of Defence also dated and filed on 22nd October 2012, in response to the 1st Plaintiff's claim.

THE PLAINTIFFS' CASE

18. At the trial herein, the two Plaintiffs called a witness each in support of their respective cases.
19. PW1 – Maingi Muchiri is a farmer in Murang'a and a representative of Hura Farmers Self Help Group. He told the Court he is the Chairman of the Group.
20. Relying on his Statement dated 9th August 2012, PW1 testified that on 25th August 2000 they had entered into an agreement with Joseph Ndirangu under which the Hura Farmers Self Group and Ithethe Company Limited (the 2nd Plaintiff) jointly purchased a total of 400 acres out of LR No. 2760/41 – Kimuri Marura at an agreed consideration of Kshs.4,200,000/=. As at the time of sale the land was not in the name of Joseph Ndirangu Kaigua but he had a Certificate of Confirmation of Grant from the High Court at Nairobi to prove that the land belonged to him.
21. PW1 told the Court their Group purchased 200 acres while the 2nd Plaintiff also bought 200 acres. The purchase price was paid in full to Joseph Ndirangu from August 2000 to mid-2012 when he passed away. PW1 further told the Court that pursuant to the Sale Agreement, the deceased had allowed them to enter the land and sub-divide the same with the help of a Surveyor on 28th February, 2001.
22. PW1 testified that they were waiting for the seller to have the land registered in his name and to complete the transfer of the land to the Group. In that respect, the Group facilitated the seller to travel severally to the Lands Office in Nairobi to follow up on the transaction. In October 2010, the seller filed a case against the Chief land Registrar, the Land Registrar Laikipia and the 3rd Defendant herein but he died on 7th June, 2012 before he could transfer the land and hence the claim against his estate.
23. On cross-examination, PW1 told the Court each of the Plaintiffs paid a total of Kshs.2,100,000/= for the 200 acres that each was purchasing. He told the Court they sued the 1st Defendant because the land was sold by her husband. PW1 conceded he had nothing to show that the 1st Defendant was the legal representative of her husband's estate and that the deceased never obtained the land Control Board consent to sell the land.
24. PW1 testified further that when they executed the Sale Agreement on 25th August 2000, they had not done a Search to establish in whose name the land was. The seller showed them a letter showing the land was in his name.
25. On being shown the Green Card showing that the land was transferred to Mathai Ndikwe and the 3rd Defendant on 16th December 1996, PW1 told the Court they were unaware of that fact. While conceding that the land initially belonged to the seller's father one Kaigua Manyuria, PW1 told the Court they were unaware that Kaigua only owned 200 acres of the land.
26. PW2 – Linus Gitonga Mathenge is a resident of Embaringo in Kieni West and a director of Ithethe Company Limited (the 2nd Plaintiff). Relying on his statement recorded and filed herein on 13th August 2012, PW2 told the Court that together with the 1st Plaintiff they purchased 400 acres of land jointly from Joseph Ndirangu Kaigua at a consideration of Kshs.4,200,000/=. Each of the Plaintiffs were to get 200 acres of the land to be hived out of LR No. 2760/41 Kimuri, Marura in Laikipia.



27. PW2 told the Court they paid for their 200 acres leaving a balance payable once the seller transferred the land to the Company. The seller allowed them to enter the land and sub-divide the same with the help of a surveyor on 28th February, 2001. PW2 told the Court the seller had been visiting the Land Office in Nairobi and was making efforts to transfer the land when he passed away on 7th June, 2012. The Company was now claiming the land from his estate.
28. On cross-examination, he told the Court they paid the purchase price both in cash and by way of cheque. He did not however have a copy of the cheque. They had not however completed payment. Conceding that Kimuri farm falls within an agricultural area, PW2 testified that the seller had told them he had gone to the Land Control Board.
29. PW2 further conceded that he was aware the 3rd Defendant was a sister to Joseph Ndirangu. He told Court the was unaware they were required to do a search before purchasing the land. In this case they had just accepted what Joseph Ndirangu had shown them.
30. On being shown the Green Card, PW2 conceded it showed that the land was transferred to the 3rd Defendant on 16th September, 1996. Ndirangu had however told them he had won the case they had with her sister-the 3rd Defendant and that the will she was using was a forgery.

