



REPUBLIC OF KENYA



**Mwangi & 10 others v Hopewell Enterprises Limited & 2 others (Environment & Land Case E037 of 2024) [2025] KEELC 4604 (KLR) (Environment and Land) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4604 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE E037 OF 2024**

**MC OUNDO, J**

**JUNE 19, 2025**

**BETWEEN**

**DAVID KARANJA MWANGI ..... 1<sup>ST</sup> PLAINTIFF**  
**SALAT NUR SANY ..... 2<sup>ND</sup> PLAINTIFF**  
**SARAH KERUBO MAOSA ..... 3<sup>RD</sup> PLAINTIFF**  
**ESTHER WAKONYO MWANGI ..... 4<sup>TH</sup> PLAINTIFF**  
**JOHN GATHENYA KAHIGA ..... 5<sup>TH</sup> PLAINTIFF**  
**NAOMI WAIHERA KAHURANI (SUING AS THE ADMINISTRATOR OF  
THE ESTATE OF MARGARET MAITHA KAHURANI) ..... 6<sup>TH</sup> PLAINTIFF**  
**PAUL NGÁNGÁ GACHERU ..... 7<sup>TH</sup> PLAINTIFF**  
**PATRICK MAGURU MUCHEMI ..... 8<sup>TH</sup> PLAINTIFF**  
**JOHN MACHARIA MWANGI ..... 9<sup>TH</sup> PLAINTIFF**  
**SULEIMAN MAINA WAIHAKA ..... 10<sup>TH</sup> PLAINTIFF**  
**MARGARET NDIKO WATHIKA ..... 11<sup>TH</sup> PLAINTIFF**

**AND**

**HOPEWELL ENTERPRISES LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**KENYA PORCELAIN FACTORY LIMITED ..... 2<sup>ND</sup> DEFENDANT**  
**GEOFFREY MUHORO MWANGI ..... 3<sup>RD</sup> DEFENDANT**



## JUDGMENT

1. Vide a Complaint dated 31<sup>st</sup> August, 2024, the Plaintiffs herein sought for the following orders:
  - i. A declaration that the Plaintiffs herein are the legal owners of those parcels of land known as Naivasha Municipality Block 2/653, 654, 667, 678, 679, 684, 693, 695, 710 and 729 to the exclusion of all others.
  - ii. A declaration that the 2<sup>nd</sup> Defendant has no interest or claim over those parcels of land known as Naivasha Municipality Block 2/653, 654, 667, 678, 679, 684, 693, 695, 710, 729 and 712.
  - iii. A declaration that the registration of the 3<sup>rd</sup> Defendant as the proprietor of Naivasha Municipality Block 2/695 was fraudulent, illegal, null and void and conferred no proprietary right over the land to the 3<sup>rd</sup> Defendant.
  - iv. That the District Land Registrar Naivasha do cancel the title deed held by the 3<sup>rd</sup> Defendant in respect of Title No. Naivasha Municipality Block 2/695.
  - v. That the honourable Court be pleased to issue an order of specific performance directing the 1<sup>st</sup> Defendant to transfer land parcel Nos. Naivasha Municipality Block 2/653, 654, 667, 678, 679, 684, 693, 695, 710, 729 and 712 to the 1<sup>st</sup> to 11<sup>th</sup> Plaintiffs respectively.
  - vi. That the Honourable Court be pleased to issue an order that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants surrender all the completion documents relating to Naivasha Municipality Block 2/653, 654, 667, 678, 679, 684, 693, 695, 710, 729 and 712 including the original Certificate of Lease and the Consent to Transfer.
  - vii. That the Honourable Court be pleased to issue an order that the 2<sup>nd</sup> Defendant execute all documents that may be necessary to enable the transfer of land parcel Nos. Naivasha Municipality Block 2/653, 654, 667, 678, 679, 684, 693, 695, 710, 729 and 712 to the 1<sup>st</sup> to 11<sup>th</sup> Plaintiffs respectively.
  - viii. That should the 2<sup>nd</sup> Defendant herein refuse to sign the said transfer documents; the Honourable Court be pleased to direct the Deputy Registrar to execute the transfer and consent application in its stead.
  - ix. That should the 1<sup>st</sup> and 2<sup>nd</sup> Defendants refuse to surrender the Original Lease in respect of land parcel Nos. Naivasha Municipality Block 2/653, 654, 667, 678, 684, 693, 695, 710 and 729, the District Land Registrar Naivasha be directed to process the transfer in the absence of the original lease.
2. Despite the service of Pleadings upon the Defendants including through substituted service, they never entered appearance nor responded. The Plaintiffs having complied with the pretrial directions, the matter proceeded for hearing on formal proof on the 10<sup>th</sup> March 2025 wherein PW 1 Patrick Maguru, the 8<sup>th</sup> Plaintiff herein introduced himself as a self-employed dealer in scrap metal and that he lived at Hopewell within Naivasha. He then adopted his Witness Statement dated 31<sup>st</sup> August 2024 as his evidence in chief and proceeded to testify as follows;
3. That in July 2005, via a board affixed on parcel No. Naivasha Municipality block 2/695 (the suit land) Hopewell Enterprise had advertised sub-division of the land wherein interested land buyers were to



