



**Bendig & 2 others ((Suing through their Attorney John Mwaura Ngaruiya))
v Super Macro Ventures Company Limited & another (Environment & Land
Case 578 of 2016) [2022] KEELC 2428 (KLR) (5 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2428 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 578 OF 2016**

EK WABWOTO, J

MAY 5, 2022

BETWEEN

WINKATE WANGONYO BENDIG 1ST PLAINTIFF

JACKLINE DARIS BENDIG 2ND PLAINTIFF

ERIC FRANCIS MACHARIA 3RD PLAINTIFF

(SUING THROUGH THEIR ATTORNEY JOHN MWAURA NGARUIYA)

AND

SUPER MACRO VENTURES COMPANY LIMITED 1ST DEFENDANT

LILACODE INVESTMENTS LIMITED 2ND DEFENDANT

JUDGMENT

Introduction

1. The dispute in this suit is about the ownership of all those parcels of land known as Ruiru/Kiu Block 2(Githunguri)/8991-8998 being sub-divisions from Ruiru/Kiu Block 2(Githunguri)/1553, hereafter referred to as the “Suit Properties”.
2. Vide an amended Complaint dated June 16, 2020, the plaintiffs sought for the following reliefs against the defendants: -
 - a. A permanent injunction to restrain the defendants by themselves, their directors, agents, servants, employees, and/or any person claiming through the Defendants from taking possession of, entering, occupying, constructing, leasing, charging, selling or in any other way interfering with the Plaintiffs’ ownership and quiet possession of the suit premises being the



parcels of land known as Ruiru/Kiublock 2 (Githunguri) 8991, 8992, 8993, 8994, 8995, 8996, 8997,8998;

- b. A declaration that the transfer of the parcels of land known as Ruiru/kiu Block 2 (Githunguri) 8991, 8992, 8993, 8994, 8995, 8996, 8997,8998 to the 2nd defendant was fraudulent and illegal and therefore null and void ab initio;
 - c. An order for the cancellation of the transfer and title deeds held by the 2nd defendant or any other person in respect of the parcels of Land known as Ruiru/Kiu Block 2 (githunguri) 8991, 8992, 8993, 8994, 8995, 8996, 8997,8998;
 - d. An order compelling the defendants to forthwith transfer or cause to be transferred the parcels of land known as Ruiru/kiu Block 2 (githunguri) 8991, 8992, 8993, 8994, 8995, 8996, 8997,8998 to the Plaintiff as follows:
 - i. Parcels of land known as Ruiru/Kiu Block 2 (Githunguri) 8991 & 8992 To Winkate Wangonyo Bendig.
 - ii. Parcels of land known as Ruiru/kiu Block 2 (Githunguri) 8993 & 8994 to Jackline Daris Wambui Bendig.
 - iii. Parcels of land known as Ruiru/Kiu Block 2 (Githunguri) 8995 & 8996 to Eric Francis Macharia.
 - iv. Parcels of land known as Ruiru/Kiu Block 2 (Githunguri) 8997 & 8998 to Angelo Ngugi
 - e. In the alternative to (d) above an order compelling the Defendants to jointly and severally refund the plaintiff's Ksh 2,800,000 with interest at court rates from October 12, 2011 till payment in full.
 - f. Exemplary damages and special damages.
 - g. Costs of this suit.
3. The 2nd defendant filed its written Statement of Defence and Claim against a Co-defendant as well as Notice of Claim Against a Co-defendant all dated July 15, 2020. There was no filing of any amended Statement of Defence by the 1st defendant. However, on record there was a Memorandum of Appearance and Statement of Defence dated May 29, 2018 filed by one Henry Karanja Ngugi on behalf of the 1st defendant.
 4. The 1st defendant filed a Statement of defence dated May 29, 2018 alleging that the plaintiffs had breached the Agreement by their failure to pay the surveyor's fees, stamp duty and registration fees. The Statement of defence was accompanied by witness statements, list of witnesses and list and bundle of documents. In their filed defence, the 1st defendant prayed for the suit to be dismissed with costs.
 5. The 2nd defendant filed a Statement of Defence and Counter-claim dated July 15, 2020 seeking for the suit to be dismissed with costs and judgement entered against the 1st defendant for:
 - a) A declaration that the 2nd defendant was a purchaser for value without notice and that the transfer of the parcels number Ruiru/Kiu Block 2 (Githunguri) 8991, 8992, 8993, 8994, 8995, 8996, 8997,8998, 8999 and 9000 was lawful and legal.



