



REPUBLIC OF KENYA



KENYA LAW
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**Paan v Kariuki & 16 others (Environment and Land Case
80 of 2019) [2025] KEELC 4804 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4804 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 80 OF 2019
LC KOMINGOI, J
JUNE 26, 2025**

BETWEEN

RAKOI OLE MONIREI PAAN PLAINTIFF

AND

GEORGE NGURE KARIUKI 1ST DEFENDANT
JANE NJOKI MUNGAI 2ND DEFENDANT
JOSEPH MATHIA MUIGAI 3RD DEFENDANT
MUMBI MUNGAI 4TH DEFENDANT
BEN NYOIKE MATHU 5TH DEFENDANT
WAMBUI WA MATHU 6TH DEFENDANT
GEORGE MBUTHIA WARUI 7TH DEFENDANT
WANJIRU WARUI 8TH DEFENDANT
PETER NDUNG’U KANARI 9TH DEFENDANT
DAVID THIRU KIHUMBU 10TH DEFENDANT
SIMON JOHN KAMPA LUGAMBA 11TH DEFENDANT
PAUL WAKONYO LUGAMBA 12TH DEFENDANT
JOHN MUNORU MUTURI 13TH DEFENDANT
JOSEPH GICHANGA KIMANI 14TH DEFENDANT
LAND REGISTRAR, KAJIADO 15TH DEFENDANT
LAND SURVEYOR, KAJIADO 16TH DEFENDANT
HON ATTORNEY GENERAL 17TH DEFENDANT



JUDGMENT

1. By the Plaint dated 4th September 2019, the Plaintiff claims that at all material times, he was the registered owner of parcel LR. No. Kajiado/Kipeto/32 measuring approximately 212 hectares. On or about February 1987, he decided to sell 40.5 hectares of that land to Gatundu Women Horticultural Growers Association. On May 1987, he applied for the subdivision of parcel Kajiado/Kipeto/32 into two parcels: Parcel Kajiado/Kipeto/214 measuring approximately 40.5 hectares and parcel Kajiado/Kipeto/215 measuring approximately 174 hectares. Parcel 214 was then sold and transferred to Gatundu Women Horticultural Growers Association. Upon the subdivision, he was to get the title for parcel 215 but the 15th and 16th Defendants retained the subdivided titles without authority and they failed, refused and/or neglected to return the said title to the Plaintiff despite numerous requests.
2. It was until sometime in May 2019 that he discovered that parcel Kajiado/Kipeto/215 had been subdivided into parcels Kajiado/Kipeto/415-426 and parcel Kajiado /Kipeto/426 was further subdivided into parcels Kajiado/Kipeto/837, 838, 1084, 1085, 1086 and 1087. Parcel Kajiado/Kipeto/837 was apparently registered in the Plaintiff's name. The Plaintiff claims that the subdivision and transfer of parcel Kajiado/Kipeto/215 was undertaken without his consent and/or authority in a scheme hatched by the defendants. He stated that he has all through been in occupation of the suit property. He had not sold and was not aware that any fraudulent transactions had been undertaken until 2019 when he conducted a search.
3. He states that as per the Green card, parcel 215 was subdivided and transferred on 17th October 1990 and allegedly a title issued to him while he never signed any documents regarding this subdivision. He did not transfer the same and he was not in possession of the original title to parcel 215. He further stated that he neither applied for any consent from the Land Control Board nor did he attend any meetings or obtained consent for the subsequent subdivisions and transfers to the 1st Defendant. It is his case that, any subdivisions or transfers to the Defendants was done fraudulently and without his knowledge and or approval.
4. He particularised fraud against the Defendants as:Causing his properties to be subdivided without his consent;Forging his signature or identification on the applications, subdivisions and transfers;Failing to notify the plaintiff of any transactions involving his property;Surveying his property without his authority;Transferring the plaintiff's property without a sale agreement or consideration.
5. Particulars of fraud against the 15th and 16th Defendants were as follows:Failing to ensure that the Plaintiff appeared before them for purposes of obtaining consents for any of the above transactions;Allowing the 1st-14th Defendants consent to transfer, subdivide and/or deal with the property contrary to provisions of the *Land Control Act*.Issuing consent in absence of the Plaintiff.
6. Particulars of fraud against the 15th Defendant were:Issuing documents to the 1st -14th Defendants without first releasing them to the Plaintiff;Failing to ensure that the Plaintiff had indeed executed the documents of transfer before releasing the title documents to the 1st - 14th Defendants;Failing to ensure that the provision of the Land Control Board Act had been properly complied with before acting on the documents presented by the 1st – 14th Defendants their agents and/or servants.Conniving with the Defendants to defraud the Plaintiff of his property by transferring to the Defendants the Plaintiff's property without following due process.