- pay whatever they could afford to David Gichuki Advocate, whose office was in Naivasha Town. That he had paid Ksh. 150,000/= for a plot measuring 50 by 100.
4. That they conducted due diligence and confirmed Hopewell Enterprise as the proprietor of the land having secured a title deed and an agreement from the previous owner. That they also knew that the land was genuine because they were buying it through a lawyer.
  5. He produced a sale agreement dated 25<sup>th</sup> January 2005 between Hopewell Enterprise and walkabout Kenya Limited relating to land parcel No. Naivasha Municipality Block 2/620 measuring approximately 4 hectares as Pf exh 1 wherein he proceeded to explain that after the said land was subdivided, everybody took the portion of land that had pleased them.
  6. He proceeded to produce as Pf exh 2, an executed sale agreement dated 8<sup>th</sup> August 2005 between Hopewell Enterprise Limited, represented by Thomas Murithi Githui and himself as the buyer in relation to plot No. Naivasha Municipality Block 2/695 measuring 84 by 86 Ft, which plot he had bought for Kshs. 150,000/=.
  7. He explained that he had deposited the whole purchase price money in Barclays Bank as follows: -
    - i. A deposit slip dated 22<sup>nd</sup> July 2005 for Kshs. 50,000/=
    - ii. A deposit slip dated 21<sup>st</sup> June 2005 for Kshs. 50,000/=
    - iii. A deposit slip received on 28<sup>th</sup> July 2005 for Kshs. 10,000/= as final payment.
  8. He thus produced the receipts as Pf exh 3 (a - c) and proceeded to explain that when he started buying the land, Kshs. 40,000/= would be deducted as his commission whenever he brought somebody to buy the land.
  9. He continued to state that after he had completed the payment, he had taken possession of his parcel of land in the year 2005 and constructed his house therein and also built rental houses and had been living therein to date. That he had a photograph of his premises showing the two gates of his plot. He explained that the unpainted gate was where he carried out his scrap metal business while the gate painted blue was his residence. He produced the said photograph as Pf exh 4.
  10. His further evidence was that he had been living peacefully on the suit land since the year 2005 wherein he had installed both electricity and water wherein he had receipts as evidence and a breakdown of monthly payments from January 2010 – March 2010 and receipts dated 14<sup>th</sup> February 2011, 22<sup>nd</sup> November 2011, 4<sup>th</sup> August 2011 herein produced as Pf exh 5 (a - d). That there had also been deposit slips of Co-operative bank for water bills dated 6<sup>th</sup> September 2021 and 4<sup>th</sup> June 2022 which deposit slips he produced as Pf exh 6 (a-c).
  11. That despite having paid a sum of Kshs. 40,000/= on the 20<sup>th</sup> March 2009 and Kshs. 25,000/= on 2<sup>nd</sup> September 2011 to process the title for Plot Nos. 695 and 696 wherein he had been given receipts herein produced as Pf exh 7 and 8, he had not been issued with a title deed for his parcel of land.
  12. That despite a follow up for issuance of the title, they were unable to trace the people who had sold them the land, despite their promises that they would issue them with the same and despite them having called them for meetings where they had demanded payments for the title twice, being Kshs. 20,000/= and Kshs. 25,000/=.
  13. He produced a chief's letter dated the 12<sup>th</sup> August 2024 as Pf exh 9 to show that he had been living on those premises and proceeded to testify that on the 3<sup>rd</sup> July 2024, they had conducted a search at the Naivasha Lands Office in relation to land parcel No. Naivasha Municipality Block 2/695 wherein they