- b) In the alternative to (a) above, an order compelling the 1st defendant to refund the 2nd defendant the sum of Ksh 3,000,000 together with interest thereupon at the prevailing commercial rates from June 29, 2010 until payment in full.
- c) Costs of the suit.

Plaintiffs' case

- 6. In the Amended Plaint dated June 16, 2020, it was alleged that each of the Plaintiffs had separate sale agreements with the 1st defendant for Plots 1-8 on the entire suit property RUIRU/KIU BLOCK 2 (Githunguri)/1553. Each of the plots was priced at Kshs 350,000.
- 7. The Plots were purchased as follows: Plot 1 and 2 bought by Winkate Wangonyo Bendig, Plot 3 and 4 bought by Jackline Daris Bendig, Plot 5 and 6 bought by Eric Francis Macharia and Plot 6 and 7 bought by Angelo Ngugi with each plaintiff paying a total purchase price of Ksh 700,000, totalling to Ksh 2,800,000 Million, the plaintiffs received a certificate of ownership and were to await the sub-division of the same.
- 8. It was averred that the 1st defendant had refused to fulfil the obligation of sub-division and transfer and it was also discovered that the suit properties had been given different numbers Ruiru/Kiu Block 2 (Githunguri) 8991-8998.
- 9. John Mwaura Ngaruiya (PW1) testified to being a holder of the power of attorney on behalf of the Plaintiffs. He also testified to being a marketing consultant living in Ruiru. During his testimony, he adopted his witness statement and bundle of documents all dated June 17, 2020. He stated that he was aware that the 1st defendant had sold the properties to the plaintiffs.
- 10. He also stated that he had seen the documents filed by the defendants and that they had not denied selling the land to the plaintiffs save for merely stating that the plaintiffs had not paid the costs of the title. It was also his testimony that the 2nd defendant had equally not produced a sale agreement which could confirm whether or not they had purchased the property from the 1st defendant.
- 11. On cross examination, he stated the following; that the sale agreements did not have evidence of payment of stamp duty, no request for refund of the purchase price had been made, the plaintiffs had not obtained consent from the land control board, they did not have a transfer document for the suit properties and that they did not have a search certificate.
- 12. In re-examination, he reiterated that the power of attorney had been registered at the land's office and that the aspect of him not signing the documents did not in any way invalidate the sale agreements. On the land control board consent, he stated that the same was to be obtained by the 1st defendant and that all that was required from the plaintiffs was the collection of the titles once they were ready and upon payment of Ksh 35,000/-.

1st Defendants' case

- 13. Despite being served with a hearing notice, the 1st defendant never participated in the proceedings nor filed their written submissions. This necessitated the court to close their case in their absence.

2nd Defendant's case

- 14. John Mwicigi Kungu testified on behalf of the 2nd defendant. He adopted his witness statement dated August 3, 2022 and also availed his bundle of documents in support of the 2nd defendant's case.



15. He stated that he knew the 1st defendant from the year 2009 and that before purchasing the suit properties, they did due diligence and even obtained a search which confirmed that the properties were indeed registered in the names of the 1st defendant.
16. He also stated that the 1st defendant and 2nd defendant entered in to an agreement for sale on or about June 2010. It was also his testimony that they could not trace a copies of the sale agreements as the same had been misplaced due to the passage of time.

