



Kariuki v Mbugua and Mbugua (Sued as the legal representatives of Estate of Joseph Mbugua Njuguna) & another (Environment & Land Case 7 of 2016) [2022] KEELC 13798 (KLR) (3 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13798 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 7 OF 2016
JO MBOYA, J
OCTOBER 3, 2022**

BETWEEN

WILFRED MBITU KARIUKI PLAINTIFF

AND

**HARRISON NJUGUN MBUGUA AND ALOISE NJERI MBUGUA (SUED AS THE LEGAL REPRESENTATIVES OF ESTATE OF JOSEPH MBUGUA NJUGUNA) 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT**

JUDGMENT

Introduction And Background:

1. Vide the plaint dated the October 23, 2003, the plaintiff herein has approached the court seeking for the following reliefs;
 - i. A declaration that the transfer was irregular, illegal and a fraud.
 - ii. Orders that the land registrar at Kiambu do cancel the transfer and registration of the title LR No Kiambaa/Kihara/2625 and rectify the register according to the entries prior to the unlawful and fraudulent registration.
 - iii. An order of permanent injunction to restrain the 1st defendant by himself, agents, servants or by any other person authorized by him from alienating, transferring, selling, disposing of or interfering with plot LR No Kiambaa/ Kihara/2625 until the determination of the plaintiffs suit.
 - iv. General damages



- v. Cost of the suit
 - vi. Interest on (iv) and (v) above.
 - vii. Any other order that the court may deem fit to grant to preserve and maintain
2. Upon being served with the plaint and summons to enter appearance, the 1st defendant duly entered appearance and thereafter filed a statement of defense on the October 22, 2007.
 3. On the other hand, the 2nd defendant entered appearance on the December 1, 2003, and thereafter filed a statement of defense on the December 22, 2003. Nevertheless, the 2nd defendant thereafter filed an amended statement of defense dated the November 25, 2009.

Evidence By The Parties:

A. Plaintiff's case:

4. The plaintiff herein testified as PW1. The witness stated that same was the lawful and registered proprietor in respect of plot No. Kiambaa/ Kihara/2625, hereinafter referred to as the original parcel of land, measuring 0.382 Ha. For clarity, the witness pointed out that the said parcel of land arose from the subdivision of plot No Kiambaa/ Kihara/1829, which belonged to his Father, now deceased.
5. Further, the witness stated that on or about the November 24, 1997, the first defendant, namely, Josephat Mbugua Njuguna, now deceased approached same and sought to purchase a portion of plot No Kiambaa/ Kihara/2515. In this regard, the witness added that ultimately same agreed to sell to the first defendant, now deceased, a portion measuring 0.25 acres.
6. The witness further testified that upon agreeing and/or accepting to sell the 0.25 acres to the first defendant, now deceased, the first defendant invited him to accompany him (the defendant) to Nairobi, whereat the 1st defendant took the witness to an office where a sale agreement was crafted/ prepared and thereafter executed by both the 1st defendant, now deceased and the witness.
7. Nevertheless, the witness added that even though same executed the sale agreement, same was not allowed to read the sale agreement and neither was the sale agreement read unto him.
8. Be that as it may, the witness added that upon the execution and/or signing of the sale agreement, the 1st defendant, now deceased gave unto him a total of Kes 2, 000/= only.
9. Subsequently, the witness stated that after both the 1st defendant and himself went back to the village, namely, Kihara Village, the 1st defendant was very friendly and kept on buying alcohol and food for him. For clarity, the witness stated that indeed he was an alcoholic and that at one point in time same was even admitted at Mathare Hospital for rehabilitation.
10. On the other hand, the witness testified that around the year 1998, the 1st defendant now deceased brought unto same (witness) some forms, which he clearly read and found out to be forms for application for land control board consent.
11. Having established the basis of the forms, the witness stated that same proceeded to and executed the forms and that it was clearly stated that his parcel of land was being subdivided into two portions, namely, 0.25 acres and 0.70 acres.
12. The witness further testified that on or around february 1998, the 1st defendant now deceased urged him(the witness) to proceed to the District Officer's Office for purposes of procuring and obtaining the requisite land control board consent.