7. Particulars of fraud against the 16th Defendant were: Allowing and issuing survey plans to the Defendants without the Plaintiff's consent; Filing to ensure that the registry index map, the records of survey and the beacons tally with proprietary ownership of the Plaintiff.
8. He sought the following reliefs against the Defendants jointly and severally:
 - a. An injunction be to restrain the Defendants, their servants, agents or contractors or whomsoever is acting on their behalf or upon their instructions and all and each of them whether by themselves or otherwise howsoever from entering upon, remaining on the Plaintiff's property or transferring, selling or allotting or alienating, evicting, or denying the Plaintiff access to it and or in any way interfering with the Plaintiff's lawful and legal enjoyment of a quiet and peaceful possession of the premises being LR. No. Kajiado/Kipeto/415, Kajiado/Kipeto/416, Kajiado/Kipeto/417, Kajiado/Kipeto/418, Kajiado/Kipeto/419, Kajiado/Kipeto/420, Kajiado/Kipeto/421, Kajiado/Kipeto/422, Kajiado/Kipeto/424, Kajiado/Kipeto/425, Kajiado/Kipeto/838, Kajiado/Kipeto/1089, Kajiado/Kipeto/1085 and Kajiado/Kipeto/1087 or any part thereof, till further orders of this Court.
 - b. That an order do issue cancelling all registrations, transfers, entries subdivisions or other resulting interests on Land Registration No Kajiado/Kipeto/215, 415, 416, 417, 418, 419, 420, 421, 422, 423, 425, 426, 838, 1084, 1085, 1087 or any other resultant interest created by the Defendants, and any person claiming through them.
 - c. The Defendants be ordered to pay damages for fraud, misrepresentation and unlawful interference with the Plaintiff's title.
 - d. Costs of this suit with interest until payment in full.
 - e. Any other relief that this Honourable Court may deem fit and just to grant.
9. The 1st to 9th and 11th to 13th Defendants in their statement of defence dated 30th January 2020, stated that the sometime in May 1990, the Plaintiff presented to them a title deed in respect of parcel Kajiado/Kipeto/215 which was issued on 15th May 1987 in his name and stated his desire to sell 100 acres of that land to the 1st – 14th Defendants. In May 1990, they entered into a sale agreement for the sale of 100 acres out of Kajiado/Kipeto/215. They bought the 100 acres in portions as follow: 1st Defendant 14 acres 2nd Defendant 10 acres 3rd and 4th Defendants 5 acres 5th Defendant 6 acres 6th Defendant 3 acres 7th and 8th Defendants 6 acres 9th Defendant 10 acres 11th and 12th Defendants 10 acres 13th Defendant 20 acres And that they are aware that the 10th defendant bought 5 acres and the 14th Defendant 10 acres.
10. The Plaintiff then caused the survey of the portions and obtained consent from the Land Control Board to subdivide and transfer the portions to the Defendants. Upon the subdivision, the parcels were transferred as follows and all titles issued on 17th October 1990 by the 15th Defendant: Kajiado/Kipeto/415 to the 1st Defendant Kajiado/Kipeto/416 to the 2nd Defendant Kajiado/Kipeto/417 to the 3rd and 4th Defendants Kajiado/Kipeto/418 to the 5th Defendant Kajiado/Kipeto/419 to the 6th Defendant Kajiado/Kipeto/420 to the 7th and 8th Defendants Kajiado/Kipeto/421 to the 9th Defendant Kajiado/Kipeto/423 to the 11th and 12th Defendants Kajiado/Kipeto/424 to the 13th Defendant Kajiado/Kipeto/426 to the Plaintiff Kajiado/Kipeto/422 and 425 to the 10th and 14th Defendants
11. They stated that following this subdivision parcel Kajiado/Kipeto/426 comprising 134 hectares or 331 acres was retained by the Plaintiff. Sometime in September 1992, the Plaintiff offered another 60 acres of Kajiado/Kipeto/426 to the 1st Defendant, 6th and 7th Defendants, one Consolata Nkatha



