



**Njoroge (Suing as the Administrator of the Estate of Wangui Njoroge - Deceased) v Ticha
(Environment & Land Case 68 of 2021) [2025] KEELC 3649 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3649 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 68 OF 2021**

A OMBWAYO, J

MAY 9, 2025

BETWEEN

**JAMES WAWERU NJOROGE (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF WANGUI NJOROGE - DECEASED) PLAINTIFF**

AND

STANLEY NDUNGI TICHA DEFENDANT

JUDGMENT

Introductions

1. The Plaintiffs commenced this suit vide a Complaint dated 1st September, 2021 against the Defendant seeking the following orders:
 - a. A declaration that any sale agreement between the Defendant and Wangui Njoroge (Deceased) is void and that Wangui Njoroge (Deceased) is the sole owner and/or proprietor of all that parcel of land known as Plot No.180 Missouri Farm in Naivasha.
 - b. An order that the Land Registrar, Naivasha rectifies all records in respect of Plot No.180 Missouri Farm to reflect only the name of Wangui Njoroge (Deceased) as the proprietor of the property.
 - c. A permanent injunction restraining the Defendant whether by himself, his employees, servants, agents, or otherwise howsoever from entering, occupying, carrying on any development, or dealing with all or any portion of that parcel of land known as Plot No.180 Missouri Farm in Naivasha in any manner prejudicial to the interests of the Plaintiff.
 - d. Costs and interest.
 - e. Any other orders that the court may deem just and fit to grant.



2. The Defendant entered appearance and filed its statement of Defence and Counterclaim dated 27th October, 2021 where he denied the allegations in the plaint. He sought for the following orders:
 - a. Approximately 9 ½ acres out of plot 180 Missouri Safari Farmers Company Limited.
 - b. ½ share in the phase B measuring 1.4 acres and ½ share in the phase “C” which is 50 × 100 feet plot.

Plaintiffs’ Case

3. James Waweru Njoroge testified as PW1 where his statement dated 1st September, 2021 was adopted as his evidence in chief. He also produced his list of documents dated 1st September, 2021 as follows:
 - Limited grant of letters of administration. Exhibit P1.
 - Receipt for shares for Kshs 4080 dated 5th October, 1976. Exhibit P2.
 - Ballot no. 498. Exhibit P3.
 - Letter dated 8th January, 1984 exhibit P4.
 - Share certificate and counter foils exhibit P5 and P6 (a) (b).
4. Bundle of documents relating to HCCC no 492 of 1998 summons to enter appearance plaintiff defence, reply to defence, typed proceedings in Naivasha civil case 95 of 1986. Exhibit P7.
5. Bundle relating to succession proceeding in cause 19 of 2018. The supporting affidavit at page 94 and 95 and supporting affidavit at page 109 and 110. Exhibit P8 (a) and (b).
6. It was his testimony that the Defendant claimed that they jointly owned the land with his mother. He further testified that the company from which he claimed he bought land was Missouri Safari Farmers Co. Ltd. He went on to testify that his mother was a shareholder with 2 shares where she was given plot no 180 equivalent to 12 acres in 1983. He testified that the Defendant claimed that he had a share in the said parcel. He went on to testify that her mother had filed a case before she passed on in 2003. It was his testimony that he continued to live on the land until 2018 when the Defendant claimed it and requested that they share since it was jointly owned by him and his late mother. He further testified that 3 acres were sold to him. He added that he had not seen any sale agreement. PW1 testified that the land was his and that the Defendant had no right to claim the suit parcel. He testified that he was in possession of the land.
7. Upon cross examination by Ms. Njoroge, he confirmed that the Defendant was his cousin. He further confirmed that his mother instituted the suit no. 95 of 1986 which was later referred to the DO and a ruling delivered that each person was to get 6 acres. He went on to confirm that his mother instituted another suit 498 of 1998 which suit was dismissed for want of prosecution on 15th August, 2018. PW1 was referred to defendants list of documents where he stated that he was not aware of the same. He stated that parcel 180 was supposed to be 204 shares. He admitted that he did not have the share certificate no. 301 for 102 shares. He confirmed that the Defendant’s certificate was no. 302 with 102 shares. He stated that the same was a total of 204 shares. He however denied that the same gave parcel no. 180. PW1 was referred to documents no. 3 of Defendants list where he confirmed that the Defendant was issued with a share certificate on 1st March, 1978 which share was 102. He stated that he did not have it in court. He was again referred to a letter dated 5th September, 1976 where he confirmed that his mother sought help from the Defendant. He confirmed that his mother requested the Defendant to contribute Kshs. 2,014/= since the company wanted 4080 which she didn’t have. He further confirmed that she had requested that they become joint owners. He added that his