- had discovered that the land had been registered to one Geoffrey Muhoro, the 3<sup>rd</sup> Defendant herein who was one of the Directors of Kenya Porcelain, the 2<sup>nd</sup> Defendant wherein the suit land had been transferred to the said Geoffrey on 27<sup>th</sup> February 2024. He produced the search dated 3<sup>rd</sup> July 2024 as Pf exh 10.
14. That whereas 11 people had filed the instant suit, he was given authority to testify on their behalf as per the executed authority dated 31<sup>st</sup> August 2024 herein produced as Pf exh 11. He testified that they had tried all means to get their respective titles and had even paid twice to no avail, hence it had really become a burden to him.
  15. That all the 11 Plaintiffs herein had conducted searches and found that their parcels of land were still registered to the 2<sup>nd</sup> Defendant. That the 1<sup>st</sup> Plaintiffs parcel of land No. Naivasha Municipality Block 2/653 had been registered to the 2<sup>nd</sup> Defendant on 28<sup>th</sup> June 2024. He produced the search as Pf exh 12 (a).
  16. He relied as evidence, on a sale agreement dated 5<sup>th</sup> March 2005 between Hopewell (the 1<sup>st</sup> Defendant) and David Karanja Mwangi (the 1<sup>st</sup> Plaintiff herein) for Ksh. 140,000/= for land measuring 50 by 100 which was to be excised from Plot No. 620, and the following the receipts:
    - i. A Receipt dated 24<sup>th</sup> September 2005 for Ksh. 35,000/=
    - ii. A Receipt dated 22<sup>nd</sup> April 2005 for Ksh. 2,000/= as deposit.
    - iii. A Receipt dated 29<sup>th</sup> March 2005 for Ksh. 2,000/= as deposit.
    - iv. A Receipt dated 15<sup>th</sup> April 2005 for Ksh. 4,000/=
    - v. A Receipt dated 15<sup>th</sup> March 2005 for Ksh. 7,000/=
    - vi. A Receipt dated 14<sup>th</sup> February 2005 for Ksh. 25,000/=
    - vii. A Deposit Slip for Equity Bank dated 14<sup>th</sup> June 2006 for Ksh. 25,000/=
    - viii. A Receipt dated 18<sup>th</sup> April 2007 for Ksh. 10,000/=
    - ix. A Receipt dated 22<sup>nd</sup> January 2008 for Ksh. 10,000/=
    - x. A Receipt dated 19<sup>th</sup> January 2008 for Ksh. 15,000/=
    - xi. A Receipt dated 5<sup>th</sup> December 2007 for Ksh. 5,000/=
    - xii. A Receipt dated 29<sup>th</sup> September 2007 for Ksh. 5,000/=
  17. That the 1<sup>st</sup> Plaintiff had built his home on the said plot and had been living therein as per a letter from the Chief dated 12<sup>th</sup> August 2024. That nevertheless, the 1<sup>st</sup> Plaintiff had also not been issued with a title deed. He produced the 1<sup>st</sup> Plaintiff's documents as Pf exh 12 (a) (b), c (i - xi) and (d).
  18. That for the 2<sup>nd</sup> Plaintiff, his sale agreement was dated 1<sup>st</sup> August 2006 between the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant herein represented by David Mwaniki Kinuthia for the purchase of plot No. 654 measuring 40 by 80 ft at a purchase price of Ksh. 150,000/=. That the said agreement had been executed by all parties and thereafter, the 2<sup>nd</sup> Plaintiff had been given an ownership Certificate of the Plot No. 654 dated 15<sup>th</sup> December 2006.
  19. That a letter from the chief dated 12<sup>th</sup> August 2024 also confirmed that the 2<sup>nd</sup> Plaintiff had been living on the plot wherein he had put up a building as could be seen from the picture showing him outside his house. That they had conducted a search on the 28<sup>th</sup> June 2024 which search had shown that the