and Ngina Mathu. On 1st September 1992, the Plaintiff obtained consent from Oololaiser Land Control Board and subdivided parcel Kajiado/Kipeto/426 into six [6] portions which were transferred as follows: Kajiado/Kipeto/837 approximately 270 acres retained by the Plaintiff; Kajiado/Kipeto/838 measuring approximately 20 acres to the 1st and 2nd Defendants; Kajiado/Kipeto/1084 measuring approximately 10 acres to Ngina Mathu; Kajiado/Kipeto/1085 measuring approximately 10 acres to the 6th and 7th Defendants; Kajiado/Kipeto/1086 measuring approximately 10 acres to Consolata Nkatha Bucha; Kajiado/Kipeto/1087 measuring approximately 10 acres to the 1st Defendant

12. They stated that at all times, the Plaintiff entered into sale agreements with them, obtained the necessary consents, subdivided the parcels, duly transferred them to the Defendants upon receipt of the consideration. It is their case that the allegation that the fraud was discovered in May 2019 was dishonest pointing out that the Plaintiff had legal representation of one Mr. Kenneth Mungai Advocate, in all these transactions. It was averred that no fraud was perpetrated by any of the Defendants and that this suit was brought in bad faith, was an abuse of the Court process and should be dismissed with costs to the Defendants.
13. They also contested the suit on grounds that it was bad in law because it was statute barred.
14. The 10th Defendant in his Statement of Defence dated 6th November 2019 contested the Plaintiff's claim on the grounds that the Plaintiff was being untruthful because he purchased property Kajiado/Kipeto/422 from him and had been residing thereon since 17th October 1990. He pointed out that the Plaintiff had been in occupation of parcel Kajiado/Kipeto/837 which was adjacent to parcel 422 and he was thus aware of the 10th Defendant's occupation. He added that the Plaintiff who is and was of sound mind, executed all the transfer documents upon the advice of one of his relatives as well as the Advocates who handled the transaction. He also contested the allegation that the Plaintiff never applied for consent to transfer the land, attended the Land Control Board or transferred the land and that each transaction was duly undertaken by the Plaintiff. It was therefore the Plaintiff who was attempting to defraud him by claiming that he was unaware of the transfer. The Defendant also claimed that the suit against him was statute barred because he had been on the suit property from 1990 and therefore the Plaintiff's claim extinguished upon the lapse of 12 years. He sought that the suit be dismissed with costs. He also prayed the Court do find that he was entitled to the land by way of adverse possession.
15. The 15th, 16th and 17th Defendants in their Statement of Defence dated 17th October 2019 contested the Plaintiff's claim that they conspired with the 1st – 14th Defendants to defraud him of his parcel of land LR No. Kajiado/Kipeto/32. They prayed that the suit against them be dismissed with costs.