Plaintiffs submissions

17. The plaintiffs filed written submissions dated November 30, 2021 through the firm of M/S Mbiriri Ngugi & Co. Advocates. Counsel for the plaintiff outlined five issues for determination by the Court. These included; Whether or not the plaintiffs purchased the suit property, Whether or not the 2nd defendant purchased the suit property, Whether or not the transfer of the suit property to the 2nd defendant was fraudulent, Whether or not the plaintiffs are entitled to the reliefs sought and who should bear the costs of the suit.
18. On whether or not the plaintiffs purchased the suit property, Counsel submitted that the plaintiffs had proved that they entered into a valid contract for purchase of the suit property through the written sale agreements dated October 12, 2011 between the plaintiffs and the 1st defendant. The said sale agreements had been signed by the plaintiffs agent and reference was made to the case of *Heifer Project international v Forest City Export Services Limited & another* [2017] eKLR and *Mayfair Holdings Limited v Ahmed* [1990] eKLR
19. Counsel also submitted that the duty of facilitating payment of stamp duty and procuring the necessary consents was upon the 1st defendant and hence the plaintiff could not be faulted for the same. It was argued that the non-payment of stamp duty did not render the sale agreements enforceable and or admissible and counsel cited a number of authorities to support the said position.
20. Citing the case of *Macharia Mwangi Maina & 87 others v Davidson Mwangi Kagiri* [2014] eKLR Counsel further submitted that in the absence of the necessary consents, a constructive trust was deemed as created between the plaintiffs and the 1st defendant in relation to the suit property and it would be contrary to the interest of justice and the Doctrine of Equity envisaged by article 10 (2) (b) of the *Constitution* of Kenya. Based on those reasons, Counsel submitted that it would be in the interest of justice that the property they had duly purchased be transferred to them and the title deeds thereof be issued to them accordingly.
21. On whether or not the 2nd defendant purchased the suit property; the plaintiffs position was in the negative. Counsel submitted inter alia that there was no contract produced by the 2nd defendant to confirm that they indeed bought the land and as such the transfer of the suit property to the 2nd Defendant was null and void ab initio.
22. Counsel also submitted that the transfer of the suit property to the 2nd defendant was fraudulent due to the following reasons; that there was no evidence of a sale agreement as provided for under section 3(3) of the *Law of Contract Act*, the 1st and 2nd defendant did not exist as registered entities at the time of the purported transaction, the full consideration of the purchase price of the suit property had not been paid and that also the transfer of the suit property to the 2nd defendant while it had been sold to the plaintiffs was fraudulent. It was also submitted that the plaintiffs were deserving of the reliefs sought in their *Plaint* together with the costs of the suit.



The 2nd Defendant's submissions

23. The 2nd defendant filed written submissions dated December 28, 2021 through the firm of M/S Kinyanjui Kirimi & Co. Advocates. Counsel for the defendant outlined four issues for determination by the court. These included; Whether or not the 2nd defendant purchased the suit properties, Whether or not the 2nd defendant was a purchaser for value without notice, Whether or not the transfer of the suit properties to the 2nd defendant was fraudulent and whether or not the plaintiffs are entitled to the reliefs sought?
24. On whether or not the 2nd defendant purchased the suit properties, Counsel argued that the sale agreements though in writing were not signed by all parties to the contract and therefore must be impugned. All the four Sale Agreements produced show the parties as being the plaintiff and the 1st defendant. At no point was the 2nd defendant privy to the agreement between the plaintiffs and the 1st defendant and therefore cannot seek to enforce the terms and conditions therein against the 2nd defendant. Reference was made to the the case of *Kenya Women Finance Trust v Bernard Oyugi Jaoko & 2 others* [2018] eKLR.
25. On whether or not the 2nd defendant was a purchaser for value without notice, Counsel submitted that the 2nd defendant in its pleadings, documents and testimony by DW1 had shown the court that it started dealing with the 1st defendant in purchasing the suit properties over a year before the plaintiffs entered into any agreement for sale with the 1st defendant which was dated October 12, 2011.
26. It was submitted that the 1st defendant and 2nd defendant entered in to an agreement for sale on or about June 2010. The 2nd defendant averred that it could not trace a copy of the agreement due to having misplaced it and that the court should take note of passage of time. That over 9 years had passed at the time the suit was instituted against the 2nd defendant.
27. Counsel also stated that the 2nd defendant then known as Lilac Investment Group had on the June 29, 2010 made payment of Ksh 350,000/= to Super Micro Self-Help Group and by the time the second payment of Ksh 150,000/= was made on 10th of August 2010 the 2nd defendant had been incorporated and hence the payment was done in its name. It was also submitted that by the time the plaintiffs entered into an agreement on the sale of the same parcels of land, the 1st defendant had received over Ksh 1,447,000/= from the 2nd defendant. In plaintiffs' own words the 1st defendant had no proprietary right, beneficial or other interest in the said plots and any agreement entered with the plaintiffs was null and void and made with the intent to defraud the 2nd defendant.
28. It was also submitted that the 2nd defendant had provided a schedule of all payments made to the 1st defendant that they were able to secure proof but aver that they made full payment, although due to passage of time they could only prove payments of Ksh 2,777,000/=. It was contended that there is no claim against the 2nd defendant by the 1st defendant for unpaid proceeds of the sale.
29. Counsel also submitted that no right in the suit properties had passed to the plaintiffs or existed when the transfers were done in favour of the 2nd defendant. It was submitted that the only claim that the plaintiffs have against the 1st defendant under the terms of the Sale agreements to which the 2nd defendant was not privy to was refund of the purchase price but not a claim of ownership of the suit properties.