THE DEFENCE CASE

31. The Defence called a total of 3 witnesses who testified in support of their respective cases at the trial.
 32. DW1 – Lucy Wangari Murenga is the 1st Defendant and a farmer in Tinganga Village, Mathira. Relying on her Statement dated 8th December 2021, DW1 told the Court the suit property belonged to her husband and that as a wife, she was unaware of any sale of the same and had never consented to any sale to the Plaintiffs or anyone else.
 33. DW1 testified that her husband merely used to lease the land but he had never sold it to anyone.
 34. On cross-examination, DW1 told the Court the land initially belonged to 11 men and that her husband Joseph Ndirangu was one of them. Ndirangu’s father was known as Ephraim Kaigua. DW1 told the Court she had heard of the 3rd Defendant but did not know her well. She had however heard the 3rd Defendant was from the family of Ephraim Kaigua.
 35. On further cross-examination, DW1 conceded that Ephraim was one of the 11 men who had initially bought the land. The said Ephraim was the father of her husband Joseph Ndirangu and the 3rd Defendant. She told the Court her father in law owned 405 of the 4500 acres comprised in the suit property.
- 36 DW1 told the Court that she was married in 1988 and that her husband used to cultivate maize and beans on the land. She has since heard that it was the 3rd Defendant who was using the land. Her husband had got letters of administration for her father-in-law’s estate but she was unaware if the 3rd Defendant had also filed a Succession cause in relation to the same.
37. DW2 – Catherine Ngima Ndegwa is a farmer in Mweiga Endarasha and the 3rd Defendant herein. She told the Court she was the owner of the suit property.
 38. DW2 testified that in 1962 her father summoned her with her brother Joseph Ndirangu and told them he had 10 shares of land in Kimuri. He asked the two to help him pay for the land as he had no money having just come from detention. Joseph declined saying he did not want land in the dry area of Kieni. DW2 however agreed to help her father and paid from the year 1965.



39. DW2 further testified that before his death, her father transferred the half-share of the land to herself. The father also made a will indicating the share of land to be DW2's. She was unaware if anyone had bought any land from her brother.
40. On cross-examination DW2 told the Court she had produced a cheque and Bank statements to show she paid for the land. She however conceded that the bank Statements did not show what the payments were for. She told the Court she paid Kshs.16,000/= and a further Kshs.500/= for the farm. Her father transferred the half-share to herself in 1983 although she did not register the transfer in the lands office.
41. DW2 told the Court that after the death of her father in 1984 she had filed for probate but abandoned the same since her father had already left the land to herself. It was eventually transferred to her name in 1996. DW2 told the Court she used her father's will and other documents to have the land transferred to her name.
42. On further cross-examination, DW2 testified that though she had not produced a Land Control Board consent in Court, she had obtained the same before transfer. She further told the Court she was aware her brother had filed a Succession cause in Nairobi. She told the Court she applied for revocation of the Grant obtained in the cause but did not follow it up after the land was transferred to her name. She denied that she had obtained the land illegally.
43. DW3 Stanley Karori Gakoge is a farmer in Iriga. He told the Court he had known the 3rd Defendant for a long time.
44. DW3 testified that he was one of the 11 Partners who had jointly bought the suit property. DW3 told the Court two of the Partners shared one share while the others had one share each. He further told the Court he was aware it was the 3rd Defendant who had helped the father to pay for the suit land.
45. DW3 further told the Court that John Ndirangu who was a brother to the 3rd Defendant could not sell the land as he had no title thereto. He could also not inherit the land as he already had his portion in Gatung'ang'a. Kimuri farm however belonged to the 3rd Defendant as she is the one who had helped to pay for the same.
46. On cross-examination, DW3 conceded he could not tell how much money the 3rd Defendant had contributed toward the sale. He also did not know when the 3rd Defendant was registered as the owner and how the registration was done.
47. DW4 – John Wambugu is a farmer in Mweiga. He told the Court the 3rd Defendant's mother was a friend to his wife. He further told the Court he was a friend to the 3rd Defendant's father.
48. DW4 testified that the 3rd Defendant's father had two wives. The 1st wife had one son – Joseph Ndirangu and one daughter whose name DW4 could not recall. The 2nd wife had two daughters with the 3rd Defendant being one of them. DW4 told the Court he was a witness to a will executed by the 3rd Defendant's father in 1984.
49. On cross-examination, DW4 stated that the 3rd Defendant's father Ephraim called him to Nairobi to witness the will. They went with Ephraim and the 3rd Defendant to a lawyer who prepared the will. On further cross-examination, DW4 told the Court the Will was prepared by a lawyer but in the 3rd Defendant's house somewhere near Kenyatta Hospital. He told the Court that the Will was prepared in English and the lawyer explained it to him. He did not see the Gikuyu version of the Will.
50. DW5 – John Wachira Maathai is a farmer and a businessman residing in Nanyuki. He told the Court the 3rd Defendant was his aunt. DW5 testified that the 3rd Defendant's father and one Ndikwe held one



