



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC NO. 282 OF 2012

CONSOLIDATED WITH ELC 162 OF 2015

(FORMELY NAIROBI HCCC NO. 2316 OF 2007)

FORWARD AGENCIES LIMITED 1ST PLAINTIFF

WISDOM PROPERTY AGENCIES LIMITED 2ND PLAINTIFF

VERSUS

KITANGILA LIMITED 1ST DEFENDANT

NIRISHI CHANDULAL SHAH 2ND DEFENDANT

CHIEF REGISTRAR OF TITLES 3RD DEFENDANT

DIRECTOR OF SURVEY..... 4TH DEFENDANT

JUDGMENT

Introduction

1. The two Plaintiffs filed their respective Amended Plaints dated 18th December, 2019 and 20th December, 2019 on 9th January, 2020. In the Amended Plaints, the Plaintiffs averred that at all material time, the 1st Defendant was the registered proprietor of land known as L.R. No. 10426/7 which was sub-divided into four sub-divisions, being L. R. Nos. 10426/24-27.
2. The Plaintiffs averred that the 1st Plaintiff entered into a sale agreement with Keziah Mumbi Paul comprising of two acres of L.R. No. 10426/7 (the suit property); that after sub-division of L.R. No. 10426/7, the two acres that Keziah Mumbi purchased from the 1st Defendant became L.R. No. 10426/24; that the said Keziah Mumbi Paul was the wife of the 1st Defendant's principal shareholder and Director and that Keziah Mumbi received as a gift L.R. No. 10426/24 from the 1st Defendant which she sold to the 1st Plaintiff for Kshs.1,000,000 vide an agreement of sale dated 29th November, 2005.
3. According to the 2nd Plaintiff, the other sub division of L.R. No. 10426/7 was L.R. No. 10426/27. The 2nd Plaintiff averred that the 1st Defendant sold L.R. No. 10426/27 to Francis Mwanzia Mulwa and that the said Francis Mwanzia Mulwa sold the sub division of the suit property to the 2nd Plaintiff on 24th December, 2003.
4. The Plaintiffs averred that they later on learnt that the 1st, 3rd and 4th Defendants had purported to sell the suit property to other parties, including the 2nd Defendant, despite having sold the same land to them and that they had already lodged the completion documents in respect to the two properties in the lands registry for registration.
5. The Plaintiffs have averred in the Amended Plaints that during the pendency of Nairobi ELC No. 2316 of 2007 (now Machakos 162 of 2015) and despite L.R. No. 10426/7 having been sub divided into four distinct portions, the 1st and 2nd Defendants used forged documents and hurriedly obtained a decree from this court which they used to obtain a new title for L.R. No. 10426/7 and transferred the entire land to the 2nd Defendant.
6. It is the Plaintiff's case that the purported cancellation of the Plaintiffs' titles in respect of L.R. No. 10426/24 and L.R. No. 10426/27 was tainted with illegality and fraud because the Plaintiffs were the *bona fide* purchasers of the said land and that as at the time the 1st

Defendant purportedly entered into an agreement for loan with an option to sell L.R. No. 10426/7 to the 2nd Defendant, the 1st Defendant did not have a legal title over the suit property, having sub-divided L.R. No. 10426/7 and sold the sub-divisions to the Plaintiffs and third parties.

7. It is the Plaintiffs' plea that the 2nd Defendant was not an innocent purchaser of the two portions of land because he was working in the law firm of Harith Sheth and was aware of the transactions between the Plaintiffs and the 1st Defendant in respect of the suit property, and that the 1st Defendant was not the registered proprietor of L.R. No. 10426/7 at the time he purported to sell the said land to the 2nd Defendant.

8. In the particulars of fraud, the Plaintiffs have alleged that the 1st Defendant purported to sell the suit property to the 2nd Defendant yet it did not have the title to the suit property; that the said Defendants used a forged title to transfer the suit property and that the 1st and 2nd Defendants were aware that L.R. No. 10426/7 had been sub-divided and sold to third parties, including the Plaintiffs. The Plaintiffs have sought for the following prayers;

a) A declaration that the 1st and 2nd Plaintiffs are the legitimate owners of the suit property L.R. Nos. 10426/24 and 27 respectively, being a subdivision of L.R. No 10426/7 to which they have taken vacant possession.

b) A permanent injunction stopping the 1st and 2nd Defendants by themselves or through their agents and servants and third parties from any further dealings with the suit property, namely L.R. No. 10426/7.

c) A permanent injunction against the 3rd and 4th Defendants whether by themselves, their agents or third parties restraining them from approving or registering any subdivision schemes, leases, assignments or any other dealings by the 1st and 2nd Defendants jointly or severally relating to L.R. No. 10426/7.

d) An order directing the 3rd Defendant to revoke and or annul all entries illegally entered on the land register and recall and cancel the title issued to the 2nd Defendant and all encumbrances over L.R. No. 10426/7 and transfer it back to the 1st Defendant.

e) An order directing the Director of Surveys to reinstate the Deed Plans for L. R. No. 10426/24 -27 being subdivisions of L.R. No. 10426/7 cancelled via CT221/91/65 on 6th August 2013.

f) An order directing the 1st Defendant to transfer L.R. Nos. 10426/24 and L.R. No. 10426/27 being subdivisions of L. R. No. 10426/7 to the two Plaintiffs respectively within 30 days of this order.

g) That in default of complying with prayer (f) of the order above the Deputy Registrar of the Machakos Environment and land Court be authorized to sign all documents and instruments of land parcel L. R. No 10426/24 and L.R. No. 10426/27, subdivisions of L.R. No. 10426/7 to confer title upon the 1st and 2nd Plaintiffs.

h) Damages for breach of contract.

9. The 1st, 3rd and 4th Defendants did not file a Defence. In his Defence, the 2nd Defendant averred that in August, 2006, the 1st Defendant approached him for a loan of Kshs 500,000; that he advanced to the 1st Defendant the said amount; that on 1st November, 2006, the 1st Defendant's Director, Francis Mburu, approached him again for a loan facility of Kshs 1,000,000 and that they agreed to execute a binding loan agreement in which the 1st Defendant would sell to him L. R. No. 10426/7 should the 1st Defendant default in repaying the loan advances.