13. Premised on the belief that the 1st defendant was a gentleman and could ultimately pay the purchase price, the witness stated that same proceeded to and indeed obtained the requisite land control consent.
14. On the other hand, the witness testified that after obtaining the land control board consent, the 1st defendant brought a surveyor to the land and sought to have the land subdivided into two portions. In this regard, the witness added that the land was ultimately subdivided into two portions and thereafter a mutation was prepared showing the acreages of the subdivisions.
15. After the subdivision and the signing of the mutation forms, the witness stated that the 1st defendant, now deceased started behaving in a funny way and stopped interacting with him or at all.
16. As a result of the change of conduct and behavior by the 1st defendant, now deceased, the witness stated that he was constrained to and indeed approached the 1st defendant, now deceased to pay him the purchase price over and in respect of the portion measuring 0.25 acres, which was being sold.
17. However, the witness stated that when he approached the 1st defendant, now deceased for purposes of procuring the payment of the purchase price, the 1st defendant, now deceased told the witness to stop bothering and nagging him (the 1st defendant).
18. Further, the witness added that at one point in time, the 1st defendant informed the witness that same should get ready to vacate the land in question because the land now belonged to him, read, the 1st defendant.
19. The witness stated that upon being threatened with eviction from his own land, he visited and consulted a friend of his family, namely, Mr Bernard Munga, who advised the witness to proceed to the land registry and thereafter procure a certificate of official search.
20. Owing to the advise received from the said Bernard Munga, the witness herein proceeded to and indeed visited the land registrar's office at Kiambu, whereat same procured and obtained a certificate of official search.
21. The witness further testified that when he obtained a certificate of official search, it transpired that his parcel of land had indeed been subdivided into two portions.
22. Further, the witness clarified that the subdivision showed that 0.25 Ha was registered in the name of the 1st defendant, now deceased, contrary to the terms of the sale agreement, whereby the 1st defendant was only entitled to 0.25 acres.
23. Other than the foregoing, the witness added that despite having caused a huge chunk of the land to be transferred and registered in his name, the witness herein stated that same had not been paid the entire purchase price, except Kshs 2, 000/= Only, which was handed over to the witness on the day of execution of the sale agreement.
24. Based on the foregoing, the witness stated that same was obliged to lodge a complaint with the land disputes tribunal seeking to negate the fraudulent actions by and at the instance of the 1st defendant.
25. Nevertheless, the witness added that when the complaint before the land dispute tribunal was heard and determined, the tribunal awarded to the 1st defendant 0.10 Ha whilst the witness was awarded 0.15 Ha.
26. However, the witness stated that same was aggrieved and/or dissatisfied by the award by the land dispute tribunal. In this regard, the witness contended that what had been given to the 1st defendant exceeded the acreage that had been agreed upon.



27. Notwithstanding the foregoing, the witness added that it was the 1st defendant who appealed to the provincial lands appeal committee, challenging the award of the land dispute tribunal.
28. Subsequently, the witness added that the appeal to the land disputes appeal committee was heard and determined and the award arising therefrom, was reversed. For clarity, the witness stated that the decision of the tribunal was quashed and the committee awarded the 1st defendant the entire land that he had defrauded the witness.
29. As a result of the outcome from the land dispute appeals committee, the witness stated that same was aggrieved. Consequently, the Witness added that same was constrained to and indeed lodged an appeal to the High Court *vide* HCCA No 20 of 2002 at Nyeri.
30. Further, the witness added that the appeal before the High Court was ultimately heard and determined, whereupon the court found and held that the proceedings before the Land Dispute Tribunal and the Land Dispute Appeal Committee, were all illegal null and void. Consequently, the witness clarified that the proceedings and decisions which had hitherto been made by the tribunal and the land dispute tribunal were quashed.
31. In any event, the witness also testified that the High Court also found that the transfer and the resultant title which had been issued to the 1st defendant was a nullity, fraudulent and invalid.
32. Nevertheless, the witness clarified that despite the finding and holding that the 1st defendant's title was fraudulent, the High Court declined to cancel the title, insofar as cancelation was not one of the issues to be addressed and/or determined in the said appeal.
33. Arising from the foregoing, the witness testified that same was therefore enjoined to and indeed commenced the subject suit with a view to retrieving the portion of land which the 1st defendant had fraudulently acquired and registered in his name, even though same had neither paid nor settled the agreed purchase price.
34. On the other hand, the witness herein alluded to his witness statement dated the March 4, 2022 and same sought to rely thereon. Consequently, the witness statement dated the March 4, 2022 was adopted as the witness further evidence in chief.
35. Besides, the witness also alluded to the list and bundle of documents dated the March 4, 2022, and sought to have the documents therein admitted in evidence. In this regard, the said documents were admitted in evidence and marked as exhibits P1 to P11, respectively.
36. On cross examination by counsel for the 2nd defendant, the witness stated that same has sued the 2nd defendant because the land registrar is the one who facilitated the transfer and registration of the resultant portion of his land to the 1st defendant.
37. In any event, the witness added that prior to and or before accepting and acting upon the transfer documents, the land registrar ought to have interrogated the documents, with a view to authenticating their validity.
38. On the other hand, the witness stated that had the land registrar scrutinized the transfer instrument and the resultant documents, same would have discovered that the transfer instrument was at variance with the land control board consent, which was a critical document.
39. Further, the witness also stated that same did not visit the land registry and neither did same participate in the transfer of the resultant parcel of land to and in favor of the 1st defendant, now deceased.