share of Kimuri Farm and that it was the 3rd Defendant who paid for her father's half –share of the farm. DW5 further told the Court he sat in a Committee in Kimuri Farm to deal with sub-divisions and that he is the one who assisted the 3rd Defendant to transfer the shares.

51. On cross-examination, DW5 insisted that it was the 3rd Defendant who used to send money to his grandfather Ephraim to pay for the shares even though he had no documents to prove it. He told the Court that he saw the evidence of the payment while serving in the Kimuri farm Sub-division Committee.
52. DW6 – Margaret Watetu Nduriri is a livestock farmer in Endarasha. She told the Court she is a neighbour of the 3rd Defendant. She knew the 3rd Defendant's father Ephraim. She further told the Court that the late Ephraim told her she had left the land called Kimuri Farm to the 3rd Defendant as it was the 3rd Defendant who had assisted him in paying for the same.

ANALYSIS AND DETERMINATION

53. I have carefully perused and considered the pleadings in the two consolidated suits, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the detailed written submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
54. The two Plaintiffs pray for a declaration that the sub-division, transfer, registration and issuance of title documents for the parcel of land known as LR No. 2760/41 situated in Kimuri Marura in Laikipia (Kimuri Farm) in the name of the 3rd Defendant was fraudulent. Accordingly they urge the Court to cancel the title documents, reverse the transaction on the Green Cards and direct the issuance of new titles for the 400 acre parcel of land in the names of the 1st and 2nd Defendants.
55. The Plaintiffs further urge the Court to dispense with the presence of the 3rd Defendant and to authorize the Deputy Registrar of this Court to execute necessary documents to facilitate the transfer of 200 acres of the suit land to each of the Plaintiffs. They further pray for orders of vacant possession by the 3rd Defendant and for mesne profits to be paid to them for loss of user from 25th August, 2000.
56. In the alternative, the Plaintiffs pray for a refund of the purchase price paid to the now deceased husband of the 1st and 2nd Defendants together with the survey fees and other related expenses incurred pursuant to the sale transaction with interest at 14% per annum from the date of the Sale Agreement.
57. It was the Plaintiffs case that by the Agreement of Sale executed between them and the late Joseph Ndirangu on 25th August, 2000, they had both purchased 400 acres being the rightful share of the deceased in the parcel of land commonly known as Kimuri Farm at a total consideration of Kshs.4,200,000/=.
58. The Plaintiffs aver that pursuant to the said Agreement; the deceased undertook to transfer the land to themselves but instead, the land was sub-divided irregularly with the result that the deceased's entitlement was wrongfully and fraudulently registered in the name of the 3rd Defendant.
59. The 1st and 2nd Defendants were sued in their capacity as widows and the Legal Representatives of the late Joseph Ndirangu. While the 2nd Defendant failed to enter appearance, the 1st Defendant denies that her husband sold any land to the Plaintiffs. It is her case that the Plaintiffs were mere tenants on the land and that if indeed there was any Sale Agreements executed with the Plaintiffs, the same was irregular and invalid for want of a spousal consent.



60. On her part, the 3rd Defendant asserts that she is the rightful proprietor of the suit property and is a stranger to the allegation that her deceased step-brother sold any land to the Plaintiffs. It is the 3rd Defendant's case that her father the late Ephraim Kaguria Munyira (also known as Kaigua Manyuira) had together with 10 other individuals jointly purchased the suit property measuring some 4,800 acres.
61. The 3rd Defendant told the Court that while 9 of the joint purchasers of the land were each allocated one share of the property, her father and one Mathai Ndikwe Mungatu were jointly allocated one share of the property. It is the 3rd Defendant's case that prior to his death in 1984, her father transferred to herself his half-share in the said Kimuri Farm subsequent to which she was duly registered as the proprietor of the half-portion of the land.
62. Arising from the various positions taken by the respective parties herein, the following issues arise for the Court's determination:
- (i) Whether there was a Sale Agreement executed on 25th August, 2000 between the deceased and the two Plaintiffs, and if so, whether the same were valid, legal and binding;
 - (ii) Whether the 3rd Defendant had a valid title over the Suit Property; and
 - (iii) Who should bear the costs of this suit.