10. According to the 2nd Defendant, he entered into an agreement dated 2nd November, 2006 with the 1st Defendant in respect of L.R. No. 10426/7 which was the security for the repayment of the loan advanced to the 1st Defendant and that in addition to the pledge and to further secure the repayment of the said advance, the 1st Defendant gave the 2nd Defendant an option to purchase the suit property for the sum of Kshs 10,000,000 in the event the 1st Defendant defaults in repaying the loan on or before 31st May, 2007.

11. It was averred by the 2nd Defendant that simultaneously with the execution of the sale agreement, the 1st Defendant executed a transfer of the suit property in his favour; that the 1st Defendant was also required under the agreement to deposit the original Deed Plan for L.R. No.10426/7 together with the Grant with the parties' advocates within 90 days and that the 1st Defendant defaulted in paying the loan amounting to Kshs 5,000,000 as agreed.

12. The 2nd Defendant averred that he duly paid the full purchase of Kshs 10,000,000 by paying the 1st Defendant a sum of Kshs 5,000,000 and the loan of Kshs 5,000,000 which was advanced to the 1st Defendant and that after making the said payment, the 1st Defendant declined to give him the completion documents, including the original Grant and the Deed Plan for the suit property.

13. The 2nd Defendant averred in his Defence that the 1st Defendant's Director eventually swore an affidavit which enabled the Director of Survey's to prepare and issue to him a certified Deed Plan for the suit property; that when the 1st Defendant failed to deliver to him the original Grant, he filed a suit being ELC number 282 of 2012 against the 1st Defendant and that on 31st August, 2012, a Decree was issued in Machakos ELC No. 282 of 2012.

14. The 2nd Defendant finally averred that on the basis of the Decree in Machakos ELC No. 282 of 2012, the suit property was transferred to

him and that there is no indication on the Grant that was issued to him to show that the suit property had been subdivided into several portions. In the counter-claim, the 2nd Defendant has averred that the court should declare him the rightful owner of land known as L.R. No. 10426/7.

The Plaintiff's case

15. PW1, an advocate of the High Court, informed the court that L.R. No. 10426 was subdivided into several portions of land; that one of the sub-divisions was L.R. No 10426/7 which measured ten (10) acres which was purchased by the 1st Defendant; that out of the ten (10) acres, two (2) acres was sold to a Mr. Kamau, another two (2) acres to Keziah Mumbi while five (5) acres was sold to him.

16. It was the evidence of PW1 that he sold his portion of land measuring 5 acres to the 2nd Plaintiff; that Keziah Mumbi also sold her two acres to the 1st Plaintiff and that the land that Keziah Mumbi sold to the 1st Plaintiff after sub division of L.R. No. 10426/7 was L.R. No. 10426/24.

17. According to PW1, he is the one who acted for Keziah Mumbi in the sale of L.R. No. 10426/24 to the 1st Plaintiff; that the 1st Defendant had previously sold to Keziah L.R. No. 10426/24 vide an agreement of sale dated 24th December, 2003 and that the 1st Defendant had earlier sold to him (PW1) the 5 acres and sold the remaining land of L.R. No. 10426/7 to Mr. Joseph Kamau.

18. According to PW1, he had the authority of the 1st Defendant's Director to sell the sub-divided land; that he is the one who prepared the Deed of Assignment in which Keziah Mumbi sold her portion of land to the 1st Plaintiff and that he paid the requisite rent rates and stamp duty to facilitate the said transfer.

19. In cross-examination; PW1 stated that he used to act for the 1st Defendant; that the Directors of the 1st Defendant signed the agreement between the 1st Defendant and Keziah Mumbi in respect of L. R. No. 10426/24 measuring approximately 2 acres; that Keziah Mumbi sold the said land to the 1st Plaintiff by way of an Assignment and that it is the 1st Defendant who initiated the sub-division of L.R. No.10426/7.

20. According to PW1, after the sub-division of L. R. No. 10426/7, the 1st Defendant frustrated the transfer process; that he (PW1) was in possession of the provisional certificate, the Deed Plan, the transfers, the rates receipts and the rates clearance certificate and that he handed to the Plaintiffs the completion documents in respect to the land that Keziah Mumbi was selling to the 1st Plaintiff, including the documents that he (PW1) was selling to the 2nd Plaintiff.

21. PW1 informed the court that a disagreement amongst the 1st Defendant's Directors arose; that the differences amongst the 1st Defendant's Director might have caused the frustration of the transfer of the suit property to the Plaintiffs and that he was not privy to the details that caused the disagreements of the 1st Defendant's Directors.

22. The Plaintiffs' Director, PW2, informed the court that the 1st Defendant sub-divided L.R. No. 10426/7 into L.R. Nos. 10426/24-27; that the 1st Plaintiff purchased a portion of the sub divided land from Keziah Mumbi which she had purchased from the 1st Defendant and that the land that the 1st Plaintiff purchased from Keziah was L.R. No. 10426/24. According to PW 2, PW1 was the advocate for both parties.

23. The 1st Defendant having executed the sale agreement on 29th November, 2005 in favour of Keziah, it was the evidence of PW2 that Keziah Mumbi executed a Deed of Assignment in which she assigned and transferred all her rights to the 1st Plaintiff for a consideration of KShs 1,000,000 which the 1st Plaintiff fully paid.

24. It was the evidence of PW 2 that the 2nd Plaintiff on its part purchased the portion of land that had been acquired by Mr. Mulwa (PW 1) from the 1st Defendant which was L.R. No. 10426/27; that prior to the purchase of the two properties, he had conducted due diligence to ascertain their existence on the ground.

25. PW 2 informed the court that on 20th April, 2006, he received documents from the 1st Defendant's advocate to facilitate the transfer of all the properties; that the documents he received included the original Deed Plans for the two properties, consent to transfer, land rent and rates clearance certificates, stamp duty assessment forms and receipts as well as executed transfer documents and surrender of titles.

26. PW 2 stated that the original grant for L.R. No. 10426/7 was declared lost and PW 1 authorized the then advocates for the 1st Defendant, Mutisya and Co. Advocates, to procure a provisional certificate of the title; that after the provisional certificate was issued, they submitted the completion documents to lands for transfer and registration and that the said documents included the surrender of the title of L.R. No. 10426/7 to facilitate the issuance of individual title documents.