mother asked the Defendant to find someone else in case he didn't have the money. He denied that his mother invited the Defendant. He also denied that they farmed together. PW1 was referred to letter a dated 24th March, 1978 where he confirmed that it was done by one of the Defendants, Mbugua. He confirmed that the letter showed that the land (acres) had been filed. The witness was again referred to the letter dated 17th October, 1976 where he confirmed that the letter was to Ndungi allegedly written by his mother. He denied that his mother wrote the letter. He added that the letter confirmed that when Missouri Safari Farmers removed the wheat, they would be given their respective parcels. He was referred to the members register of Missouri Safari Farmers where he confirmed that member no. 282 was Wambui Njoroge and Ndirugi Tisha. He stated that he did not live in the suit parcel but that he farmed on it. He further stated that from 1983, members had to take more shares totaling 12 acres. He added that all members were also entitled to another 1 acre and a 50 by 100 plot next to the tarmac. He stated that he was the one using the 1 acre and plot. He added that the title was at lands office. He further stated that he had not taken it because the committee had put a caveat as a result of the present suit. He admitted that the succession cause was not finalized. He also added that he was aware of the citation. PW1 stated that the Defendant caused him to file the succession cause. He stated that he had sold 1 acre. He denied that his actions were intended to defeat the Defendants claim.

8. Upon reexamination, he stated that the letters did not mention plot no. 180. He added that his mother had 1 share and was allocated plot no. 180. He also stated that the Defendant had 102 shares but that he was not sure that he was allocated land. He added that the share certificate was not in respect to plot 180. He stated that the letter dated 5th September, 1976 confirmed that his mother did not have capacity to add money and inviting him to add 2040 so they can jointly own the share. He added that everyone was to get their portion as divided by the company. He confirmed that the Naivasha case was transferred to Nakuru.
9. Joseph Chege Mbugua testified as PW2 where his statement dated 10th June, 2022 as adopted as his evidence in chief. He testified that he lived in Maraguchu Missouri Farmers in Naivasha. He also produced his list of documents dated 6th July 2022 as follows:
 - a. Share certificate in the name of Julia Njeri Kibuiya. Exhibit P9.
 - b. Title deed his name which he inherited the land from his mother. . Exhibit P10.
10. He testified that the land belonged to the family of Wangui Njoroge. He further testified that his mother was a member of Missouri Farmers Co. Ltd. with 2 shares. He added that she got a total of 24 acres. He testified that he did not know the Defendant.
11. Upon cross examination, he stated that the land initially belonged to his mother. He further confirmed that it was bought by the company in 1964. He also stated that he could not recall when his mother bought the land. He added that the share was 4080 shillings. PW2 explained that with one share, a member was entitled to 12 acres. He stated that it was slightly over 1 acre and that one had to pay 4080 in order to get it. He stated that he was not aware of the Defendant having paid 2040 to the Plaintiff's mother. He added that if the Defendant paid, then it was half. He was referred to letter dated 5th September, 1976 which requested Stanley to add 2040. He confirmed that the letter stated that when he paid 2040, they would be joint shareholders. He confirmed that his mother had paid 4080 being 12 acres, 1 acre and the 50 by 100 plot. He stated that if she had 24 acres she paid 8160 equivalent to 2 shares. He confirmed that he had sold 1 acre.
12. Upon reexamination, PW2 stated that his mother's share certificate had 102 shares equivalent to 12 acres. He further confirmed that the share certificate that indicated 102 shares, a person had to pay 4080 shillings. He added that from the letter dated 5th September, 1976, Wangui invited the Defendant to



contribute 2040. He stated that the company had asked members to add more money so as to increase their shareholding.

That marked the close of the Plaintiff's case.