Evidence of the Plaintiff

16. PW1, Rakoi Ole Monirei Paan, the Plaintiff adopted his witness statement dated 5th September 2019 as part of his evidence and produced his bundle of documents which was marked as P. Exhibit 1-17.
17. On cross examination he stated that he did not know the Defendants and that his parcel of land in Kipeto was initially 530 acres but he sold about 100 acres to Nyakinyua sometime back. He could not recall the date or year. He also stated that he could not recall the title number of the land. On being referred to the documents he had produced, he confirmed that title for Kajiado/Kipeto/837 measuring approximately 109.2 hectares was in his possession. When asked about the mutation form for parcel Kajiado/Kipeto/32 into parcels Kajiado/Kipeto/214 and Kajiado/Kipeto/215 he confirmed that the parcel had been subdivided although he could not recall the resultant parcel numbers. He also confirmed that after he was given the title to parcel 215 in his name and that he had also sold a portion to Nyakinyua. He stated that he did not know Mungai Gakuru Advocate. He also denied the sale agreements in the Defendants' documents. He confirmed that on 13th May 1996 his wife Muyiai



Ene Rakoi registered a caution against the title because he wanted to sell the land and that by 1996 the land Kajiado/Kipeto/837 measured 109.2 hectares. He indicated that he realised that his land had been sold when his wife registered the caution. He pointed out that the caution registered by his wife was fraudulently removed. He had also lost the title deed. When asked about the letter by Mungai and Gakuru Advocates, seeking the removal of the caution, he stated that the letter was not written under his instructions. He also indicated that he was not aware of the application for consent to subdivide parcel Kajiado/Kipeto/426 in 1992 because it was the Defendants who caused the subdivision of about 100 acres of the land and could not tell how many titles were issued after this subdivision. He stated that the title deed got lost immediately he sold part of the land to Nyakinyua. He got the names of the Defendants from the records at the Land Registry. He maintained that the Defendants stole his land. When asked about the mutation of Kajiado/Kipeto/426 on 1st November 1994 he denied that transaction.

18. On further cross examination he stated that he did not procure services of an advocate during the sale of the 100 acres to Nyakinyua but he effected the transfer by putting his thumbprint on the transfer documents. He once again confirmed that his wife placed a caution after the sale of the land to Nyakinyua and the caution was fraudulently lifted on 21st October 1994. That after it was lifted, several titles were processed. He went on to state that as of 26th February 2012 he was aware that his land was measuring approximately 430 acres and he did not sell part of it to any of the defendants. He maintained that they got the land fraudulently using forged documents. He indicated that while he did not report the forgery, he lodged a complaint with the Land Registrar. When asked about the consent from Land Control Board consent for parcel Kajiado/Kipeto/422, mutation form, transfer form and title issued to the 10th Defendant, denied this transaction and that he had never attended any handover ceremony of the land to the 10th Defendant. He stated that his land was not fenced but it had a homestead and cattle pen on it.
19. On re-examination he stated that none of the Defendants had structures on the land and reiterated that after the sale to Nyakinyua, he never sold any other portion of his land.

Evidence of the Defendants

20. DW1 George Ngure Kariuki, the 1st Defendant adopted his witness statement dated 15th July 2021 as his evidence and produced the bundle of documents of the even date dated 8th December 2022 as exhibits in this case. He stated that he was present in Court when the Plaintiff testified and that the Plaintiff had lied by saying that he did not sell the land to the Defendants. He stated that the Plaintiff who was well known to him, visited his office together with his agent and expressed his desire to sell part of his land. He stated that the defendants had been in possession of their specific portions from sometime in October 1990. He pointed out after the sale, the Plaintiff received the full purchase price, there was a handover ceremony in presence of the Plaintiff, the titles were given to them by Kenneth Mungai Advocate. He further stated that they were each given vacant possession of their individual parcels. It is his testimony that they did not acquire their parcels fraudulently.
21. On cross examination he admitted that he knew Plaintiff and he offered them his land sometime in February 1990. They entered a sale agreement and the same was duly signed. However, his signature was not witnessed. He also confirmed that the witnesses had not signed. He stated that the Plaintiff collected the purchase money and put his thumbprint in acknowledgement and they [defendants] took possession in 1990. He stated that his property was fenced but it had not been developed.
22. DW2, David Thiru Kihumba the 10th Defendant, adopted his witness statement and further statement dated 6th November 2019 and 14th October 2021 respectively as his evidence and produced his bundle