27. It was the evidence of PW 2 that when the completion documents were presented for registration, they were informed that one of the 1st Defendant's Director had instructed the land registry not to effect the transfer; that the said Director of the 1st Defendant then filed Nairobi ELC No. 2316 of 2007 (now Machakos ELC 162 of 2015) seeking to stop the transaction and that while the said suit was pending, they learnt that Mr. Kamau had sold one of the sub divisions of L.R. No. 10426/7 to Agriculture Syndicate Limited through the firm of Harith Sheth Advocates.

28. It was the evidence of PW 2 that in an attempt to steal a match on them, the 1st Defendant and the 2nd Defendant instituted Machakos ELC number 282 of 2012 in which they entered into a consent, which consent culminated in the transfer of L.R. No. 10426/7 to the 2nd Defendant while knowing that L.R. No. 10426/7 had been sub-divided on 2nd June, 2006 into four (4) portions. According to PW2, the 1st

and 2nd Defendants duped the court in Machakos ELC 282 of 2012 by tearing and replacing the last page of the title which had entries 29 and 30 as a caveat and a provisional title.

29. It was the evidence of PW 2 that after purchasing the two portions of land, he sub-divided them and sold the sub-divisions to various people including members of Kinanie Self Help Group; that the people who purchased the land have taken possession of the same; that the 2nd Defendant's business partner, Mr. Harith Sheth, has proved to be conflicted, including transacting in L.R. No. 10426/25 in 2010 and that he backdated the sale and loan agreement of 2nd November, 2006 between the 1st and 2nd Defendants. PW2 testified that the 2nd Defendant and his then advocate Harith Sheth, used the court process to illegally take land that was not available for sale, which fact he was aware.

30. In cross-examination, PW 2 stated that Keziah bought a portion of the suit property from the 1st Defendant; that the said Keziah was Mr. Mburu's mistress and that the agreement between the 1st Plaintiff and Keziah was witnessed by her brother. According to PW 2, Mr. Francis Mulwa advocate, PW1, was acting for the 1st Defendant in the sale transaction and that there was no conflict of interest when the said Mr. Mulwa purchased a portion of the suit land.

31. PW 2 informed the court that the 1st Plaintiff purchased a total of eight acres (8) of land; that they surrendered one (1) acre of the land to the local authority for a road and that when they were threatened with being arrested, they agreed to have five (5) acres of land instead of eight (8) acres. These changes, according to PW 2, were incorporated in an Amended Agreement and that the purchase price reduced due to the reduction in the acreage that was being sold.

32. PW 2 stated that all the completion documents were handed over to Mr. Mulwa advocate, who passed them over to Mr. Mutisya advocate because he was unwell; that the only document that was not passed to his advocate was the original title document and that he was informed that the original title was lost.

33. According to PW 2, the 1st Defendant's Directors authorized their advocate, PW 1 to procure a provisional title; that the 1st Defendant's Directors authorized the sub-division of the suit property and that the 1st Defendant's Directors gave them duly signed transfers after sub-dividing the land, amongst other completion documents.

34. It was the evidence of PW 2 that Mr. Sheth advocate had acted for the 1st Defendant's sister company, Agriculture Syndicate Limited, in which him (PW 2), as a Director of GIMU Development Limited, purchased from Agriculture Syndicate Limited L.R. No. 10426/30; that they paid Mr. Sheth the purchase price of Kshs 11,000,000 and that when the transaction failed to go through, he asked for a refund of the purchase price.

35. The land surveyor, PW3, informed the court that he did a re-establishment of boundaries of the suit property (L.R. No. 10426/7) which was by then measuring approximately ten (10) acres; that he was engaged by PW2 to undertake a survey work on land previously known as L.R. No. 10426/7 which had been sub-divided into four portions and that he was provided with the copies of the Deed Plans which were pending the issuance of titles.

36. It was the evidence of PW 3 that he was to process the further sub-division of L.R. No. 10426/24 and 10426/27 which had been purchased by the Plaintiffs; that he was given the Deed Plans for the said two plots and that he had instructed a Mr. Omari, a licensed Physical Planner, to get the sub-division of the two plots done.

37. According to PW3, he prepared the survey plan for L.R. No. 10426/24 and 27; that he placed beacons on the ground for the two plots and that he acquired the Deed Plan numbers 258133 and 258136 for L.R. No. 10426/24 and 27 respectively. It was the evidence of PW 3 that while pursuing the title documents for the two plots, he was informed that there was a court order that had been issued stopping any further dealings in the suit property.

The Defence case

38. The 2nd Defendant, DW 1, informed the court that sometimes in the year 2006, the 1st Defendant, through its Director, Mr. Francis Mburu, who was well known to him, approached him for a loan facility of Kshs. 500,000 which he advanced him and that on various dates between August, 2006 to October, 2006, he advanced to the 1st Defendant a total sum of Kshs 4,000,000.

39. It was the evidence of DW1 that on 1st November, 2006, the 1st Defendant's Director approached him for a further loan facility of Kshs. 1,000,000 and that he was only willing to advance him this amount if he agreed to execute a binding loan agreement in which he would sell to him L.R. No. 10426/7 should he default in repaying the loan advances.

40. According to DW 1, on 2nd November, 2006 he entered into an agreement for the loan with an option to buy L.R. No. 10426/7; that the 1st Defendant gave him an option to purchase the suit property for the sum of Kshs. 10,000,000 in the event he defaulted in repaying the loan on or before 31st May, 2007 and that simultaneously with the execution of the Agreement, the 1st Defendant executed the transfer document in his favour and deposited the same with the law firm of Harith Sheth Advocates.

41. When the 1st Defendant defaulted in repaying the loan amount of Kshs 5,000,000, it was the evidence of DW1 that he paid to the Defendant Kshs 5,000,000 and requested him to deliver to him the Deed Plan and the title document for L.R. No. 10426/7 and that the 1st Defendant refused to deliver the said documents.

42. DW1 stated that he then sued the 1st Defendant in ELC Number 282 of 2012; that the 1st Defendant's Director informed him that he had lost the Deed Plan and the Grant for L.R. No. 10426/7 and that pursuant to an order of the court in ELC No. 282 of 2012, he was registered

as the proprietor of the land on 31st January, 2013.