- land had been registered to the 2<sup>nd</sup> Defendant although he had also not been given a title. He produced the 2<sup>nd</sup> Plaintiff's documents as Pf exh 13 (a - e).
20. That vide an agreement dated 10<sup>th</sup> September 2005 between Hopewell Enterprise Director Thomas Kirui and Sara Kerubo Moasa, the 3<sup>rd</sup> Plaintiff herein, the same was in relation to plot No. 667 measuring 40 by 80 ft wherein the purchase price had been Kshs. 110,000/= . That at the time of the agreement, the 3<sup>rd</sup> Plaintiff had paid a sum of Kshs. 70,000/= leaving a balance of Kshs. 40,000/= . That he also had the Chief's letter dated 13<sup>th</sup> August 2024 confirming that the 3<sup>rd</sup> Plaintiff lived on the plot. That a search dated 5<sup>th</sup> August 2024 revealed that the 2<sup>nd</sup> Defendant had been the registered as the owner. He produced the 3<sup>rd</sup> Plaintiff's document as Pf exh 14 (a-c).
  21. In reference to an Agreement dated 28<sup>th</sup> October 2005 between 1<sup>st</sup> Defendant and Esther Wakonyo Mwangi, the 4<sup>th</sup> Plaintiff herein he confirmed that the same had been in relation to the sale of plot No. 678 measuring 40 by 50 ft for the purchase price of Ksh. 130,000/= wherein at the time of agreement, the 4<sup>th</sup> Plaintiff had paid Ksh. 120,000/= and had a balance of Ksh. 10,000/= . That he also had a letter from the chief dated 14<sup>th</sup> August 2024. He produced the 4<sup>th</sup> Plaintiff's documents as Pf exh 15 (a-b).
  22. He produced an agreement dated 1<sup>st</sup> October 2005 between the 1<sup>st</sup> Defendant and Margaret Maitha the 6<sup>th</sup> Plaintiff, for the sale of Plot No. 684 measuring 40 by 80 ft for the purchase price of Ksh. 120,000/= . That Margaret who was now deceased had fully paid for her land. That the said Margaret was represented by her legal representative vide a grant of 27<sup>th</sup> May 2022 in Succession Cause No. 9/2019 before Naivasha Law Courts and that the plot herein had been mentioned as No. 7 on the grant. That he had a payment slip of 3<sup>rd</sup> October 2005 for Ksh. 120,000/= . He testified that Margaret had even opened a school on the said plot and that after her demise, one of her children, one Jacob had been living on the plot. That there was a letter from the Chief dated 12<sup>th</sup> August 2024 to confirm the same. That he also had a receipt dated 8<sup>th</sup> February 2010 addressed to Margaret Maitha for the supply of electricity to Plot No. 684. That a search conducted on the 18<sup>th</sup> September 2023 revealed that the land had been registered to the 2<sup>nd</sup> Defendant. He produced Margaret's document as Pf exh 16 (a - g).
  23. That an agreement of 25<sup>th</sup> January 2006, had been between the 1<sup>st</sup> Defendant represented by Mureithi Muthui and one James Mutiga in relation to plot No. 693 measuring 40 by 80 ft, at a purchase price of Ksh. 110,000/= . That the said James had paid the whole purchase price at the time the agreement was executed wherein he had subsequently sold the land to Paul Nganga Gacheru, the 7<sup>th</sup> Plaintiff for Ksh 140,000/= which purchase price had been paid wholly. That he had the receipt from an Advocate dated 5<sup>th</sup> May 2006 for Ksh. 2,000/= for the payment of the sale agreement. That the 1<sup>st</sup> Defendant had drawn a receipt dated 16<sup>th</sup> March 2009 for processing of the title to plot No. 693 which receipt had been issued to the 7<sup>th</sup> Plaintiff. That there was also another receipt dated 18<sup>th</sup> March 2009 for Kshs. 5,000/= addressed to the 7<sup>th</sup> Plaintiff for processing of title to plot No. 693. That the 7<sup>th</sup> Plaintiff had been living on the land as per the Chief's letter, wherein he had put up a storied building as could be seen in the photographs filed. He produced the 7<sup>th</sup> Plaintiff's documents as Pf exh 17 (a - f).
  24. He also relied on another sale agreement between the 1<sup>st</sup> Defendant and Peter Mwaura for plot Nos. 710, 713, 688, 674 and 687 all measuring 40 by 80 Ft. That Peter had purchased the said parcels of land at Ksh. 100,000/= per plot totaling to Ksh. 700,000/= wherein by the time they were executing the agreement, Peter had paid a total sum of Kshs. 560,000/= remaining with a balance of Ksh. 140,000/=
  25. That an agreement of 31<sup>st</sup> July 2009 was between Peter Mwaura Kimani and John Mwangi Macharia, the 9<sup>th</sup> Plaintiff herein for Plot No. 710 measuring 40 by 80 ft at a purchase price of Ksh. 400,000/= which money had been fully paid as per a deposit slip of 31<sup>st</sup> July 2009 for Kshs. 400,000/=.