- of documents as exhibits in this case. He produced a copy of the transfer, application for consent to transfer, certified copy of the consent from Land Control Board, his original title deed and a copy thereof, certificate of official search and certified copy of the green card. He stated that he was present in court when the Plaintiff testified and he too confirmed that Plaintiff's testimony was full of lies. He stated that he was in support of DW1'S evidence.
23. On cross examination he stated that there was no separate sale agreement. He indicated that it was the Plaintiff who obtained the consent from the Land Control Board as per his thumbprint impression on the application and the transfer forms. He stated that upon purchase, he took possession of his parcel in 1991 and put a hedge around it.
 24. On re-examination he stated that he had seen the letter from Mungai and Gakuru advocates confirming execution of the sale agreements. He also reiterated sometime in 1990 he met the Plaintiff together with his son and he had the original title deed. He showed part of his property that was to be hived into the portions they had purchased and the land was indeed subdivided as such.
 25. DW3 Kenneth Ng'ang'a Mungai, an Advocate of the High Court of Kenya adopted his witness statement dated 14th April 2023 as his evidence. He testified that he was familiar with the Plaintiff and the 1st to the 14th Defendants because he acted for them in the transaction regarding the suit property.
 26. On cross examination he stated that he was first approached by the 1st Defendant who was the principal in the transaction. He stated that the Plaintiff was introduced to him by the 1st Defendant. He then acted for both the seller and the buyers in the transaction but did not disclose to the seller that there could be a potential conflict of interest if they proceeded that way. This is because that was the practice back then.
 27. He confirmed that there was a caution that was registered against the title and he applied for its removal on the instructions of the seller. He stated that he did not have the instructions letter from the seller, but he copied the letter applying for the lifting of the caution to the seller. He confirmed that the sale agreements were drafted in his firm by him and his Associates. When shown the sale agreement produced by the 1st Defendant he confirmed that the purchaser did not sign it but put his thumbprint on it since that was his preferred mode. On being questioned about the mutation form dated 1st November 1994 in the Plaintiff's bundle he indicated that the name Rakoi was written on it but could not confirm if it was the Plaintiff who wrote it. He stated that before the transfers, consent was sought from the Land Control Board and he acknowledged that the transfer process takes time. When asked about the entries on the Green Card, he confirmed that the registration of the transfer to the 1st Defendant was done in one day [17th October 1990] although he stated that the process took a while. He confirmed that the evidence of payment as per the Plaintiff's documents showed that consideration of Kshs. 260,000 was received on the same date; 17th October 1990 although some payments were made by his firm.
 28. On re-examination he confirmed that the acknowledgment of payments in the 1st Defendant's bundle were signed by the seller. He confirmed that entry number three dated 17th October 1990 showed that the title was closed on subdivision stating that it was not unusual for the Registrar to carry out several transactions regarding the same title on the same day. That from his experience, it was possible to register subdivision, transfer and a new title be issued on the same date. When asked about the name RAKOI on the Plaintiff's bundle and the thumb print on the sale agreements he stated that he could not comment on that because he was not involved in the survey process. On the issue of the removal of the caution, he confirmed that he was orally instructed by the seller to have it removed.
 29. At the close of the oral testimonies, parties tendered final written submissions.