43. DW1 denied being privy to any dealings between the Plaintiffs and the 1st Defendant in respect to the suit land; that the Agreement of 2nd November, 2006 is not backdated and that Mr. Harith Sheth is not his employer but rather his advocate.
44. According to DW1, the Plaintiffs forged Grant number I.R 17604 and made false entries being entry numbers 30, 31 and 32; that the said entries were cancelled by the Land Registrar and that he is not aware of any provisional title regarding the property as he holds the original title.
45. DW1 stated that from the Grant he was holding, there was no indication that L. R. No. 10426/7 was sub-divided and that he was an innocent purchaser for value without notice of any purported sub-divisions and/or any alleged transactions between the 1st Defendant and the Plaintiffs in regard to the suit property.
46. In cross-examination, DW1 stated that he conducted a search before purchasing the suit property; that he was taken on the ground and saw the beacons for the entire land, that is L.R. No. 10426/7 and that although the 1st Defendant's Director was to pay the initial loan by 31st May, 2007, he did not pay.
47. According to DW1, he was given a copy of the Deed Plan for L.R. No. 10426/7 and not the original Deed Plan; that he was also not given the original Grant for L.R. No. 10426/7 and that he released to the 1st Defendant the purchase price after the 1st Defendant's Directors signed the transfer documents. According to DW1, the security that he had for the release of Kshs10,000,000 to the 1st Defendant was the signed Transfer document.
48. DW1 stated that the 1st Defendant's Director told him the Grant was lost; that he signed an affidavit which he gave to his advocate, Mr. Sheth; that the affidavit he was given is in his bundle of documents and that the affidavit shows that L.R. No. 10426/7 was sub-divided into four (4) portions.
49. DW1 stated that he was not aware that the 1st Defendant had sued them in Nairobi HCCC No. 2316 of 2007; that they were issued with a title based on a Decree that was issued in Machakos ELC No. 282 of 2012 and that the Grant was registered in his favour on 31st January, 2013.
50. In respect of his relationship with Mr. Sheth advocate, DW1 stated that they went to the same school and that they are business partners. According to DW1, it is Mr. Sheth who paid the balance of the purchase price to Mr. Mburu; that the issue of the lost title and the provisional title came up much later after the payment of the purchase price and that he conducted due diligence before buying the land.
51. DW2 informed the court that he is an advocate; that in the year 2006, he was informed by the 2nd Defendant, DW1, who was his client, that Mr. Francis Mburu was borrowing money from him on behalf of the 1st Defendant and that the amount that was released to the 1st Defendant on various dated in 2006 was Kshs 4,000,000
52. According to DW2, in November 2006, DW1 informed him that the 1st Defendant had agreed to execute a loan agreement with the option to sell the L.R. No. 10426/7; that he was to hold a transfer of the property as security for the repayment of the loan which was Kshs 5,000,000 and that the 1st Defendant was to transfer the land to the 2nd Defendant for Kshs10,000,000 in the event it defaulted in repaying the loan of Kshs 5,000,000.
53. When the 1st Defendant was unable to repay the 2nd Defendant the loan, it was the evidence of DW2 that the 2nd Defendant exercised the option of buying the land in May, 2007; that he instructed him to pay the 1st Defendant through Mr. Francis Mburu, a further sum of Kshs 5,000,000 which he did and that he lodged the transfer documents that he was holding for registration.
54. It was the evidence of DW 2 that the 1st Defendant failed to deliver up the original Grant for L.R. No. 10426 and the Deed Plan for L.R. No. 10426/7 and that when they got tired of waiting for the documents, the 2nd Defendant sued the 1st Defendant in Machakos HCCC No. 282 of 2012.
55. DW2 stated that they obtained a Decree in Machakos HCCC No. 282 of 2012 which they lodged together with the transfer and that the title in favour of the 2nd Defendant was issued on 31st January, 2013. DW 2 stated that he was not aware of any sub-division of L.R No.10426/7 at the time of preparing the agreement for sale between the 1st Defendant and the 2nd Defendant.
56. In cross examination, DW2 stated that he has acted before for the 1st Defendant; that Mr. Mburu, the 1st Defendant's director, is his good friend and has had several transactions with him before and that he witnessed the signing of the sale agreement of 2nd November, 2006.
57. DW2 stated that the 2nd Defendant's wife works in his office as an accountant; that he is a co-director with the 2nd Defendant in Chigwe Limited; that he is the one who did the agreement between the 2nd Defendant and the 1st Defendant in respect of the loan and the sale of L.R No. 10426/7 and that the said land was not sub divided as at the time he drew the said agreement.
58. DW 2 informed the court that the Affidavit in the 2nd Defendant's bundle of documents purportedly signed by Mr. Francis Mburu and Mr. Mbiti did not emanate from his office; that the 1st Defendant was to repay the 2nd Defendant the borrowed money by 31st May, 2007; that he conducted a search before drafting the sale agreement between the 1st and 2nd Defendants and that he was not in possession of the

official search.

59. It was the testimony of DW2 that the Transfer in respect of L.R No. 10426/7 was signed by the 1st Defendant's Directors, Mr. Francis Mburu and Geoffrey; that they showed him a CR 12 before signing the said transfer; that he was not aware that Mr. Mburu had lost his passport as at the time he signed the Transfer and that they paid the requisite stamp duty in the year 2012 although the Transfer was signed in the year 2007.

60. DW2 lastly stated that they were not aware that a provisional certificate had been issued in respect of the suit property. It was the evidence of DW2 that they only became aware of the issuance of a provisional certificate in the year 2013 and after filing Machakos ELC 282 of 2012.

61. The Registrar of Titles, DW3, informed the court that the Transfer dated 30th July, 2007 was registered on 31st January, 2013; that she is the one who registered the said Transfer and that the transfer was registered as entry number 30 in favour of the 2nd Defendant. According to DW 3, although entries number 31 and 32 were cancelled, the said entries were never registered and that the provisional title appears just before the cancelled entries.

Submissions

The Plaintiff's submissions

62. The Plaintiff's advocate submitted that the fact that there were sub divisions of LR No. 10426/7 has been demonstrated by the documents produced by both parties. It was submitted that the provisional title exhibited by the 2nd Defendant has entries that include the transfers of L.R 10426/24 and 10426/27 to the Plaintiffs and that the 2nd Defendant did not challenge the said document or the entries.

63. Counsel submitted that the 2nd Defendant produced in evidence the Affidavit of Francis Mungai Mburu, sworn on 28th November 2006 which at paragraphs 12 and 14 as read with paragraph 9, it is admitted that the said sub divisions existed as at September 2006 and that the Affidavit sworn by the 1st Defendant's directors of 10th August 2005 states at paragraphs 3 & 5 that the sub divisions had been properly done by Kitangila Limited and the transfers had already been executed in favour of purchasers.