30. To buttress the argument that the 2nd defendant was a purchaser for value, Counsel cited the following case and stated that they had met the standard for an innocent purchase for value. The case of [Lawrence P. Mukiri v Attorney General & 4 others](#) [2013] eKLR

“To my mind, I have not been convinced that the 3rd , 4th, and 5th Defendants were aware about the fraudulent dealings of the of the 2nd Defendant. I believe their testimony with regard to the process to become the joint registered proprietors of the Suit Property. That being the case, as the law states as cited above, their title to the suit property is absolute and indefeasible. Section 80(2) of the [Land Registration Act](#) specifically applies to this particular case and protects their title to the suit property as they were innocent purchasers for value without notice. I wish to rely further on the case of *Katende v Haridar and Company Limited* where the court of Appeal in Uganda held as follows: “... a bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchase to successfully rely on the bona fide doctrine, he must prove the following: a) He holds a certificate of Title; b) He purchased the Property in good faith; c) He had no knowledge of the fraud; d) The vendors had apparent valid title; e) He purchased without notice of any fraud; f) He was not party to any fraud. A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner”

31. On whether or not transfer of the suit properties to the 2nd Defendant was Fraudulent, Counsel referred to section 28 of the [Land Registration Act](#) No 3 of 2012 which provides instances where a certificate of title as evidence of absolute ownership of land may be challenged; 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.
32. According to the 2nd defendant, the plaintiffs have not shown that the 2nd defendant was part of fraud orchestrated by the 1st Defendant nor have they shown that the title to Plots no. Ruiru/Kiu Block 2(Githunguri)/8991-8998 were acquired illegally, unprocedurally or through a corrupt scheme. Counsel urged the court to dismiss the plaintiffs suit and allow its claim as against the co-defendant as was prayed for in their statement of defence and claim against a co-defendant.

Analysis and Determination

33. I have considered the parties’ pleadings, evidence and submissions and in my view, the following are the key issues falling for determination in this suit:
- i. Whether the plaintiffs are bonafide purchasers of the suit property?
 - ii. Whether the 2nd defendant was a bonafide purchaser for value?
 - iii. Whether the transfer of the suit property to the 2nd defendant was fraudulent?
 - iv. What are the appropriate orders or remedies to issue herein?
 - v. Who will bear costs of the suit?

Issue No. I

Whether the Plaintiffs are bonafide purchasers of the suit property?

34. An examination of the gist of the plaintiffs’ suit is that they allege that they entered into a valid contract for purchase of the suit property through the written sale agreements dated October 12, 2011 between



the plaintiffs and the 1st defendant. However, the transactions were not finalized since the 1st Defendant did not procure the necessary consents and they were not able to obtain the titles in respect to the said properties.