26. That there was a transfer form of the 1<sup>st</sup> Defendant from Peter Kimani to the 9<sup>th</sup> Defendant for Plot No. 710. That however, a search in relation to the said plot dated 3<sup>rd</sup> July 2024 revealed that the land was registered to the 2<sup>nd</sup> Defendant. He produced the 9<sup>th</sup> Plaintiff's documents as Pf exh 18 (a - e)
27. That a sale agreement dated 5<sup>th</sup> November 2005, was between the 1<sup>st</sup> Defendant and the 10<sup>th</sup> Plaintiff for the sale of Plot No. 729 measuring approximately 40 by 80 ft at a purchase price of Ksh. 120,000/= where a certificate dated 16<sup>th</sup> September 2006 for the purchase of land had been issued to the 10<sup>th</sup> Plaintiff. That the 10<sup>th</sup> Plaintiff had built on the plot and had been living therein as per the Chief's letter dated 8<sup>th</sup> March 2012 which confirmed the installation of electricity by the said 10<sup>th</sup> Plaintiff. He produced the 10<sup>th</sup> Plaintiff's documents as Pf exh 19 (a - d).
28. He testified further that an agreement of 15<sup>th</sup> April 2009 was between the 1<sup>st</sup> Defendant and Margaret Ndiko Waithaka, the 11<sup>th</sup> Plaintiff herein for Plot No. 712 measuring 40 by 80 ft for a purchase price of Kshs. 350,000/= which sum of money had been paid at the time of execution of the agreement. That the 11<sup>th</sup> Plaintiff had built on the plot as evidenced by the Chief's letter dated 16<sup>th</sup> August 2024. He produced the 11<sup>th</sup> Plaintiff's documents as Pf exh 20 (a- b).
29. His evidence had been that they were at a loss as to why they had not been issued with their respective titles. That further, by the Defendants registering the said titles in their own names was a clear indication that they had wanted to sell the same to somebody else. He urged the court to request for the said titles on their behalf since he was an old man, with nowhere else to go.
30. He confirmed that all of them had paid money for the purchase of the land wherein they had peacefully lived on those plots for about 20 years and the Defendants had not interfered with their occupation.
31. When he was examined by the court, he confirmed that it was the 1<sup>st</sup> Defendant that had sold all the plots to them and told them that they would get the titles. That whereas he had seen the title held by the 1<sup>st</sup> Defendant, he did not have it in court.
32. John Gakenya Kahiga, a businessman living at Hope Estate within Naivasha Town testified as PW2 and adopted his witness statement dated 31<sup>st</sup> August 2024 as his evidence in chief. He testified that around the year 2005 a surveyor called Mutiga had informed him that he had surveyed and sub-divided land parcel No. Naivasha Municipality Block 2/620 which land was up for sale by the 1<sup>st</sup> Defendant. That he had advised him to talk to one of the Directors of the 1<sup>st</sup> Defendant known as Thomas Githui which he did and subsequently bought Plot No. 679 a subdivision of Plot No. 620 measuring 40 X 80 Ft at a purchase price was Ksh. 110,000/= via an agreement of 7<sup>th</sup> September 2005. That he had been issued a receipt dated 27<sup>th</sup> October 2005 for Kshs. 110,000/= only for plot No. 679, by the 1<sup>st</sup> Defendant.
33. That they were informed that the titles were ready and that they would be issued with the same within 1 month. That he had deposited the money at Equity Bank wherein he had availed the receipt to the Advocate who had drafted the sale agreement after which he had been shown his plot. He produced the Sale Agreement as Pf exh 21 (a) and then testified that whereas they were not shown the title of their respective parcels of land, they had been assured that the same would be processed for them. That had not been shown the Pf exh 1.
34. That after paying the purchase price, he had constructed his house in the year 2006 and had been in occupation of the said house to date. He maintained that they were told that they would be issued with titles and that the payment in the agreement had included processing of the titles hence there was nothing else that he was to pay. That whereas the title was to be ready by 31<sup>st</sup> December 2005, nothing was forthcoming and no reason had been given for the delay.