40. For the avoidance of doubt, the witness added that it is the 1st defendant who procured and caused the resultant subdivision to be transferred and registered in his name, albeit with the connivance of the Land Registrar.
41. In short, the witness maintained that the transfer and ultimate registration of the resultant portion of his land, to and in favor of the 1st defendant, now deceased was a fraud perpetuated by the 1st defendant, with the help, collusion and connivance of the Land Registrar.
42. Premised on the foregoing, the witness added that the resultant parcel of land, namely plot No Kiambaa/ Kihara/2625, ought not to remain in the name of the 1st defendant. For clarity, the witness maintained that the land should and ought
43. With the foregoing testimony, the plaintiff's case was closed.

B. 1st Defendant's Case:

44. It is imperative to note that by the time the matter herein came up for hearing, the 1st defendant had passed on and same was substituted with the current set of the 1st defendants.
45. Nevertheless, despite having been duly served with the hearing notice, the current set of the 1st defendants, failed to attend court and/or participate in the hearing of the matter.
46. Premised on the failure by the current 1st defendant to attend court, the 1st defendant's case was closed without any evidence having been adduced and/or tendered.

C. 2nd Defendant's case

47. Though the 2nd defendant herein attended court and participated in the hearing, including cross examination of the plaintiff, same however stated that she would not be calling any witness.
48. Essentially, the 2nd defendant's case was also closed without any evidence being adduced and/or called on her behalf.

Submissions By The Parties:

A. Submissions by the plaintiff:

49. The plaintiff herein filed written submissions dated the July 8, 2022, and wherein same raised and ventilated two issues for consideration. First and foremost, counsel for the plaintiff submitted that even though there existed a written sale agreement, the 1st defendant failed, neglected and or refused to pay the purchase price to and in favor of the plaintiff herein.
50. Further, counsel added that in the absence of payments of the consideration, the entire sale agreement stood vitiated and was therefore rendered redundant.
51. As a result of the foregoing, counsel for the plaintiff submitted that the title which was ultimately issued in favor of the 1st defendant, over and in respect of the suit property, for which no consideration was paid was therefore illegal, unlawful and invalid.
52. In support of the foregoing submissions, counsel for the plaintiff quoted and relied on the case *Edward Ndungu Wambui v Francis Kinyanjui Mwangi & 3 others* (2021)eKLR, where the honourable court found and held that a title founded on irregularity, illegality or arising from a corrupt scheme stands vitiated.



53. Secondly, counsel for the plaintiff submitted that at the onset of the transaction, the plaintiff and the 1st defendant had agreed on the sale of a portion measuring 0.25 acres only and not 0.25 Ha.
54. In this regard, counsel contended that the manner in which the 1st defendant maneuvered and thereafter acquired title in respect of the suit property, which measured 0.25 Ha, was not only fraudulent, but bespoke of corrupt practice.
55. As a result of the foregoing, counsel for the plaintiff submitted that a title procured and obtained by fraud, cannot confer and/or vest in the title holder, any legitimate rights and/or interests, whatsoever.
56. In support of the foregoing submissions, counsel for the plaintiff quoted and relied on the decision of *Ardhi Highway Developers Ltd v Westend Butchery & 6 others* (2015)eKLR, where the issue of fraudulent titles was addressed and or deliberated upon.
57. Based on the foregoing submissions, learned counsel for the plaintiff contended that the plaintiff's case stood proved and ought to be granted.