64. It was submitted that the Plaintiffs adduced the following evidence: Deed Plan for 10426/24; Deed Plan for L.R 10426/27 clearly certified by the Director of Surveys and dated 11th January 2005; sub division plan duly signed on 30th August 2004 by the Physical Planner and showing approval by the Municipal Council; the final approval of the sub divisions from the Ministry of Lands dated 7th September 2008 and the issuance of the sub divisions by the Ministry of Lands on 2nd June 2006 which automatically meant that the mother title being L.R 10426/7 ceased to exist at this point.

65. Counsel submitted that upon payment of the full purchase price to the vendors for the respective sub divisions, and getting vacant possession of the subdivisions, they acquired a legal and equitable right on the property and that this is a right the 1st Defendant or any other party could not take away unless with the express consent of the Plaintiffs. Counsel relied on the case of **Public Trustee v Wanduru Ndegwa [1984] eKLR** where it was held that:-

“The position of a vendor and a purchaser of registered land is this. The vendor as the registered owner retains the legal estate and becomes the trustee of it for the purchaser when the purchaser pays a deposit for it. The vendor retains a lien on the property for the balance of the purchase money which disappears when it is paid and the purchaser then becomes the sole beneficial owner and the vendor becomes a bare trustee for the purchaser.”

66. Having met all the obligations as stipulated in the respective agreements for sale, it was submitted that the Plaintiffs had a legitimate expectation that upon lodging the transfer documents, the sub-divisions would be registered in their name. It was submitted that no tangible reason has been given for the failure by the 1st Defendant to transfer the sub-divisions into the Plaintiffs' names.

67. The Plaintiff's counsel submitted that L. R No. 10426/7 ceased to exist and was not available for sale; that after sub division and transfer, the interest in the mother title ceased to exist; that the 1st Defendant had already transferred its interest in the property and there was nothing to be transferred to the 2nd Defendant and that it is trite law that you can only give what you do not have as encapsulated in the rule of *nemo dat quod non habet*.

68. Counsel submitted that the 2nd Defendant interacted with the suit property and commenced the process of unlawfully transferring it to himself from 2010 and not 2007 as alleged and that this process followed a raft of correspondence and culminated in the Decree of this court issued in July 2013 which was obtained by use of falsifications and concealment of the fact that a counterclaim was alive in Machakos ELC No 164 of 2012 (formerly 2316 of 2007) which was withdrawn in mischievous circumstances in 2014.

69. The Plaintiffs' advocates submitted that the **Black's law Dictionary 8th Edition** defines “*bona fide purchaser*” as:

“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

70. It was submitted that none of the 2nd Defendant's witnesses showed any proof that they conducted any form of due diligence before

they entered into the agreement dated 2nd November 2006 with the 1st Defendant; that the 1st and 2nd Defendant's, in an attempt to steal a match from the Plaintiffs, and while case no Nairobi 2316 of 2007 was ongoing, instituted Machakos ELC 282 of 2012 and swiftly compromised it.

71. It was submitted that the present case was initially filed by the 2nd Defendant against the 1st Defendant; that this case was filed and compromised during the pendency of another case being Nairobi HCCC No 2316 of 2007 (now Machakos 162 of 2015); that the case was filed on 30th July 2012 and compromised on 29th August 2012; that the case was concluded in less than a month and that the speed at which the case was filed and compromised smacked of fraud and collusion.

72. Counsel submitted that the 2nd Defendant was not an innocent purchaser for value without notice since his actions betrayed him and that there was a deliberate attempt by the 1st and 2nd Defendants to clandestinely acquire the suit property without involving the Plaintiffs. It was submitted that the 1st and 2nd Defendants in filing ELC No 282 of 2012 was not in good faith and that their aim was to defraud the Plaintiffs and that the 1st and 2nd Defendants' conduct amounted to stealing a match.

The 2nd Defendant's submissions

73. The 2nd Defendant's advocate submitted that the transactions between the 1st Defendant, PW1 and Keziah Mumbi were tainted *ab initio*; that not only are the issues of conflict of interest in the transaction where PW1 acts as both an advocate as well as a purchaser arose, but in both agreements, the signatures of the parties have not been witnessed.

74. It was submitted that PW2 confirmed that he never witnessed the 1st Defendant execute the Transfers; that according to him, the Transfers were given to them by PW1 and Keziah Mumbi and that in Nairobi ELC 2326 of 2007 (now Machakos ELC 162 of 2015), at paragraph 14 of the Plaint, the 1st Defendant expressly denied ever executing any transfer over the two parcels of land in favour of the Plaintiffs.

75. It was submitted that in Nairobi ELC 2326 of 2007 (now Machakos ELC 162 of 2015) at paragraph 12, the 1st Defendant contended that it rescinded the agreements it had with Keziah Mumbi because of breach of the terms of the agreements; that the 1st Defendant having so rescinded the agreements, PW1 and Keziah Mumbi had no title or right to pass to the Plaintiffs and that the Plaintiffs were clearly aware of this fact and that is why in Machakos ELC 169 of 2015, they were seeking refund of the monies they paid to PW1 and the Keziah Mumbi.

76. It was submitted that the 2nd Defendant denied knowledge of any sub-division of the suit property prior to his purchasing the suit property from the 1st Defendant and that the discrepancy in the evidence by PW1, PW2 and PW3 with regard to sub-division of the property whereas PW1 and PW2 indicated that it was Mr. Mburu who instructed the surveyor, while PW3, who was the surveyor stated that he was actually instructed by PW2 and confirmed not having received any instructions from the 1st Defendant was telling.

77. It was submitted that in his evidence, PW3 confirmed that he did not complete the sub-division process because the same was stopped by Mr. Mburu and that the entries in favour of the Plaintiffs were cancelled before they had been registered and thus could not have given them any real or equitable right over the suit property.

78. Counsel submitted that from the evidence of DW3, it is clear that the Plaintiffs tampered with the title by making entries that were not in the deed file; that the Plaintiffs inserted an entry indicating that a provisional title had been issued and that in her evidence, DW3 confirmed that she did not see any such entry and that she did not see evidence of any documentation that is required to generate a provisional title.