Defence case

13. Stanley Ndungi Ticha testified as DW1 where his witness statement dated 27th October, 2021 was adopted as his evidence in chief. It was his testimony that Wangui Njoroge (deceased) was his aunt. He testified that she lived in Maraiguchu Missouri Farmers company. He testified that in 1976, his aunt wrote him a letter dated 5th of September, 1976. He testified that the land was 2040 but another 2040 was added. He testified that she asked that he raises the other half so that they could jointly own the land. Exhibit D1. He testified that he sent her the money after which she wrote a letter on 17th October, 1976 confirming that the money was received by the company and that she had the receipt. He added that he was also informed that there was wheat growing on the land and that once it is harvested, they would then occupy the land. Exhibit D2. He went on to testify that she wrote another letter dated 15th February, 1978 confirming that the company had added other members and 4 acres. He testified that the cost was Kshs 100/- per acre. Exhibit D3. DW1 testified that there was another letter for March 1978 where he was informed that the land was cultivated and that all the potatoes had been bought. He testified that Mbugua was his cousin who wrote the letter on behalf of his wife. Exhibit D4.
14. DW1 went on to testify that he also had a letter dated 4th September, 1978 written by his mother who stated that she had returned home from the shamba. Exhibit D5. He testified that each of them was issued with a share certificate. He further testified that he had a photocopy of the Wangui Njoroge's certificate together with documents certified on 24th September, 1991. He added that the Defendant had 102 shares and Wangui Njoroge and the Defendant with 204 shares. He testified that the 102 shares were merged to 204 and they were given one certificate which he gave his aunt. He admitted that he did not have it in court. It was his testimony that he was issued with a certificate for 102 shares dated 1st March, 1978. Exhibit D6.
15. He testified that for the 204 shares, they got 3 portions, Block 1 plot No. 180-12.8 acres, Stone area 1.4 acres and 50x100 plot. He testified that all the portions were to be shared equally with his aunt but it did not happen. He testified that his aunt took him to court in Naivasha Magistrates where the court ruled that they share 50.50 but she refused. He went on to testify that the case went to Nakuru High court as 498 of 1993 where it was dismissed for want of prosecution on 15th August, 2018. It was his testimony that when they planted, it was 4 acres instead of 6 acres. He added that his cousin, the Plaintiff was used part of the land. He testified that he did not have the title since he had only paid half of the total for survey and title. He added that he had a receipt for 1650 and that his aunt had not paid the other half. He further testified that the office issued him with the receipt dated 5th July, 1982 and that the cost was Kshs. 3,300. Exhibit D7. He denied that he had conned his aunt. He testified that he was invited by his aunt and was introduced to Missouri Farmers. He testified that he did not know them and he could not have influenced anything that happened there. DW1 testified that he was taken to the company by the aunt and they were jointly registered. He denied that he had misled an illiterate woman. He was referred to Exhibit P4 where he stated that after balloting on 20th June, 1993, on 8th January, 1984, his aunt told him that she had wanted to sell 3 acres from her ½ at Kshs. 5000 per acre. He testified that he paid Kshs. 13,540 and left a balance of Kshs. 1,450. He added that before he completed payment, she took him to court. DW1 testified that Wangui and his mother are sisters. He also testified that they had not agreed to pay the balance within a certain time. He testified that he also bought 3 acres aside from his shares. He further testified that Wangui was not a full share holder. He explained that for one to be a full shareholder, one must have 204 shares. He testified that his name was