B. Submissions by the 2nd defendant:

58. It is imperative to observe that the 2nd defendant participated in the proceedings and was present when directions were given for the filing and exchange for written submissions.
59. Nevertheless, despite being privy and party to the directions on the filing and exchange of written submissions, the 2nd defendant neither filed nor served any written submissions.
60. In the premises, the only written submissions that were availed to the honourable court are the submissions by and/or on behalf of the plaintiff.

Issues For Determination

61. Having reviewed the plaint filed by and/or on behalf of the plaintiff together with the witness statement and the bundle of documents and having considered the statement of defense filed by the defendants; and having similarly reviewed the oral testimony by the plaintiff, the following issues do arise and are thus germane for determination;
 - i. Whether the transfer and registration of the suit property, namely, plot No Kiambaa/ Kihara/2625 in the name of the 1st defendant was procured and/or obtained by fraud.
 - ii. Whether the plaintiff herein is entitled to the reliefs sought at the foot of the plaint.

Analysis And Determination:

Issue number 1 - Whether the transfer and registration of the suit property, namely, plot No. Kiambaa/ Kihara/2625 in the name of the 1st defendant was procured and/or obtained by fraud.

62. It is common ground that the plaintiff herein was hitherto the registered proprietor of that parcel of land known as plot No Kiambaa/ Kihara/2625, otherwise referred to as the original parcel of land.
63. Pursuant to and by virtue of being the registered proprietor of the original parcel of land, the plaintiff stated that same was approached by the 1st defendant, now deceased, with a view to selling unto him (the 1st defendant) a portion of the original parcel of land.



64. Arising from the approach, the plaintiff testified that same agreed to sell a portion of the original parcel of land to the 1st defendant and in this regard, a sale agreement was duly crafted and executed by both the 1st defendant and himself.
65. However, despite the entry into and execution of the sale agreement, the plaintiff testified that same was never paid the purchase price, which was agreed upon and/or covenanted to *vide* the terms of the sale agreement.
66. Further, it was contended that despite the fact that what had been agreed upon was 0.25 acres, the 1st defendant proceeded to and procured a portion measuring 0.25 Ha, which was bigger and beyond what the parties had agreed upon.
67. At any rate, evidence was also adduced that both the land control board consent and the nutation that was ultimately drawn, showed that the 1st defendant ought to have been entitled to only 0.25 acres.
68. Be that as it may, the 1st defendant herein contrary to and in contravention of the terms of the sale agreement, proceeded to and procured registration of a portion measuring 0.25 Hain his name.
69. Suffice it to note, that the transfer and registration of the portion measuring 0.25 Ha, which now comprises the suit property, was never anchored on any land control board consent or a mutation form, duly signed by the plaintiff, whatsoever and howsoever.
70. Notwithstanding the foregoing, it is also important to recall that the circumstances leading to the procurement, transfer and registration of a portion of plot No Kiambaa/ Kihara/2515 measuring 0.25 Ha in favor of the 1st defendant was addressed by the honourable judge *vide* Nyeri HCCA No 20 of 2002, where the judge observed as hereunder;

“ it is instructive that the application for consent to subdivide land number plot No Kiambaa/ Kihara/2515 dated the January 22, 1998 was the said land was to be divided into two portion measuring 0.25 Ha and 0.7 acres. It was not Ha. The consent to subdivide was also given in acres and not hactres on the February 3, 1998. The respondents was unable to explain how he got himself registered as the owner of a piec of land measuring 0.25 Ha in the absence of land control board consent to that effect. If reliance were to be placed on the mutation form, then that would have been illegal. The subdivision had to be carried out in conformity with the land control board consent.”

71. It is important to note that the foregoing observation were made by the judge, when same was dealing with an appeal challenging the decision of the Land Disputes Appeals committee, which appeal had been lodged by the current plaintiff.
72. On the other hand, it is also worthy to note that despite the foregoing observations, which denotes that the creation, transfer and registration of the suit property in favor of the 1st defendant was fraudulent and void, the honourable judge could not impeach the title insofar as what same was dealing with was an appeal against the decision of the Lands Disputes Appeal Committee.
73. However, there is no gainsaying that the honourable judge was himself puzzled and disturbed by the manner in which the 1st defendant herein had acquired and caused to be registered in his name the suit property, albeit in the absence of the requisite land control board consent speaking to the impugned acreage.