(i) Whether there was a Sale Agreement executed on 25th August, 2000 between the deceased and the two Plaintiffs, and if so, whether the same was valid, legal and binding.

63. In her pleadings, Lucy Wangari Murenga (the 1st Defendant) asserts that the Plaintiffs herein were mere tenants on the suit property and that the Agreement of sale relied on were not valid as she had not provided any spousal consent to the sale. Testifying at the trial herein, the 1st Defendant told the Court that the suit property belonged to her husband and that she was unaware of any sale thereof to the Plaintiffs or to anyone else.
64. As it were, the existence of the Sale Agreement was not much of a matter of doubt. The Plaintiffs herein produced in evidence the Sole Agreement executed between themselves as joint purchasers and the 1st Defendant's husband Joseph Ndirangu as the vendor on the said 25th day of August, 2000. The said Agreement provided in the relevant portion as follows:

“AND WHEREAS the vendor is the registered owner of all that parcel of land known and referred to as the Nanyuki LR No. 2760/41 Kimuri situate in Marura/Nanyuki Block IV within the Republic of Kenya

AND WHEREAS the Purchasers jointly are desirous of buying and the vendor is desirous of selling the said land parcel subject to the terms and conditions herein appearing;

NOW THEREFORE IT IS HEREBY AGREED by the vendor and the joint Purchasers as follows:

1. The Vendor shall sell and the Joint Purchasers shall buy all that land parcel known and referred to as Nanyuki LR 2760/41 Kimuri situate in Marura/ Nanyuki Block IV consisting of two (2) pieces of land separated by a road and comprising of FOUR HUNDRED (400) acres or thereabouts.
2.
 - (a) The consideration or purchase price shall be the sum of Kenya shillings Four Decimal Two (4.2) Million so that the price of



ONE (1) acre shall be the sum of Kenya Shilling Ten Thousand and Five Hundred (Kshs.10,500/=) only.

(b) The Purchasers have jointly paid to the Vendor, upon execution of this Agreement, the sum of Kenya shilling Six Hundred Fifty Five Thousand and Three Hundred (Kshs.655,300/=) only, receipt whereof the Vendor hereby acknowledges.

(c) The balance of the Purchaser price and/or consideration shall be paid by the Purchasers jointly to the vendor within a period of TWELVE (12) months through a bank account whose particulars the Vendor shall supply to the Purchasers within THIRTY (30) days of the date hereof.

3. The Vendor shall within THREE (3) months of the date hereof apply for requisite consent of the Land Control Board at his expense.

4. ...”

65. The said Agreement was executed by representatives of the two Plaintiffs and the said Joseph Ndirangu (the deceased) before IEK Mukunya Advocate in Nyeri. I did not hear the 1st Defendant to contend that the signature on the document was not that of her deceased husband.

66. In respect of her consent as a spouse not having been obtained, I was unable to find any basis for the contention. As it were, the requirement that consent of the spouse be provided before matrimonial property can be sold or transferred to a third Party was not explicitly set out in our laws until the enactment of the *Land Act* of 2012 which Act came into force on 2nd May, 2012. In the year 2000 when the 1st Defendant’s deceased husband executed the Sale Agreement, there was no law that I am aware of that required spousal consent.

67. Arising from the foregoing, it was evident to me that there was indeed in existence a valid Sale Agreement executed between the 1st Defendant’s deceased husband on the one hand and the two Plaintiffs on the other.

68. From the material placed before the Court however, it was apparent that the Plaintiffs did not bother themselves to conduct due diligence before entering into the Sale Agreement. Black’s Law Dictionary 8th Edition gives a definition of due diligence as follows:

“The diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or discharge an obligation.”

69. In this respect and in a transaction involving the purchase of land, it was a clear duty on the part of the Purchaser to conduct due diligence and inform itself on all the relevant aspects concerning the property that is on sale. In his testimony before the Court on behalf of the 1st Plaintiff, Maingi Muchiri (PW1) conceded that they relied on a letter the vendor showed them that indicated that the suit property was in the vendor’s name. Accordingly Hura Farmers Self-Help Group (the 1st Plaintiff) entered into the Sale Agreement without doing any search at the Lands Registry to establish the name of the then registered proprietor of the suit property.