79. Counsel submitted that the 2nd Defendant is an innocent purchaser for value without notice; that DW1 informed court that he visited the suit property accompanied by Mr. Mburu who pointed out to him the beacons; that the 2nd Defendant immediately took possession of the suit property upon payment of the balance of the purchase price and is still in possession of the suit property to date and that DW1 satisfied all the conditions of an innocent purchaser for value without notice.

Analysis and findings

80. Having considered the pleadings and the evidence on record, the issues that arise for determination are as follows:

- a) *Whether the Plaintiffs acquired a legal and/or equitable right in L.R No. 10426/27 and L. R. NO. 10426/24.*
- b) *Whether L.R. No. 10426/7 was available for sale to the 2nd Defendant.*
- c) *Whether the 1st Defendant is an innocent purchaser for value of 10426/7.*
- d) *Whether the Plaintiffs are entitled to the prayers sought.*

81. The 1st and 2nd Plaintiffs commenced this suit by way of amended Plaints dated 18th December, 2019 and 20th December, 2019 respectively. The 1st, 3rd and 4th Defendants did not file Defence to the Plaintiff's claim. The 2nd Defendant filed a Statement of Defence dated 27th May, 2021. Consequently, by implication, the averments made in the Amended Plaints have not been traversed by the 1st, 3rd and 4th Defendants.

82. The Plaintiffs' Director, PW2, stated that at all material times, the 1st Defendant was the registered owner of L.R No 10426/7 located in Mavoko within Machakos County (hereinafter referred to as the "suit property"). It was his testimony that the suit property was subdivided into 4 subdivisions being LR No 10426/24, 25, 26 and 27.

83. According to the Plaintiffs, the 1st Plaintiff purchased a portion of LR No 10426/7 (the suit property) from one Keziah Mumbi Paul (wife of Francis Mburu Mungai, the principle shareholder of the 1st Defendant); that Keziah Mumbi was a beneficial owner, having purchased the property from the 1st Defendant and that the sub-division that the 1st Plaintiff purchased from Keziah was subsequently registered as L.R No 10426/24.

84. The Agreement for sale between the 1st Defendant and Keziah Mumbi dated 24th December, 2003 was produced in evidence. The perusal of the said agreement shows that the land was sold to Keziah by the 1st Defendant for Kshs. 700,000, which amount was acknowledged by the 1st Defendant.

85. The Plaintiffs produced in evidence the Deed of Assignment that was signed by Keziah and the 1st Defendant dated 29th November, 2005 in respect of Land Reference number LR No. 10426/24. The Deed of Assignment shows that the 1st Plaintiff purchased the said land for Kshs. 1000,000. The agreement was duly signed by Keziah as the assignor.

86. The Plaintiffs' Director produced in evidence the acknowledgment slips that the said Keziah signed in respect to the purchase price. The Advocate who acted for both parties in the transaction, PW 1, informed the court that he witnessed the two parties sign the two agreements. According to PW1, in addition to the 1st Plaintiff buying LR No. 10426/24, which is a sub division of LR No. 10426/7, he (PW1, the advocate) also sold LR No. 10426/27 which he had purchased from the 1st Defendant, to 2nd Plaintiff.

87. It was the evidence of PW1 that the process of subdividing LR No. 10426/7 by the 1st Defendant was commenced in the year 2003 and was subdivided into 4 portions and fully sold out as follows;

- a) LR No 10426/24- Purchased by the 1st Plaintiff
- b) LR No 10426/25- purchased by J Kamau
- c) LR No 10426/26- Purchased by H Rohio
- d) LR No 10426/27-Purchased by the 2nd Plaintiff

88. The evidence produced by the Plaintiffs shows that by way of a letter dated 23rd April, 2004, the Ministry of Lands informed the Machakos Municipal Town Clerk that it had no objection to the sub division of LR No. 10426/7. The Plaintiff also produced in evidence the letter dated 28th June, 2004 by Arch Surveys, which letter forwarded to the Director of Surveys the documents in support of the sub division of LR No. 10426/7 for approval.

89. In his letter dated 7th September, 2004, which was copied to the Director of Surveys, the Commissioner of Lands informed the 1st Defendant that he had given the final approval for the sub division of LR No. 10426/7. In the letter dated 2nd June, 2006, the Commissioner of Lands informed the 1st Defendant the payable rent for LR No. 10426/24, 25, 26 and 27 which was to take effect from 1st June, 2006.

90. The Plaintiffs produced in evidence a duly authenticated Deed Plan number 258136 dated 11th January, 2005 showing LR Nos. 10426/24, 25, 26 and 27; the rates demand notices by Mavoko Municipal Council for L.R No. 10426/24 dated 2nd February, 2005 and the certificate of payment of rates for the said land as at 31st December, 2005.

91. The evidence produced by the Plaintiffs shows that the Plaintiffs received completion documents to facilitate the transfer of LR No 10426/24 and L. R. No. 10426/7 from the 1st Defendant's advocate (PW1). The documents forwarded by the advocate included: the deed plans, consents to transfer, Land rent and rates clearance certificates, stamp duty assessment forms and stamp duty receipts as well as the executed transfer documents.

92. The Plaintiffs also produced in evidence the Letter of Consent to transfer LR No. 10426/24-27 by the Commissioner of Lands dated 7th June, 2006; the Rent Clearance Certificate for LR No. 10426/24-27 issued by the Commissioner of Lands dated 15th June, 2006; stamp duty assessment form and the Transfer document for LR No. 10426/24 between the 1st Plaintiff and the 1st Defendant dated 20th July, 2006.

93. The Transfer document dated 20th July, 2006 shows that it was duly signed by the 1st Defendant's directors. The Transfer document dated 14th February, 2005 between the 2nd Plaintiff and the 1st Defendant for L.R No. 10426/27 was also produced in evidence by the Plaintiffs. The Plaintiffs also produced in evidence the unsigned Transfer document between the 1st Defendant and Joseph D. M. Kamau for LR No. 10426/25.

94. The evidence by both the Plaintiffs and the 2nd Defendant was that the 1st Defendant did not have the original Grant for LR No. 10426/7 having lost it. According to the Plaintiffs, the 1st Defendant applied for a provisional certificate. The Plaintiffs produced in evidence the application for the provisional certificate, the declaration sworn by the 1st Defendants Directors on 10th August, 2005, the police abstract, the gazette notice number 7785 of 30th September, 2005 and the provisional certificate which was issued in favour of the 1st Defendant.