74. Besides, it is apparent that what the honourable judge was saying is that the subdivision, transfer and registration, culminating into the ownership of the suit property by the 1st defendant, was fraudulent and illegal.
75. Similarly, just like the honourable judge whose observations I have quoted and or alluded to in the preceding paragraph, I am also puzzled by the fraudulent circumstances leading to the creation, transfer and registration of the suit property in the name of the 1st defendant, albeit without the requisite founding documents.
76. To my mind, the actions by the 1st defendant, leading to the transfer and registration of the suit property in his name, were informed by fraud, irregularity or better still arose as a result of a corrupt scheme, perpetrated by the 1st defendant, obviously, with the collusion and connivance of the land registry officials.
77. Consequently, I come to the conclusion that the circumstances leading to the transfer and registration of the suit property to and in favor of the 1st defendant, now deceased was fraudulent and that the fraud has been established and proved, by the plaintiff, to the requisite standard, as stipulated and envisaged under the law.
78. Suffice it to state and reiterate that sum total of the activities that were undertaken by and/or at the instance of the 1st defendant epitomizes fraud.
79. To this end, it is appropriate to refer to the holding of the Court of Appeal in the case of *Ardhi Highway Developers Ltd v Westend Butchery Ltd & 6 others* (2015)eKLR, where the Court of Appeal stated and observed as hereunder;

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from *Bullen & Leake & Jacobs, Precedent of pleadings* 13th Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (*Wallingford v Mutual Society* (1880) 5 App Cas 685 at 697, 701, 709, *Garden Neptune v Occident* [1989] 1 Lloyd’s Rep 305, 308).

The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see *Lawrence v Lord Norreys* (1880) 15 App Cas 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (*Davy v Garrett* (1878) 7 chD 473 at 489).

“General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice”.

80. Additionally, it is also imperative to take cognizance of the holding in the case of *Kuria Kiarie v Sammy Magera* (2017)eKLR, where the Court of Appeal similarly stated and observed as hereunder;

“The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR, where Tunoi, JA (as he then was) stated as follows:



“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See order 2 rule 4 of the *Civil Procedure Rules*.

As regards the standard of proof, this 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; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

81. As pertains to the subject matter, clear, explicit and cogent evidence has been placed before the court, inter-alia the application for land control consent and the resultant land control board consent, all which spoke to 0.25 acres and not 0.25 Ha, the latter which informed the impugned title that was registered in the name of the 1st defendant.
82. Other than the issue of fraud, there was also the evidence that despite the entry into and execution of the sale agreement, the 1st defendant never paid and/or settled the purchase price. Clearly, the transaction in question could not materialize in the absence of the consideration being paid/ settled.
83. In the premises, what becomes clear is that the 1st defendant procured the transfer and registration of the suit property in his name, albeit without paying a dime. In this regard, it suffice it to note that the 1st defendant’s title was therefore procured in vacuum and hence the process leading to its creation was vitiated.
84. Consequently, the question then is, can such a title, which is devoid of any legal foundation or anchorage, be allowed to stand.
85. To my mind, it is imperative that whoever procures and acquires title, must do so in accordance with the law. Consequently, if the process leading to the acquisition is wrought and replete with fraud, illegality and/or blemish, then such a title cannot stand or better still, be countenanced in any manner, whatsoever.
86. To vindicate the foregoing observation, it is appropriate to take cognizance of the decision of the court of appeal in the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment), where the Court of Appeal stated and observed as hereunder;

“Sixth, the title was also tainted with nullity in that the court process on the basis of which the title to the suit property was anchored was subsequently declared null and void *abinitio*. The position in law as we have already highlighted above is that anything founded on nullity is also null and void and of no consequence. The title allegedly vested in the 3rd respondent



and subsequently passed on to the appellant having stemmed from court proceedings that were subsequently declared null and void also stood vitiated by the same nullity and of no consequence. The judge cannot therefore be faulted for stating the correct position in law in the manner done.

87. Finally, it is also important to take note of the holding in the case of *Munyua Maina v Hiram G Maina* (2013)eKLR, where the Court of Appeal stated, observed and held as hereunder;

We state that when a registered proprietor's 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. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant's testimony. We find that a trust exists in relation to the suit property.