Submissions of the Plaintiff

30. On whether the Defendants' acquired a good title, it was submitted that the Defendants devised a scheme to fraudulently subdivide his parcel 215 into various parcels and everything was done without his knowledge or consent. Counsel highlighted the following as proof that the transaction was fraudulent: The sale agreements are not dated and it is not possible to know when they were executed; The sale agreements were not witnessed by anyone despite there being a provision for a witness to sign; there was no evidence that someone who understands the Maasai vernacular language interpreted the sale agreement to the Plaintiff who denied selling the land to anyone; There was no evidence of payment of purchase price. The Defendants produced receipts of payment at the lands office made on 7th November 1996 but did not produce any evidence of payment of the purchase price; The Plaintiff did not instruct the advocate and no evidence was adduced to the contrary; The mutation forms produced by the Defendant had the name of the Plaintiff without his signature; The mutation had his name as the signature but the advocate who handled the transactions testified that the Plaintiff used to 'sign' documents by affixing his thumb print. He was illiterate and did not know how to write his name; There were no consents to sub-divide and to transfer the lands; Nearly all the transactions are captured as having taken place on the same day.
31. Counsel submitted that it was impossible for all processes to have been effected on the same day as held in *Sairowua v Ologeso & another* [2023] KEELC 20885 [KLR]. It was also argued that the Defendants were dangling titles which were not procedurally acquired and thus void citing *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 [KLR].
32. On whether the suit is time-barred, counsel submitted that the fraud was discovered in 2019 and that is when time started to run. As such, the Plaintiff was entitled to the reliefs sought.

Submissions of the 1st to 9th and 11th to 13th Defendants

33. Counsel submitted that the Plaintiff's case was statute barred under Section 7 *limitation of Actions Act*. This is because the Defendants testified to having in possession of the land since 1990 and 1996. It is evident therefore that the claim has been brought more than 12 year after it arose. This suit was therefore an abuse of the court process in the Plaintiff feigning that he was not aware of the transactions and the occupation of the Defendants on the property for over 30 years. Reference to *Mehta v Shah* [1965] EA 321 which held: "The object of any limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time..."
34. On whether the Plaintiff had proved his case on the required threshold, it was submitted that he had not satisfied the threshold as espoused by Section 107 of the *Evidence Act*. Adding that the allegation of fraud was not proved as held in *Kuria Kiarie & 2 Others v Sammy Magara* [2018] KECA 467 [KLR]: "... It is trite law that any allegations of fraud must be pleaded and strictly proved..."
35. They prayed that Plaintiff's suit be dismissed with costs.