35. That they had also been asked for Ksh. 20,000/= for processing the title which money he had paid as could be seen from the receipt dated 20<sup>th</sup> March 2006 for Ksh. 5,000/=, 16<sup>th</sup> March 2009 for Kshs. 5,000/= and 9<sup>th</sup> March 2006 for Kshs. 10,000/= which he produced as Pf exh 21 (b (i - iii)). That after he had completed paying the extra money for the title, he had been given a certificate of ownership by the 1<sup>st</sup> Defendant for Plot No. 679 which Certificate he produced as Pf exh 21 (c).
36. That after a very long, he had approached one Chege who worked in the 1<sup>st</sup> Defendant's office and demanded for his title, wherein he was asked to pay another Kshs. 25,000/= he complied and was issued with his title for land parcel No. Naivasha Municipality Block 2/679. His evidence was that they had were in possession of the titles.
37. He explained that the approximate area of his plot was 0.6300 hectares and the term of the lease was for 99 years from 1<sup>st</sup> February 1992. That the 2<sup>nd</sup> Defendant was registered as the owner of the land wherein the certificate of lease had been issued on 14<sup>th</sup> June 2007. That the 1<sup>st</sup> Defendant was to process the lease in his name. He produced the said lease as Pf exh 21 (d).
38. That he had the certificate of incorporation of the 2<sup>nd</sup> Defendant and a PIN Certificate for Mwangi Geoffrey Muhoro, the person who had sold them the plots on behalf of the 2<sup>nd</sup> Defendant. That he also had the KRA PIN for Kimani Anthony who was a co-director of the 2<sup>nd</sup> Defendant, as well as a photo copy of the identity card for Geoffrey Muhoro Mwangi, a Director of the 2<sup>nd</sup> Defendant who had sold the land to the 1<sup>st</sup> Defendant.
39. That he also had a copy of Kimani Anthony's passport and form LR 33, that is, transfer form of land as well as a photocopy passport of Geoffrey Muhoro and Anthony Kimani. That whereas he had all the aforementioned documents, he was not able to transfer the land into his name because Geoffrey Muhoro had refused to sign the transfer form to enable the transfer of the land from the 2<sup>nd</sup> Defendant's name to his name.
40. That when he contacted the said Geoffrey in the year 2024, he told him that he could not sign the transfer form because despite the land being his, he was not the one who had sold him the plot. That Geoffrey had demanded a sum of Ksh. 500,000/- so that he could sign the transfer. He produced the said documents as Pf exh 21 e( i-vii). His evidence finally was that neither Geoffrey Muhoro nor the 2<sup>nd</sup> Defendant had made any claim to the land.
41. When he was examined by the Court, he confirmed that Geoffrey was aware of the suit herein.
42. The Plaintiff closed their case wherein parties were directed to file their written submissions.
43. The Plaintiffs through their submissions dated the 28<sup>th</sup> March 2025, framed three issues for determination to wit;
  - i. Whether the suit is uncontroverted?
  - ii. Whether the Plaintiffs have proved their case?
  - iii. Whether the Plaintiff be awarded costs?
44. On the first issue for determination, the Plaintiffs submitted that through an affidavit sworn on the 10<sup>th</sup>. December 2024, their Advocate had served the summons of appearance, plaint and accompanying pleadings upon the Defendant herein on 9<sup>th</sup> December, 2024 via substituted means in accordance to Order 5 Rule 17 of the Civil Procedure Rules by placement of an advertisement on the Standard newspaper at pg no 24.