88. In short, I come to the conclusion that the 1st defendant's title over and in respect of the suit property, was not only procured vide fraud and as a result of a corrupt scheme, but same was also obtained in vacuum insofar as the requisite consideration was never paid.
89. Consequently, the title in favor of the 1st defendant over the suit property was vitiated and hence cannot be allowed to stand. In this regard, same is amenable to revocation/ nullification.

Issue number 2 - Whether the plaintiff herein is entitled to the reliefs sought at the foot of the plaint.

90. Having found and held that the transfer and registration of the suit property in the name of the 1st defendant was colored with fraud, illegality and was thus unlawful, the question then is who is the lawful owner of the suit property.
91. It is imperative to observe that the suit property was hitherto part and parcel of the original parcel of land, which belonged to the plaintiff herein.
92. In the premises, to the extent that the original parcel of land belonged to the plaintiff, before the suit property was illegally excised, alienated and transferred in the names of the 1st defendant, it then means that with the foregoing declarations, the suit property must revert to the lawful owner ante.
93. Consequently, it is my finding and holding that the suit property herein lawfully belongs to and is the property of the plaintiff.
94. Secondly, having found that the suit property belongs to the plaintiff, the next issue is whether the plaintiff would be entitled to compensation, arising from the wrongful deprivation of the suit property, as a result of the fraudulent activities of the 1st defendant.
95. To my mind, having been deprived of his lawful entitlement to and in respect of the suit property, the plaintiff herein would also be entitled to recompense in damages. For clarity, the impugned actions of the first defendant amounted to trespass.
96. Premised on the foregoing, the next issue to be addressed is therefore the quantum of damages due and payable to the plaintiff.
97. As pertains to the quantum of damages, I wish to point out that the deprivation commenced on or about the March 9, 1998 and has subsisted to date. For clarity, the impugned duration constitutes a total of twenty-four (24) years.



98. Though no evidence was led in terms of the loss that the plaintiff accrued and/or accumulated, it is important to underscore that the impugned activities by the 1st defendant constituted and/or amounted to trespass and hence same is actionable per se.
99. Consequently and in the premises, I am constrained to find and hold that the plaintiff is entitled to compensation on account of general damages in the sum of Kshs 5, 000, 000/= only.
100. To vindicate the foregoing award, one needs to take cognizance of the holding in the case of Willesden Investments Limited v Kenya Hotel properties limited Nbi HCC No 367 of 2000 (a case cited by the plaintiff), where the honourable court stated that;
- “There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that Kshs 10 000 000 is a reasonable award for general damages”.

Final Disposition

101. From the analysis and evaluation of the issues for determination, which were highlighted herein before, it must have become apparent that indeed the transfer and registration of the suit property in favor of the 1st defendant, was fraudulent null and void.
102. In the premises, there is no gainsaying that the plaintiff has proved and established his case as against the 1st defendant on a balance of probabilities. Consequently, the plaintiff’s case is meritorious and is hereby allowed.
103. In a nutshell, I therefore enter judgment in favor of the plaintiff on the following terms;
- i. A declaration be and is hereby issued that the transfer over and in respect of LR No Kiambaa/Kihara/2625 in favor of the 1st defendant, now deceased was irregular, illegal and a fraudulent.
 - ii. The Land Registrar, Kiambu be and is hereby ordered to cancel the transfer and registration of the title Kiambaa/Kihara/2625 and rectify the register according to the entries prior to the unlawful and fraudulent registration.
 - iii. For clarity, the land registrar be and is hereby directed to nullify the title in respect of LR No Kiambaa/Kihara/2625 and to restore LR No Kiambaa/Kihara/2515, in its original status and acreage.
 - iv. An order of permanent injunction be and is hereby issued to restrain the 1st defendant by himself, agents, servants or by any other person authorized by him from alienating, transferring, selling, disposing of or interfering with plot No Kiambaa/ Kihara/2625.
 - v. The plaintiff be and is hereby awarded general damages in the sum of Kshs 5, 000, 000/= only to be borne by the 1st defendant.
 - vi. The award of general damages shall attract interests at court rates (14%) from the date of judgment until payment in full.
 - vii. Costs of the suit shall be borne by the 1st defendant
104. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD _____ DAY OF OCTOBER 2022.

OGUTTU MBOYA



JUDGE

In the Presence of;

Kevin Court Assistant

Mr. Ben Munyasia for the Plaintiff

Ms. Wanjiru for the 2nd Defendant

No appearance for the 1st Defendant