95. In the Declaration that was sworn by the two Directors of the 1st Defendant, the Directors stated as follows:

“4. That the original Title Deed which is now the Title Deed for LR No. 10426/7 is completely lost and cannot be found after due exertion of all efforts and diligence.

5. That Kitangila Limited (the 1st Defendant) has now sub divided L.R No. 1046/7 into four portions namely LR No. 10426/24, 25, 26 and 27 and has duly executed Transfers in favour of respective purchasers but it is not possible to effect registration without producing the original Title Deed..”

96. The evidence before this court shows that after the provisional certificate was issued, the same was registered against the mother title held by the Ministry of Lands as entry number. The evidence before this court shows that although the 1st and 2nd Plaintiffs were registered as proprietors of LR Nos 10426/24 and 27 respectively on 12th September, 2006, Mr. Francis Mburu, the 1st Defendant’s Director, informed the Principal Registrar of Titles that he never executed any transfers in favour of the Plaintiffs. It is that letter that led to the cancellation of entries numbers 31 and 32 in the title.

97. The evidence by the Plaintiffs that the 1st Defendant sold L R No. 10426/24, a sub division of LR Nos 10426/7, on 24th December, 2003, to Keziah Mumbi, who in turn sold the land to the 1st Plaintiff on 29th November, 2005, was not controverted by the 1st Defendant. Indeed, the 1st Defendant did not also deny that it sold LR No. 10426/ 27 to Mr. Francis Mwanza Mulwa (PW 1) on 24th December, 2003, who in turn sold the same to the 2nd Plaintiff. as stated above, the 1st Defendant neither filed a Defence in this matter nor testified.

98. Having been sued in this matter, it was upon the 1st Defendant to file a Defence and deny that it ever sold the two properties as alleged by the Plaintiffs. Having done so, it cannot be upon the 2nd Defendant to testify that the 1st Defendant never sold the suit properties to the Plaintiffs.

99. Indeed, other than the fact the 1st Defendant did not deny having sold the two suit properties, the sale agreements produced in court shows that the 1st Defendant relinquished its rights over the suit properties in the year 2003 when it entered into written agreements over the suit properties with Keziah Mumbi and Francis Mulwa.

100. The Plaintiffs as well as the 2nd Defendant produced in evidence a Declaration dated 10th August, 2005 which the 1st Defendants’ Directors swore in respect to the sub-divisions of L. R.No 10446/7. In the said Declaration, the 1st Defendant’s Directors stated that Kitangila Limited (the 1st Defendant) has sub divided L.R No. 1046/7 into four portions namely LR No. 10426/24, 25, 26 and 27 and has duly executed Transfers in favour of respective purchasers. The 1st Defendants’ Directors have not denied that indeed they swore the said Declaration before a Commissioner for Oaths.

101. Indeed, a perusal of the evidence on record, which was not controverted by the 1st, 3rd and 4th Defendants, shows that by way of a letter dated 23rd April, 2004, the Ministry of Lands informed the Machakos Municipal Town Clerk that it had no objection to the sub division of LR No. 10426/7. The Plaintiff also produced in evidence the letter dated 28th June, 2004 by Arch Surveys, which letter forwarded to the Director of Surveys the documents in support of the sub division of LR No. 10426/7 for approval.

102. In his letter dated 7th September, 2004, which was copied to the Director of Surveys, the Commissioner of Lands informed the 1st Defendant that he had given the final approval for the sub division of LR No. 10426/7. In the letter dated 2nd June, 2006, the Commissioner of Lands informed the 1st Defendant the payable rent for LR Nos. 10426/24, 25, 26 and 27 which was to take effect from 1st June, 2006.

103. The Plaintiffs produced in evidence a duly authenticated Deed Plan number 258136 dated 11th January, 2005 showing LR Nos. 10426/24, 25, 26 and 27; the rates demand notices by Mavoko Municipal Council for L.R No. 10426/24 dated 2nd February, 2005 and the certificate of payment of rates for the said land as at 31st December, 2005.

104. The Plaintiffs also produced in evidence the Letter of Consent to transfer LR Nos. 10426/24-27 by the Commissioner of Lands dated 7th June, 2006; the Rent Clearance Certificate for LR Nos. 10426/24-27 issued by the Commissioner of Lands dated 15th June, 2006; stamp duty assessment form and the Transfer documents for LR No. 10426/24 and 27 between the Plaintiffs and the 1st Defendant dated 20th July, 2006.

105. Considering that by January, 2005, the Director of Surveys had already approved the application for the sub division of LR No. 10426/7 and issued Deed Plans for the said sub divisions, it is my finding that LR No. 10426/7 was not in existence as at the time the 2nd Defendant purported to purchase it on 2nd November, 2006, a fact which the 1st and 2nd Defendants knew or ought to have known.

106. Indeed, the evidence before me shows that by the time the 2nd Defendant purported to buy LR No. 10426/7, the said land had not only been sub divided into LR Nos. 10426/24-27 and sold to third parties, but the completion documents, except the original grant, had been forwarded to the Plaintiffs for the registration of LR No. 10426/24 and LR No. 10426/27 in favour of the 1st and 2nd Plaintiffs respectively.

107. The completion documents that were forwarded to the Plaintiffs on 20th April, 2006 for LR Nos. 10426/24 and 27 by the 1st Defendant’s advocate for registration purposes included the deed plans, consent to transfer, land rent and rates clearance certificates stamp duty assessment forms, stamp duty receipts and the executed transfer documents. All these documents were produced in evidence by the Plaintiffs.

108. Therefore, having regard to the evidence before me, it is my finding that L.R. No. 10426/7 was not available for sale to the 2nd Defendant as at 2nd November, 2006, the same having been sub-divided and L.R. Nos. 10426/24 and 27 validly sold to the Plaintiffs.

109. The 2nd Defendant submitted that he is an innocent purchaser for value without notice of any transaction between the Plaintiffs and the 1st Defendant, and that being in possession of a title for LR No. 10426/7, the said title is protectable under section 26 of the Land Registration Act.

110. The evidence by the 2nd Defendant was that the 1st Defendant offered as security LR No. 10426/7 for the payment of Kshs. 5,000,000 that he had advanced to the 1st Defendant. In the agreement dated 2nd November, 2006, the 1st Defendant agreed with the 2nd Defendant that the 2nd Defendant will have an option to purchase the land for Kshs. 10,000,000 in the event the borrower defaults to pay the loan on or before 31st May, 2007.