- entered in Missouri register as member. He also testified that the receipts produced were genuine and denied any form of fraud. He urged the court to grant him 6 acres plus 3 acres bought from Wangui and that the case be dismissed. He added that he was willing to surrender the 50x100 to her.
16. Upon cross examination he was referred to the letter dated 24th March, 1978. Exhibit D4 where he confirmed that it did not mention the parcels subject of this dispute. He was also referred to letter date 5th September, 1976. Exhibit D1 where he stated that the shareholders were to be allocated their individual parcel from the company when the land was subdivided. He was referred to the letter dated 15th February, 1998. Exhibit D3 where he confirmed that it did not mention the suit parcels. He was again referred to the letter 17th October, 1976. Exhibit D2 where he stated that at the time, the land had not been allocated. DW1 admitted that his shares were merged. He further stated that his share certificate for 102 shares was genuine. He added that Wangui also had 102 shares. He confirmed that his share and that of Wangui produced certificate no. 009 for 204 shares. He went on to state that the certificate was cancelled after which they got 009. He stated that he did not return but it was instead cancelled and they were allotted with the 009 one. He confirmed that the company issued them with certificated no. 009. He stated that Wangui balloted. He stated that she later changed her on giving him the land in 1986 when she filed the suit in Naivasha no. 95 of 1986 which was transferred to Nakuru. He stated that he had purchased 3 acres and the balance was outstanding to date. He stated that he was ready to pay.
 17. Upon reexamination, he stated that the letters produced did not mention a specific parcel of land since there was no allocation, the land has not been surveyed. He further stated that the land was not numbered and that on shareholding, his shares were 102, while his aunt's were 102 shares. He was referred to exhibit D1 where he stated that the amount they were to pay was doubled from 2040 to 2080 and her aunt could not afford and that's when he was invited and they became joint shareholders. He stated that they were considered as one share. He further stated that he could have purchased the 3 acres but his aunt refused and they did not complete the transaction. He stated that he filed a counterclaim where he wanted the Plaintiff's case dismissed and they each have their titles. He stated that he had no complaint against Missouri since it had already allocated him and his aunt the shares and land.
 18. Dominic Nganga Gathitho testified as DW2 where his witness statement dated 19th October, 2021 was adopted as his evidence in chief. He testified that he was a member of Missouri Safari Farmers Co. Ltd where they collected money in 1964. He further testified that the members were employees in Arusha Tanzania working for Missouri plantations owned by an American. He testified that Kenyans in Tanzania, came home and bought land in Naivasha after which they used the white man's name as the name of the company. It was his testimony that in 1979 he was the chairman of the Missouri Safari Farmers Company and he was tasked with subdivision of the land. He further testified that they were 295 members. He went on to testify that before subdivision members were using the land for farming and that each member had 6 acres to be used for farming. He testified that Wangui Njoroge was their member from Tanzania. He testified that for one share, a person had to pay 1500 but not everyone was able to pay. He added that they had agreed to sell company property to pay debts and they asked members to add another 540 totaling to 2040. He testified that the same was to be divided by 20/= to give 102 shares. He went on to testify that Wangui invited her nephew, the Defendant and both their names were written on one share. He testified that when doing returns, they had both their names. He testified that on division each member got:
 - a. Arable land 12.8 acres.
 - b. On the stoney area 14 acres.
 - c. Residential commercial business was 50x100



19. He further testified that at no. 202 they had Wangui Njoroge and the Defendant where both had a 50x100 plot she balloted to 282. He testified that he also got the 12 and 14 acres land with the Defendant. He added that there was another register at the lands office which showed Wangui Njoroge and the Defendant. He also testified that he gave 3 ballots for the 3 parcels in both their names. The register is produced as Exhibit D8.
20. Upon cross examination, he stated that he was the chairman of Missouri farmers company. He admitted that the company was no longer in existence. He confirmed that the records at the office showed that Wangui Njoroge and the Defendant owned a share jointly. He admitted that he did not have the records but that they were with the receiver manager. He confirmed that if 3 people contributed to the purchase of a share, it was in all their names. He stated that he was not aware about share no 301 and 302 as stated in his statement. He added that the company records showed joint shares. He admitted that he did not have the records and that the company was no longer in existence. He confirmed that it was wound up in 1983. He stated that after the land was subdivided, the members register was taken to the land registry and their ballot numbers with 295 members. He further stated that he had the members ballot papers which they were to use to pick the title deed. He confirmed that he gave Wangui 3 ballot papers. He further confirmed that the registers were handed over to receiver manager. He confirmed that Wangui and the Defendant have 1 share of 102.
21. Upon reexamination, he stated that both Wangui and the Defendant have a total of 102 shares. He further stated that the register of members was given to the DC and that the title was to be picked at the land registry Naivasha. He added that a member presented the ballot at the registry to so as to get a title.
22. DW2 was referred to Exhibit D6 where he clarified to the court that he was not the chairman in 1978. He added that he was not familiar with the said document. He clarified that he got in 1977 and that his evidence was on what was happened after 1979. He further clarified that his evidence was that Wangui invited the Defendant to the land. He added that for someone to get the 3 parcels, one had to have 204 shares. He clarified that he initially said 102, but it was a mathematics and calculation problem. He added that he had 204 shares at Missouri Farmers.
23. Ronsisos Ritho testified as DW3 where he testified that summons was issued to him to produce the register. He testified that the register referred the allottees as the Defendant and Wangari Njoroge. He testified that the acreage of land was 12.81 acres and added that the title deed had not been issued. He further testified that there was no reason for non-issue. He testified that the case was a family dispute as noted in the register and green card. He produced the green card and members register as DEX 9 and DEX 10.
24. Upon cross examination, he stated that the register was received by the officer at the Lands office. He further stated that the register indicated the acreage but not shares. He added that the property was registered in the name of the government of Kenya. That marked the close of Defendant's case.