35. The 2nd defendant on the other hand submitted that the plaintiffs' claim to have each purchased 2 plots from the 1st defendant. Each plot was supposed to be a portion of Ruiru/Kiu Block 2(Githunguri)/1553. The 2nd defendant also submitted that the sale agreements did not indicate the size of the portion being purchased nor did the Plaintiffs provide sketch maps indicating the acreage or the position of the said plots. The Copy of Mutation form dated December 20, 2012 produced as Document 1 in their list of supplementary documents is a document prepared after the signing of the sale agreements. The identity of what exactly the plaintiffs were purchasing cannot be ascertained from the sale agreement. Counsel for the 2nd defendant also submitted that Clause 4 of all the sale agreements provided that in case of breach on the part of the vendor (the 1st defendant) the plaintiffs were to receive a refund of all monies paid plus a 5% of the same within 90 days.
36. Upon evaluation of the evidence that was tendered, it is the finding of this court and that indeed the plaintiffs could not have been bonafide purchasers of the suit properties on the basis of an uncompleted transaction and further having engaged in the transaction with the 1st defendant when already the 2nd defendant had made payments towards the purchase and acquisition of the same.

Issue No. II

Whether the 2nd Defendant was a bonafide purchaser for value?

37. Counsel for the 2nd defendant argued that the 2nd defendant was an unblemished purchaser for value and was protected under sections 25 and 26 of the *Land Registration Act*.
38. The definition of a bona fide purchaser is one who genuinely intends to purchase the property offered for sale and does not intend to acquire it wrongly. A bona fide purchaser may successfully rely on the bona fide doctrine if he proves that:
 - a) He holds a certificate of Title.
 - b) He purchased the Property in good faith;
 - c. He had no knowledge of the fraud;
 - d. The vendors had apparent valid title;
 - e. He purchased without notice of any fraud;
 - f. He was not party to any fraud.
39. The Court of Appeal in *Munyu Maina v Hiram Gatbiba Maina* [2013] eKLR emphasized the duty of the holder of an impugned title in a claim such as the present one in the following words:

“We state that when a registered proprietors' root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances, including any and all interests which need not be noted on the register”



40. The 2nd defendant has laid down a chronology of its dealings with the 1st defendant from the time when both the 1st and 2nd defendant were welfare groups to when both were incorporated into limited liability companies. DW1 testified that the 2nd defendant initially started as an investment group (coming together of friends to invest in properties) The name of the investment group then was Lilac Investment group. The name was a requirement for the group to open and operate a bank account at Barclays Bank of Kenya.
41. The 2nd defendant provided a schedule of all payments made to the 1st defendant that they were able to secure proof, although due to passage of time they could only prove payments of Ksh 2,777,000/=. There is no claim against the 2nd defendant by the 1st defendant for unpaid proceeds of the sale.
42. The 2nd defendant has produced documentary evidence in form of title deeds over the suit properties in their name as proof of ownership. Section 24 of the [Land Registration Act](#) No 3 of 2012 states that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. Section 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.
43. Section 26 of the [Land Registration Act](#), 2012 provides;
- “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 allcourts 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.
44. The courts are therefore mandated by statute to consider a title document as prima facie evidence of ownership to land and a conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case the titles produced by the 2nd defendant shows that the suit land is registered in their name. That position was not challenged by the Plaintiffs and as such it is the finding of this court that the 2nd defendant was an innocent purchaser for value.

Issue No. III

Whether the transfer of the suit property to the 2nd Defendant was fraudulent?

45. At paragraph 7C of the plaintiffs amended plaint, they pleaded fraud in respect to the transfer of the suit properties from the 1st defendant to the 2nd defendant. The specific particulars of fraud that were pleaded in respect to the 2nd defendant was that, the 2nd defendant colluded to accept the plaintiffs plots which they knew or ought to have known had been sold to the plaintiffs.



46. To succeed in a claim of fraud, the particulars of fraud have to be specifically pleaded and proved. This position was held in the case of *Demutilla Ananyama Pururmu v Salim Mohamed Salim* [2021] eKLR.

47. As regards the standard of proof, the court in the case of *Kinyanjui Kamau v George Kamau* [2015] eKLR expressed itself as follows:-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* (2008) 1 KLR (G & F) 742 wherein the court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts”

47. The burden was thus on the plaintiffs to prove on a standard higher than a balance of probability but lower than beyond reasonable doubt that indeed the defendants engaged in acts of fraud.