111. The agreement between the 1st and 2nd Defendants further provided that should the borrower default to repay the loan on the due date, then the parties' advocates were authorized to lodge the same for registration once the full purchase price has been paid. The agreement further provided that the 1st Defendant should deposit the original Deed Plan for LR No. 10426/7 together with the Title Deed in respect of LR No. 10426 with the parties advocates within ninety days.

112. Despite the 1st Defendant agreeing to deposit the original Deed Plan for LR No. 10426/7 and the Grant with the advocate, the evidence before the court shows that the 1st Defendant did not do so. In fact, the 1st Defendant could not have handed to the 2nd Defendant the original Deed Plan for LR No. 10426/7 because the same had been surrendered to the Director of Surveys in the year 2005 for sub division of the land into four portions.

113. Had the 2nd Defendant or his advocate checked with the Director of Surveys the status of the Deed Plan of LR No. 10426/7 before paying the purchase price in the year 2007, they would have discovered that the said land was not available for sale.

114. Indeed, by the time the 1st and 2nd Defendants were entering into the agreement of 2nd November, 2006, a provisional certificate for the mother title had been issued and registered on 27th January, 2006 as entry number 30. The copy of the said provisional title is not only in the Plaintiffs' bundle of documents, but also in the 2nd Defendant's bundle. In fact, the 2nd Defendant did not produce any evidence to show that he conducted an official search on the property before purporting to purchase it in the year 2006/2007 to ascertain if the said land was available for sale.

115. That being so, and DW3 (the Land Registrar) having confirmed that indeed the provisional certificate exists as entry Number 29, a search by the 2nd Defendant would have revealed that the 1st Defendant was not in possession of the original Grant.

116. The evidence before the court shows that Machakos ELC No. 282 of 2012 was filed by the 2nd Defendant against the 1st Defendant. The case was filed and compromised during the pendency of another case being Nairobi HCCC No 2316 of 2007 (now Machakos 162 of 2015). Although ELC No. 282 of 2012 was filed on 30th July 2012, it was compromised on 29th August 2012 by the 1st and 2nd Defendant.

117. It is interesting that while the 1st Defendant was aware of the Plaintiffs' claim in respect of the suit property in Nairobi HCCC No. 2316 of 2007, (now Machakos 162 of 2015), it entered into a consent with the 2nd Defendant in Machakos ELC No. 282 of 2012 in less than a month from the date of filing as follows:

"2. That an order be and is hereby directed to the Registrar of Titles to register the Transfer dated 30th July, 2007 made between the Plaintiff (the 2nd Defendant herein) and the Defendant (the 1st Defendant herein) over LR NO. 10426/7...without requiring the production of the original Grant and upon payment of the requisite duties and fees.

3. That an order be and is hereby directed to the Registrar of Titles to issue a Certificate of Title for L.R. No. 10426/7."

118. This is the Court Order that the 2nd Defendant used to have LR No. 10426/7 registered in his favour on 31st January, 2013. The speed at which the case was filed and compromised by the 1st and 2nd Defendants, while knowing that the Plaintiffs were in possession of the provisional certificate and the original Deep Plans for L. R. No. 10426/24 and 27 smacks of fraud and collusion between the 1st and the 2nd Defendants.

119. Therefore, and from the analysis of the evidence before me, it is my finding that the 2nd Defendant had actual or constructive notice of defects in or infirmities, claims or equities against the seller's title. The 2nd Defendant cannot pass for an innocent purchaser for value of the suit property.

120. In conclusion, it is the finding of this court that the 1st and 2nd Plaintiffs acquired a legal right in L.R No. 10426/24 and L.R No. 10426/27 respectively; L.R. No. 10426/7 was not available for sale to the 2nd Defendant as at 2nd November, 2006 when the 2nd Defendant purported to buy the land and the 2nd Defendant was not an innocent purchaser for value of 10426/7.

121. For those reasons, I dismiss the 2nd Defendant's Counter claim and allow the 1st and 2nd Plaintiffs' Amended Plaints dated 18th December, 2019 and 20th December, 2019 respectively as follows:

a) A declaration be and is hereby issued that the 1st and 2nd Plaintiffs are the legitimate owners of the suit properties L.R. No. 10426/24 and L.R. No. 10426/27 respectively being a subdivision of L.R. No 10426/7.

b) A permanent injunction be and is hereby issued stopping the 1st and 2nd Defendants by themselves or through their agents and servants and third parties from any further dealings with L.R. No. 10426/7 and/ or L.R. Nos. 10426/24 and 27.

c) A permanent injunction be and is hereby issued against the 3rd and 4th Defendants whether by themselves, their agents or third parties restraining them from approving or registering any subdivision schemes, leases, assignments or any other dealings by the 1st and 2nd Defendants jointly or severally relating to L.R. No. 10426/7.

d) An order be and is hereby issued directing the 3rd Defendant to revoke and or annul all entries illegally entered on the land register and recall and cancel the title issued to the 2nd Defendant and all encumbrances over L.R. No. 10426/7 and transfer it back to the 1st Defendant.

e) An order be and is hereby issued directing the Director of Surveys to reinstate the Deed Plans for L. R. Nos. 10426/24 -27 being subdivisions of L.R. No. 10426/7 cancelled via CT221/91/65 on 6th August 2013.

f) An order be and is hereby issued directing the 1st Defendant to transfer L.R. No. 10426/24 and L.R. No. 10426/27 being a subdivision of L. R. No. 10426/7 to the 1st and 2nd Plaintiffs respectively within 30 days of this Judgment.

g) That in default of complying with prayer (f) of the order above, the Deputy Registrar of this court be and is hereby authorized to sign all documents and instruments of land parcel L. R. No 10426/24 and L.R. No L.R. No 10426/27, a subdivision of L.R. No 10426/7, in favour of the 1st and 2nd Plaintiffs respectively.

h) The 1st and 2nd Defendants to pay the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 2ND DAY OF DECEMBER, 2021.

O. A. ANGOTE

JUDGE

In the presence of:

Mr. Anyona for the 1st Plaintiff

Mr. Kosgei for the 2nd Plaintiff

No appearance for the 1st Defendant

No appearance for the 2nd Defendant