70. That was the same situation that befell Ihithe Company Limited. Testifying on behalf of the Company, its director Linus Gitonga Mathenge (PW2) conceded that they were unaware that they were required



to do a search before purchasing the land. In this particular instance, they had just accepted what Joseph Ndirangu had shown to them before entering into the sale transaction.

71. If the Plaintiffs had done a little due diligence, they would have discovered that some Four (4) years before they executed the Sale Agreement, the suit property had been registered in the name of the 3rd Defendant and one Mathai Ndikwe Mungatu. The Plaintiffs would have also discovered that contrary to the misrepresentation by the late Joseph Ndirangu that he was capable of disposing 400 acres of land to themselves, the late Ndirangu's father Ephraim Kaigwa Munyira (also known as Kaigua Manyira) from whom the deceased vendor purported to derive his entitlement had only owned half a share being equivalent to 200 acres of the land they were jointly purchasing.
72. From the material placed before me, the parcel of land known as Kimuri Farm was initially purchased jointly by the said Ephraim Kaigwa Munyira together with 10 other Partners. The said Ephraim Kaigwa Munyira had two wives – one of whom gave birth to the 1st Defendant's husband Joseph Ndirangu while the other gave birth to the 3rd Defendant – Catherine Ngima Ndegwa.
73. It was not in contest that while 9 of the original Partners were each allocated one share of the property, 2 of them - Ephraim Kaigwa Munyira and the said Mathai Ndikwe Mungatu had half-a-share each entitling each one of them to about 200 acres of the suit property. That much can be discerned from the late Joseph Ndirangu's pleadings in the suit he initially instituted herein two years before his death being Nyeri HCCC No. 140 of 2010. His widow, the 1st Defendant herein, equally confirmed that history when cross-examined on her testimony herein. That being the case, it was apparent that the Plaintiffs had been duped that they could buy from him 400 acres of land which land he did not possess.
74. It was further clear to me that while the Sale Agreement purported that the suit property was in the name of the vendor as at the time of sale, nothing could have been further from the truth. From the material placed before the Court, it was apparent that following his father Ephraim's death in 1984, Joseph Ndirangu had filed a Succession Cause being Nairobi High Court Succession Cause No. 647 of 1991. On 19th July 1996, Joseph Ndirangu was issued with a Certificate of Confirmation of Grant in the said cause.
75. It was further apparent that when Joseph Ndirangu presented the Grant to the Nanyuki Land's Office, he discovered that the parcel of land had on 16th December, 1996 been registered in the name of his half-sister the 3rd Defendant herein and the said Mathai Ndikwe Mungatu. This state of affairs forced Joseph Ndirangu to lodge a restriction on the land on 5th February, 1997 and nothing much had changed when he purported to sell the suit land to the Plaintiffs purporting it to be in his name in the year 2000.
76. Arising from the foregoing, while the Plaintiffs had entered into a valid Contract with the late Joseph Ndirangu, I was not persuaded that they had acquired any valid title over the suit property. The vendor was not the registered owner of the property and had no title to the 400 acres of land that he purported to dispose to them.

(ii) Whether the 3rd Defendant had a valid title over the suit Property

77. From the material placed before the Court, the 3rd Defendant and one Mathai Ndikwe Mungatu were registered as joint proprietors of the suit land on 16th December, 1996. Subsequently upon sub-division of the parcels of land the 3rd Defendant came to be registered on 30th December, 2010 as the proprietor of the parcels of land now known as Nanyuki/Marura Block 4/96 (Kimuri) measuring 86.215 Ha. and Nanyuki/Marura Block 4/94 (Kimuri) measuring 6.65 Ha.
78. Both the Plaintiffs and the 1st Defendant have attacked the 3rd Defendant's registration as the proprietor of the land as being fraudulent, irregular and unlawful. The Plaintiffs and the 1st Defendant assert



that the transfer of the suit property to the 3rd Defendant did not follow the process of transmission provided for in law. It is their case that the 3rd Defendant ‘cut corners’ and committed a glaring fraud by transferring the property belonging to her deceased father to herself in a bid to defeat and/or frustrate her step-brother’s rightful inheritance.