Submissions

25. Counsel for the Plaintiff filed his submissions dated 7th March, 2025 where he gave a summary of the case and submits that vide the court's ruling on 19th January, 2023, the court dismissed the Defendant's preliminary objection that the suit was res judicata hence the issue is settled. He identified four issues for determination, the first one being whether the Plaintiff has proved his claim against the Defendant. While submitting in the affirmative, it was counsel's argument that all the key transactions underlying the dispute herein took place between 1976 and 1983 while the hearing took place between 2023 and 2025 thus a long period of time with parties having to recollect past matters. He relied on the case of National Union of Mineworkers V IEMO [2019] EWHC 1359 (Comm). He submits that it was not



disputed that Wangui Njoroge (Deceased) was a shareholder of Missouri Safari Farmers with 1 share. He further submits that the company asked members to increase their shares and since Wangui didn't have the financial resources she invited the Defendant to avail Kshs. 2,040/= and they purchased the additional shares after which they became joint shareholders. He relied on the case of Muchina (Suing on behalf of estate of Regina Muthoni Gitau, Deceased) V Attorney General & another (Environment and Land Appeal 12 of 2019) [2022] KEELC 2200 (KLR). He submits that when the Defendant was issued with a share certificate on 1st March, 1978, he became an independent shareholder separate from Wangui Njoroge (deceased). He argues that it was not explained why the Defendant did not ballot for his land when balloting took place on 28th June, 1983. He submits that if the Defendant has any claim to any land, the claim ought to have been against Missouri Safari Company Limited whose share he held and not the deceased and her estate.

26. The second issue was whether the Defendant's counterclaim is competent. Counsel relied on Orders 4 rule 1 and 7 Rule 5 of the Civil Procedure Rules. He submits that the Defendant's counter claim was not accompanied by a verifying affidavit thus incompetent and ought to be struck out. He relied on a number of authorities among them being the case in Priska Onyango Ojuang' & Another V Henry Ojwang Nyabende [2018] eKLR. It was his submission that the court cannot entertain the Defendant's counterclaim for want of a verifying affidavit.
27. The third issue was whether the Defendant's counterclaim is time and statute barred. He relied on the *Limitation of Actions Act* which provide for timeline for actions of contract. He also cited the case in Gekondo Omari Claimant V Ministry of Industry, Trade and Cooperative, Director of Pensions & Attorney General [2022] KEELRC 1046 (KLR) and Beatrice Kahai Adagala V Postal Corporation of Kenya [2015] eKLR. He submits that the Defendant's claim is two-fold the first one being claim for land arising from a share in Missouri Safari Farmers Limited which share he purchased through the deceased. He submits that the other claim was that the Defendant claimed 3 ½ acres allegedly purchased from the deceased. Counsel argues that the Defendant in essence sought to enforce an agreement for purchase of land entered into in 1984 thus statute barred.
28. The fourth issue on orders the court should issue, counsel relied on the case in Hortensia Wanjiku Chege V Samwel Chege Kigotho [2019] KEELC 2042 (KLR) and Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others [2014] eKLR. He urges the court to dismiss the counterclaim with costs and allow the Plaintiff's claim as prayed for.
29. Counsel for the Defendant on the other hand filed her submissions dated 27th February, 2025 where she submits that the Plaintiff's mother Wangui Njoroge (deceased) requested the Defendant to pay the additional amount of Kshs. 2,040 equivalent to 1 share in Missouri Safari Farmers Company Limited thus being joint shareholders. He submits that the Defendant paid the same and the deceased was issued with a receipt from the company. He argues that the Defendant produced a share certificate for number 301 that showed Wangui Njoroge had 102 shares and share certificate number 302 for 102 shares in his name.
30. He submits that it was the Defendant's case that he jointly bought the share at Missouri Safari Farmers Company Limited on invitation by the aunt who was the Plaintiff's mother. He further submits that DW2 the director of the company confirmed the said position in his testimony that the records showed that the two jointly owned plot 180 measuring 12.8 acres. He also submits that DW3 the Land Registrar Naivasha produced the register in respect of the company which confirmed that parcel 180 was jointly owned by Wangui Njoroge and the Defendant. He added that DW3 produced a copy of the green card which also confirmed the said position.