Submissions of the 10th Defendant

36. Counsel associated himself with the other Defendants' submissions and sought for a dismissal of the suit with costs.



Analysis and Determination

37. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
- i. Whether the Plaintiff has proved his case as against the Defendants to the required threshold;
 - ii. Whether the Plaintiff is entitled to the reliefs sought;
 - iii. Who should bear costs of the suit?
38. The Plaintiff brought this suit on grounds that his suit property Kajiado/Kipeto/215 was fraudulently subdivided and transferred to the 1st-14th Defendants without his knowledge and/or consent. He claimed that he was unaware of the transaction because after he sold the first 40 hectares of the original land Kajiado/Kipeto/32, he was never issued with the subsequent title; Kajiado/Kipeto/215. He claimed that he only learnt of the fraudulent transactions in 2019 leading to the filing of this suit. In testimony he acknowledged that his wife put a caution on the suit property sometime in 1992 to stop him from selling the land, but the same was fraudulently lifted in 1993.
39. To support his claim he produced the following documents:
- i. Green card for parcel Kajiado/Kipeto/32 which was closed on subdivision on 30th October 1986 and new titles Kajiado/Kipeto/214 and 215 issued on 8th May 1987. Title Kajiado/Kipeto/215 closed on subdivision on 17th October 1990 for new titles Kajiado/Kipeto/415-426.
 - ii. Title Kajiado/Kipeto/837 opened on 1st November 1992 in favour of the Plaintiff. On 13th May 1996 caution registered in favour of Mayiai Ene Rakoi. On 22nd May 1996 title issued to Monirei Paan and on 26th February 2012 title re-issued.
 - iii. Green card for titles 415, 416, 417, 418, 419, 420, 421, 422, 423, 424 and 425 issued on 17th October 1990 in favour of the 1st to the 14th Defendants.
 - iv. Title for Kajiado/Kipeto/426 registered on 17th October 1990 in favour of the Plaintiff, caution registered by Mayiai Ene Rakoi on 5th June 1992 claiming licensee interest. The caution was withdrawn on 21st October 1994 and on 1st November 1994 the title was closed on subdivision of the new titles 837, 838, 1084, 1085 and 1087. Mutation form dated 1st November 1994 shows new parcel numbers as 837, 838, 1084, 1085, 1086 and 1087.
 - v. All the green cards produced as evidence have a stamp indicating that they are the certified copies of the original mutation and green card.
40. However, page 1 of the Plaintiff's document shows that Parcel Kajiado/Kipeto/837 was registered in favour of the Plaintiff on 27th February 2013 contrary to the green card produced on page 6 of his bundle of documents.
41. The Defendants contested the claim of fraud stating that the Plaintiff was the one who sold the suit properties to them between the year 1990 and 1992, and caused their subdivisions and transfers. They further stated the transactions were undertaken by Kenneth N. Mungai -advocate who testified as DW3. The advocate in his testimony acknowledged having undertaken the transaction for both the Plaintiff and the Defendants including the drafting of the sale agreements.



42. The advocate contested the allegation that the caution placed by the Plaintiff's wife sometime in 1992 was fraudulently removed. He stated that in October 1993, under the Plaintiff's instructions, he unsuccessfully applied for its lifting, but upon intervention and legal advice to the Plaintiff and his wife, the Plaintiff's wife agreed to lift the caution and the same was done in 1994. In the second transaction of the sale and subdivision of a portion of Kajiado/Kipeto/426 was completed. It was his testimony that in 1996 the Plaintiff's wife registered another caution against Kajiado/Kipeto/837 which property was registered in the Plaintiff's name.
43. To support their case, the Defendants produced the following documents as evidence:
- i. Mutation form for Kajiado/Kipeto/32 dated 8th May 1987 giving rise to parcels Kajiado/Kipeto/214 and Kajiado/Kipeto/215.
 - ii. Certificate of title for Kajiado/Kipeto/215 in the Plaintiff's name issued on 15th May 1987.
 - iii. A letter dated 10th May 1990 from Mungai & Gakuru Advocates to George Ngure the 1st Defendant forwarding the sale agreement for the sale of 100 acres of parcel Kajiado/Kipeto/215. It indicates that the seller had obtained consent to subdivide and to sell.
 - iv. Subdivision sketch dated 30th July 1990 of parcel Kajiado/Kipeto/215 and on 17th October 1990 title Kajiado/Kipeto/426 was issued in favour of the Plaintiff and other titles between 415 to 425 issued on the same day in favour of the 1st to the 14th Defendants.
 - v. There is a sale agreement dated 16th September 1992 between Plaintiff and the 1st and 2nd Defendants for portion of Kajiado/Kipeto/426. The agreement bears the thumbprint against the Plaintiff's name, signature of the 1st and 2nd Defendants and stamped by N. A. Kinyanjui advocate.
 - vi. Sale agreements between the Plaintiff and Ngina Mathu, Consolata Nkatha Bucha have a thumb print against the Plaintiff's name, they are signed by the buyers, and stamped by the advocate.
 - vii. Sale agreement between the Plaintiff and Wambui Mathu has a thumb print against the Plaintiff's name but it is not signed by the buyer.
 - viii. There is a consent to subdivide parcel Kajiado/Kipeto/426 dated 1st September 1992 issued.
 - ix. A letter dated 17th November 1992 addressed to the Defendants' advocate – Mungai & Gakuru Advocates from A. Makundi advocate acting on behalf of the Plaintiff's wife asking for information on the transaction on the grounds that the Plaintiff- Rakoi Ole Monirei was intending to sell the whole family land.
44. There is a letter dated 19th October 1993 from Mungai & Gakuru Advocates addressed to the Land Registrar seeking removal of the caution on Kajiado/Kipeto/426.
45. On 31st May 1994, Mungai & Gakuru advocates wrote to the Plaintiff asking him to get a fresh consent from Land Control Board to subdivide Kajiado/Kipeto/426.
46. There is a title for parcel Kajiado/Kipeto/838 in favour of the 1st and 2nd Defendants issued on 1st November 1994
47. There are Titles, Kajiado/Kipeto/1084, 1085, 1086, in favour of Ngina Mathu, Wambui Math & Gorge Mbuthia Warui, and Consolata Nkatha Bucha issued on 20th November 1992.
48. There is a Title Kajiado/Kipeto/1087 in favour of George Ngure Kariuki issued on 1st November 1994