48. From the evidence tendered, it was not disputed that the suit properties were registered in the name of the 2nd defendant. The person charged with the process of receiving, approving and registration of documents in the land registries is the land Registrars. They are the ones also given the mandate to issue instruments of ownership of land such as title deeds and certificate of leases. The land Registrar who caused the registration of the 2nd defendants herein as owners of the suit properties was not joined as a party or summoned as a witness to produce the documents used to approve registration of the 2nd defendants such as application for consent to transfer by the relevant land control board. It cannot be possible that the 2nd defendant caused themselves to be registered without the approval of the land Registrar.

49. In the case of *Dr. Joseph Arap Ngok vs Justice Moyo Ole Keiwa & 5 others*, Civil Appeal No. Nairobi. 60 of 1997, the Court declared as follows;

“Section 23 (1) of the then Registration of Titles Act (now reproduced substantially as section 25 and 26 of the *Land Registration Act* set out below) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of title and the entire system. In relation to ownership of property in Kenya would be placed in jeopardy.”

50. For the above stated reasons, I find that the plaintiffs have not established the commission of any fraud by the 2nd defendant in the transfer and registration of the suit properties. Having found that the Plaintiffs failed to prove their claim based on grounds of fraud as particularized in the plaint, this suit therefore fails as against the 2nd defendant.



Issue No. IV

What are the appropriate orders or remedies to issue herein?

51. Having found that the plaintiffs failed to prove their claim based on grounds of fraud as particularized in the plaint, this suit therefore fails and the same is hereby dismissed as against the 2nd defendant. The court having found that the 2nd defendant proved that they acquired the suit properties regularly, procedurally and in accordance with the law being innocent purchasers for value will proceed to grant the 2nd defendant's the prayers sought as against the 1st defendant.
52. In respect to the Plaintiffs case as against the 1st defendant, it is the finding of this court that indeed the Plaintiffs had made some substantial payments in respect to the purchase of the suit properties event though the sale transaction was never finalized and as such the Plaintiffs are entitled to refund of the purchase price of Ksh 2,800,000/- that had been paid.

Issue No. V

Who will bear costs of the suit?

53. On the issue of costs, section 27 of the *Civil Procedure Act* gives the court the discretion to grant costs. Ordinarily, costs usually follow the event, unless special circumstances are presented to court. However, none has been presented herein and the court therefore finds that the plaintiffs having partially succeeded in their claim and the 2nd defendant being successful in their claim against the co-defendant (1st defendant) are entitled to the costs of the suit which I would direct that they be met by the 1st defendant. However, I wish to clarify that the plaintiffs unlike the 2nd defendant will only be entitled to half of the costs of the suit.

Final orders

54. In summary thereof, I find that the plaintiffs have failed to prove their case against the 2nd defendants. The plaintiff's suit is hereby dismissed as against the 2nd defendant. The plaintiffs suit partially succeeds against the 1st defendant to the extent that they entitled to the refund of the purchase price and also half of the costs of the suit. On the other hand, the 2nd defendant has proved the rest of its claims on a balance of probabilities and are entitled to costs.
55. In the end the plaintiffs suit against the 1st and 2nd defendants and the 2nd defendant's claim against the co-defendant (The 1st defendant) are hereby disposed as follows: -
 - i) A declaration is hereby issued that the 2nd defendant was a purchaser for value without notice and that the transfer of parcels number Ruiru Kiu Block 2/8991, 8992, 8993, 8994, 8995, 8996, 8997, 8998, 8999 and 8990 was lawful and legal.
 - ii) The 1st defendant is hereby directed to refund the plaintiffs a sum of Ksh 2,800,000/- being the purchase price payable with interest at court rates from May 31, 2016 till payment in full.
 - iii) The 1st Defendant shall bear the costs of the suit.

Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MAY 2022

E. K. WABWOTO

JUDGE



In the presence of: -

Mr. Ngugi Kariuki for the Plaintiffs

N/A for the 1st Defendant

N/A for the 2nd Defendant

Court Assistant; Caroline Nafuna

E. K. WABWOTO

JUDGE