45. Reliance was placed on a decision in *Gulf Fabricators v County Government of Siaya* [2020] eKLR, to submit that upon the court being satisfied That there had been proper service the matter proceeded for hearing on formal proof when the Defendants failed to appear in Court and failed to defend themselves.
46. On the second issue for determination, the Plaintiffs submitted that it had been their case that they purchased the suit properties Naivasha Municipality Block 2/653, 654,667,678,679,684,693,695, 710,729 and 712 from the 1<sup>st</sup> Defendant on diverse dates wherein they had called two witnesses who had produced documentary evidence in support thereof.
47. Reliance was placed in the decision in *Palace Investments Ltd v Geoffrey Kariuki Mwenda & Another* NRB CA Civil Appeal No. 127 of 2007 [2007] eKLR, where the Court of Appeal adopted the dictum of Denning J., in *Miller v Minister of Pensions* [1947] 2 All ER 372 amongst others, to submit that they had discharged the burden of proof on a balance of probabilities and their claim remains unchallenged by the Defendants we therefore pray that placed on them that despite the Plaintiff's having purchased their respective parcels of land, occupied and developed them, they were yet to be issued with their titles.
48. That the Defendants' delay and/or failure to issue the Plaintiffs with their titles or to sign the transfer documents was actuated by greed wherein they demanded money at every stage which was contrary to their agreement.
49. The Plaintiffs then submitted that they be awarded costs to compensate them for the trouble taken in prosecuting the suit. They sought for the grant of prayers contained in the *Plaint*.

#### **Determination.**

50. Despite substituted service vide the *Standard Newspaper* of 9<sup>th</sup> December 2024, the Defendants chose to stay away and/or not respond or participate in the trial for which the matter proceeded on formal proof in their absence wherein on the 10<sup>th</sup> March 2025, the Plaintiffs closed their case and directions were issued for the filing of written submissions which directions were extended on the 25<sup>th</sup> March 2025.
51. I have duly considered the evidence adduced before court by the Plaintiffs, the submissions, the authorities cited and the applicable law, and find that the Plaintiffs' evidence was believable as it was backed by genuine documents that were not contested.
52. From the evidence adduced herein, it is clear that pursuant to a sale agreement dated 25<sup>th</sup> January 2005 herein produced as Pf exh 1, the 1<sup>st</sup> Defendant (*Hopewell Enterprise*) purchased land parcel No. Naivasha Municipality Block 2/620 measuring approximately 4 hectares from *Walkabout Kenya Limited* wherein sometime in July 2005, via an advertisement affixed on a board on the said parcel No. Naivasha Municipality block 2/620 (the suit land) they had advertised the sub-division and sale of the of the land wherein interested buyers were to purchase identified portions of the land through the office of *David Gichuki Advocate* situated within Naivasha Town.
53. That subsequently, the Plaintiffs herein had conducted due diligence and confirmed that indeed *Hopewell Enterprise*, the 1<sup>st</sup> Defendant herein was the proprietor of the land having secured a title deed and an agreement from the previous owner. That they also knew that the land was genuine because they were purchasing it through a lawyer.
54. That between the years 2005 and 2006, persons, including the Plaintiffs herein, purchased various portions of land measuring 50 by 100 ft, via their respective sale agreements which agreements had been



executed in the office of David Gichuki Advocate, between Hopewell Enterprise Limited, represented by Thomas Murithi Githui and the respective Plaintiffs who had then paid either full purchase price or partial as per the documents herein above produced.