79. On her part, the 3rd Defendant told the court that she is the one who assisted her father Ephraim Kaigwa Munyira to pay for the half-share of the property he was entitled to in the Kimuri Farm and that his now deceased step-brother Joseph Ndirangu had refused to co-operate with their father following his request for help.
80. It was further the 3rd Defendant’s case that as a gesture of goodwill for her contributions, the old man had during his lifetime transferred his share of the suit property to herself. In support of that proposition, the 3rd Defendant produced a transfer of share dated 1st August, 1983 in evidence (3rd Defendant’s Exhibit 1). It was further her case that her father had written a Will before his death further bequeathing the property to herself.
81. While I did not find anything much to demonstrate the amount of support the 3rd Defendant may have given her father towards the purchase of the land, one of her witnesses Stanley Karori Gakoge (DW3) who was apparently one of the original 11 joint purchasers of the said Kimuri Farm testified that he was aware it was the 3rd Defendant who had helped the late Ephraim Kaigwa Munyira to purchase his share of the suit land.
82. While DW3 could not tell the court how much the 3rd Defendant had contributed to the land, the document termed Transfer of Shares (Exhibit 1) said to have been executed by the deceased on 1st August, 1983 reads as follows:

TRANSFER OF SHARES

I, MR. KAIGWA MANYUIRA of Post Office Box 160 Nanyuki in the Republic of Kenya hereby transfer and relinquish all my interest in my piece of land situate at Kimuri Farm, Laikipia District to Catherine Ngima Ndegwa (my daughter) of Post Office Box 30197 Nairobi free of charge. It is my daughter hereinabove who had advanced me the money to purchase the above plot in the above named farm.”

83. From the Certificate of Death produced by the 3rd Defendant, the late Ephraim Kaigwa passed on a year later on 20th July 1984 after executing the document. I did not hear the Plaintiffs and or the 1st Defendant to question the authenticity of the document. In addition, the 3rd Defendant has produced an Affidavit by the Chairman, Secretary and Treasurer of the joint partnership known as Kimuri Farm sworn on 16th April 1997 wherein the three officials confirm that the 3rd Defendant made payments in the name of her father and that she was the one entitled to inherit his share in the Farm.
84. As it were, all allegations of fraud must be pleaded and strictly proved. I was not persuaded under the circumstances herein that the 3rd Defendant had been guilty of any fraud in the registration of the suit property into her name. Under Section 26 of the *Land Registration Act*, this Court is required to take the Certificate of Title so issued by the Registrar upon registration as prima facie evidence that the person so named as the proprietor of the land is the absolute and indefeasible owner thereof unless the same has been acquired illegally, unprocedurally or through a corrupt scheme. In the circumstances herein, it was apparent to me that the property was gifted to the 3rd Defendant during her father’s lifetime.
85. In any event, arising from my conclusion above that the Plaintiffs had not acquired any valid title to the land, the only other parties that could have raised any claim to the land would have been the 1st and 2nd



Defendants as the widows of the late Joseph Ndirangu. None of them have however raised any claim against the 3rd Defendant in relation to the title issued to her in respect of the suit property.

86. It follows that I did not in the circumstances find any material to warrant the impeachment of the 3rd Defendant's title and I decline to do so.

(iii) Who should meet the costs of this suit

87. Under Section 27 of the *Civil Procedure Act*, the costs of and incidental to all suits shall be in the discretion of the Court. Ordinarily, costs follow the cause or event. From the material placed before me, it was apparent that the Plaintiffs were the authors of their own misfortune. If they had taken any steps to carry out due diligence before executing the Sale Agreement with the late Joseph Ndirangu on 25th August, 2000, the circumstances leading to the institution of this suit would not have arisen. While they filed the suit against the 1st and 2nd Defendants on the basis that they were the legal representatives of the estate of the said Joseph Ndirangu, there was no evidence placed before the Court to demonstrate that the two had been issued with a grant ad litem or Limited Grant of Letters of Administration for the said estate. It follows that this suit was clearly misconceived and incompetent.

88. In the premises herein the Plaintiffs suit is hereby dismissed with costs to the Defendants.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 2ND DAY OF FEBRUARY, 2023.

In the presence of:

Mr. Muthoni for the Plaintiffs

Mr. Macharia holding brief for Warutere for 1st Defendant

Ms. Hellen Njoki for the 3rd Defendant

Court assistant - Kendi

.....

J. O. Olola

JUDGE