31. It was counsel's submission that there was no evidence adduced that the Defendant fraudulently had his name entered in the company records as a shareholder. He relied on the case of Ahmed Mohammed Noor V Abdi Aziz Osman [2019] eKLR and Court of Appeal case in Kinyanjui Kamau V George Kamau (2015) eKLR. He submits that the sale agreement was for 3 acres between the Defendant and his mother out of the deceased's 6.4 acres where he paid Kshs. 13,540/= leaving a balance of Kshs. 1,460/=. It was counsel's submission that the Defendant was not only entitled to half of plot 180 but 3 acres he bought from the deceased, half share of the plot on the hilly side of the farm, 1.4 acres as well as half the plot along Njambini-Naivasha road.

Analysis and Determination

32. This court has considered the pleadings, the evidence on record and the submissions and is of the view that the following issues arise for determination:
- a. Whether or not the suit property is jointly owned by the Plaintiff and Defendant.
 - b. Whether the sale agreement dated 8th January, 1984 is void or not.
 - c. Whether the Plaintiff is entitled to the orders sought.
 - d. Whether the Defendant's Counterclaim is merited or not.
 - e. Who should bear the costs of the suit.
33. It was the Plaintiff's case that sometime in 1983, Wangui Njoroge (deceased) being a shareholder of Missouri Safari Farmers Company Limited a land buying company balloted for plot 180, the suit property measuring approximately 12.8 acres. PW1, son to Wangui Njoroge (deceased) testified that his late mother was a shareholder with 2 shares where she was given plot no 180. Upon cross examination, he admitted that his mother had requested the Defendant to contribute Kshs. 2,014/= since the company wanted to increase the shares of its members to Kshs. 4,080 which she didn't have. He also admitted that his late mother had requested that together with the Defendant, they become joint owners of the suit land.
34. The Defendant on the other had confirmed that his late aunt Wangui Njoroge had requested him to raise the other half of Kshs. 2,040 so that they could jointly own the suit land. He admitted that he sent her the money after which she wrote a letter on 17th October, 1976 confirming that the money had been received by the company. DW2, testified that he was the company's chairman and that the company records showed that Wangui Njoroge (deceased) and the Defendant were joint shares. He admitted that the company had been wound up in 1983. He confirmed that after subdivision of the suit land, the members register was taken to the land registry with their ballot numbers. He confirmed that Wangui (deceased) and the Defendant had 1 share of 102. Lastly, DW3, the Land Registrar confirmed that as per the register (Exhibit DEX 9) Wangui (deceased) and the Defendant were joint allottees of the suit land.
35. It is not in dispute that Wangui (deceased) was a shareholder of Missouri Safari Farmers Company Limited as evidenced by the receipt dated 5th October, 1976 and ballot card number 498 Exhibit P 2 and 3. It is also not in dispute that the company wanted to increase its members shares causing her to request the Defendant to assist in contributing Kshs. 2,040 so that they could become joint shareholders. This is evidenced by the letter dated 5th September, 1976. From the evidence, it was clear that the Defendant agreed to pay and Wangui Njoroge (deceased) acknowledged receipt of the payment vide a letter dated 17th October, 1976. It was thereafter that the company issued them with a share certificate number 009 for 204 shares and later certificates number 301 and 302 of 102 shares each for



Wangui Njoroge (deceased) and the Defendant respectively. In addition, there was a members' register under number 282 which confirmed that the two were joint shareholders. Furthermore, DW2 and DW3 the company's chairman and the land Registrar both confirmed that Wangui Njoroge (deceased) and the Defendant were in fact joint allottees of the suit land.

36. In the case of *Arthi Highway Developers Limited V West End Butchery Limited & 6 others* [2015] KECA 816 (KLR) the court held as follows:

“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 ch.D. 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”.