49. The Plaintiff has pleaded fraud against the Defendants on grounds that after he subdivided parcel Kajiado/Kipeto/32 into Kajiado/Kipeto/214 and 215, he only sold parcel 214. He claimed that he was not aware of all the other subdivisions and transfers and did not grant his consent.

50. Fraud is a serious allegation which should not only be pleaded but proved as held by the Court of Appeal in John Mbogua Getao v Simon Parkoyiet Mokare, Karempu Kaata, Nkama Group Ranch, Chief Land Registrar & Attorney General [2017] KECA 156 [KLR]:

“... Indeed, allegations of fraud are of serious nature that may carry with them penal consequences that may further infringe on a person’s right to liberty hence the insistence that fraud ought to be specifically pleaded, with particulars thereof, and proved... In Emfil Ltd v Registrar of Titles Mombasa [supra], this Court pronounced itself as follows on the issue:-

“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities...”

51. The Plaintiff raised the issue of fraud on grounds that he was never issued with the title deed in 1987 after the first subdivision.

52. From the documents produced by both the Plaintiff and the Defendants, this court finds that this averment as inaccurate. He argued that the consents and transfers were also not procured by him. He also claimed that he is illiterate and only thumb prints on documents. It is on record that the sale agreements produced bore a thumb print. No evidence was produced by the Plaintiff invalidating the thumb print affixed on the sale agreements. On the issue that some documents had his name written on them while he only uses his thumb print to attest documents, no evidence was tabled to invalidate the name used as a signature on those documents.

53. The question before this court is, can the Plaintiff claim not to have been aware of the transactions until 2019, when his wife had put cautions against the suit property to prevent him from selling it? It is also on record that his wife sought an explanation from the advocate as to the transactions. It is on record that the Advocate wrote to the Defendants’ advocates inquiring about the sale. This court finds that the claim by the Plaintiff that he was not aware of the dealings cannot stand.

54. The 10th Defendant stated that his land was adjacent to that of the Plaintiff’s and had been in occupation from the 1990s. Is it possible for the Plaintiff to claim that for over two [2] decades he was unaware that there was someone on his land? I find that it is not possible.

55. The upshot of the matter is that the Plaintiff has failed to prove his case against the Defendants on a balance of probabilities.

56. It follows that he is not entitled to the reliefs sought. The Plaintiff’s suit is hereby dismissed.

57. I Consider the circumstances of this case and order each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF JUNE 2025.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Odhiambo for the Plaintiff.



Ms. Ithondeka with Ms. Kiiru for the 1st - 9th, 11th – 13th Defendants.

Mr. Wambu for Mrs. G. Wainaina for the 10th Defendant.

N/A for the 14th Defendant.

N/A for the 15th – 17 Defendants.

Court Assistant – Mateli.