37. It is this court's view that even though the Plaintiff pleaded and particularized the alleged fraud, he did not lead sufficient evidence to prove fraud. In the circumstance, this court finds that the suit property was in fact jointly owned by Wangui Njoroge (deceased) and the Defendant.
38. Going to the second issue, it is not in contention that there was a sale agreement dated 8th January, 1984 where Wangui Njoroge (deceased) sold to the Defendant 3 acres of the suit property and half of the land she was to get as her share at the rocky place for Kshs. 15,000/= . It was also not in contention that she had received Kshs. 13,540/= as part payment and that the remaining balance was Kshs. 1,460/= . It is noteworthy that the remaining balance was yet to be paid and the Defendant upon cross examination stated that he was ready to clear the balance.
39. Section 3 (3) of the *Law of Contract Act* before the amendment of 1990, provided that:

“(3) No suit shall be brought upon a contract for the disposition of an interest in land unless the agreement upon which the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it:

Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract –

- i. has in part performance of the contract taken possession of the property or any part thereof; or



- ii. being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.”

40. It is this court’s view that the agreement met the criteria set out in the above provisions as it was in writing, signed by the parties and the signatures attested to by witnesses. I therefore find that the agreement was valid.

41. In the case of *Mwarania V M’kiambati* [2024] KEELC 4557 (KLR) the court held as follows:

“It is trite law that courts do not rewrite contracts for parties since they have the freedom to contract. Similarly, parole evidence may not be introduced to contradict what has been reduced into a contract. Courts ordinarily adopt the objective theory of contract interpretations in order to give effect to the expressed intention of the parties.”

42. It is not in contention that consideration for the 3 acres was not paid in full as there was a balance of Kshs. 1,460 a fact admitted by the Defendant.

43. In the case of *Sisto Wambugu V Kamau Njuguna* [1983] KECA 69 (KLR) the court held as follows:

“I have been unable to get the case of *Roberts v Wyatt* [1810] 2 Taunt 268 cited at 9 Halsbury’s Laws of England (4th Edn) p 366, para 531 F2 but the relevant statement says that contracts for the sale of land commonly give the vendor the right to rescind the sale if the purchaser does not pay on the appointed day. The law is that this right can only be exercised where time is of the essence, or if it is not, after the party who is not at fault has given reasonable notice to the defaulting party making time of the essence. The position is explained by the following passage: Halsbury’s Laws of England (ibid) para 485:

“In cases where time is not originally of the essence of the contract, or where stipulation making time of the essence has been waived, time may be made of the essence, where there is unreasonable delay, by a notice from the party who is not in default fixing a reasonable time for performance and stating that, in the event of non-performance within the time so fixed, he intends to treat the contract as broken.”

44. The Defendant testified that they had not agreed when the balance was to be paid. It is not in contention that the parties did not stipulate when the balance should have been cleared. I have perused the terms of the agreement and it is my view that time was not of the essence. It is my finding in law that when time is not stipulated as being of the essence, delays in performance do not constitute a fundamental breach to warrant termination. It is this court’s view that the deceased did not issue a notice to the Defendant requiring completion of the payment instead, she sent letters updating him on the progress of the land.

45. In the case of *Nagilah & 2 Others V Gitau & Another* [2022] KEELC 3221 (KLR) the court held that:

“Notice making time of the essence. In cases where time is not originally of the essence of the contract, or where a stipulation making time of the essence has been waived, time may be made of the essence, where there is unreasonable delay, by a notice from the party who is not in default fixing a reasonable time for completion and stating that, in the event of non-completion within the time so fixed, he intends to enforce or abandon the contract. But the



time fixed must be reasonable having regard to the position of things at the time when the notice is given, and to all the circumstances of the case.”

46. It is my finding that by virtue of the deceased’s conduct from the sent letters to the Defendant, she did not intend to terminate the agreement. Therefore, the balance of Kshs. 1,460/= remains a minor breach that cannot lead to the contract being repudiated. The Plaintiff contends that the Defendant cannot seek to enforce an agreement entered into in 1984 as it is statute barred. It is my finding that the said argument is rather misplaced since the claim was not solely based on the sale agreement. I thus find that the sale agreement dated 8th January, 1984 is valid. I therefore find that the Plaintiff has failed to prove his case on a balance of probabilities.

47. I have keenly perused the prayers sought in the Defendant’s Counter claim and it is a fact that the orders sought do not refer to the 3 acres he was sold to by the deceased to warrant grant by this court.

Consequently, both cases are dismissed with no orders as to costs.

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 9TH DAY OF MAY 2025.

A.O.OMBWAYO

JUDGE