55. That parties were then issued with ownership certificates awaiting the issuance of their respective title deeds. They subsequently took possession and occupation of their respective parcels of land which they developed individually and have been in peaceful occupation since the purchase, as per the Chiefs' letters herein produced in evidence, to date.
56. That despite a promise that their title deeds would be availed to them within one month of purchase, this was not forthcoming and a search made at the lands office revealed that their respective parcels of land had been transferred and registered to the 3<sup>rd</sup> Defendant herein, a Director of the 2<sup>nd</sup> Defendant, as per the search certificates herein produced in evidence.
57. The Plaintiffs thus filed suit through their representative as per the executed authority dated 31<sup>st</sup> August 2024 herein produced as Pf exh 11, seeking the above captioned reliefs. The evidence by PW 2 was to the effect that despite payments and occupation of their respective parcels of land, the 1<sup>st</sup> Defendant had been unable to transfer the land into their names because the 3<sup>rd</sup> Defendant, Geoffrey Muhoro had refused to sign the transfer form to enable the transfer of the land into their respective names. He produced the certificate of incorporation of the 2<sup>nd</sup> Defendant and a PIN Certificate for Mwangi Geoffrey Muhoro, the KRA PIN for Kimani Anthony who was a co-director of the 2<sup>nd</sup> Defendant, as well as a photo copy of the identity card for Geoffrey Muhoro Mwangi, a Director of the 2<sup>nd</sup> Defendant who had sold the land to the 1<sup>st</sup> Defendant, a copy of Kimani Anthony's passport and form LR 33, that is, transfer form of land as well as a photocopy passport of Geoffrey Muhoro and Anthony Kimani as Pf exh 21 e(i-vii) stating that when he had contacted the said Geoffrey in the year 2024, Geoffrey had told him that he would not sign the transfer form because despite the land being his, he was not the one who had sold the same. That Geoffrey had then demanded a sum of Ksh. 500,000/- so that he could sign the transfer. That indeed they had paid double for the issuance of the titles to no avail.
58. Having summarized the Plaintiffs' case as submitted, the issue that I find arising here to is whether the Plaintiffs have any cause of action against the Defendants.
59. The Plaintiffs' case was premised on the fact that after the advertisement for sale of the suit land by the 1<sup>st</sup> Defendant, they had conducted an official search at the Lands Registry and confirmed that the 1<sup>st</sup> Defendant held a good title to transfer to them wherein the sale agreements were executed. According to the sale agreements herein produced, once the intention of the parties had been reduced into a contract, a party could not purport to change the terms of the contract through oral evidence. The agreements herein stipulated the purchase price of the various suit properties wherein the Plaintiffs paid either the full purchase price or partial according to individual terms of the contract. The last clause of the said sale agreements however had stipulated as follows;
- “The purchasers shall take possession of the plot upon payment of entire purchase price and transfer shall be affected thereof without delay.”
60. The oral and documentary evidence herein produced in favor of the Plaintiffs was to the effect that they had all taken possession and occupation of their respective parcels of land which they had extensively developed. This then points irresistibly, there having been no evidence to the contrary, to the fact that they had complied with the terms of the sale agreement in respect of payment of the entire purchase price.



61. That being the case, their suit is premised on the illegality and fraudulent failure to process their individual lease certificates, refusal to release the certificate of lease as well as the fraudulent transferring of their respective titles to the 3<sup>rd</sup> Defendant. The Plaintiffs herein had challenged the 3<sup>rd</sup> Defendant's title to Naivasha Municipality Block 2/695 to the effect that it had been obtained illegally and further that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had no interest Naivasha Municipality Block 2/653, 654, 667, 678, 679, 684, 693, 695, 710, 729 and 712 and therefore they ought to surrender all the completion documents relating to said parcels of land including the original Certificate of Lease and the Consent to Transfer.
62. The Plaintiffs herein having challenged the 3<sup>rd</sup> Defendant's title to Naivasha Municipality Block 2/695 for reason that after the same had been sold to the 1<sup>st</sup> Plaintiff in the year 2005 via a valid contract wherein the full purchase price had been paid, a search revealed that the land had been registered to the 3<sup>rd</sup> Defendant. It was thus upon the 3<sup>rd</sup> Defendant, whose root of title was under challenge, to go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances. The 3<sup>rd</sup> Defendant did not go this extra mile and no evidence was led to rebut the Plaintiff's testimony.
63. The court of Appeal in the case in *Jacob Wekesa Bokoko Balongo v Kincho Olokio Adeya & another* [2020] eKLR held as follows on the importance of deciphering the historical acquisition of title:

“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant's title to the suit land was indefeasible... In the persuasive case of *Fahiye & 2 others v Omar & 4 others* [201] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In *Milankumar Shah and 2 Others v City Council of Nairobi & Attorney General* (Nairobi HCC Suit No. 1024 of 2005 (0S), it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of *Champaklal Ramji Shah & 3 Anors v AG & Anor*, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”
64. Needless to say that in property law, particularly concerning land, the situation where a purchaser is in possession of a property but has not yet received the formal title is a complex area. This often arises in scenarios where a sale agreement has been made, part or full payment has been effected, and the buyer has moved into the property, but the legal transfer of ownership (issuance of title) has not been completed.
65. It has been held and indeed it is trite that once a binding contract for the sale of land is signed, the purchaser is considered to have an "equitable interest" in the property, even though the legal title remains with the vendor. Indeed, a purchaser's physical occupation of the property serves as notice to the world of their interest, even if that interest has not been registered and therefore the vendor, in essence, holds the legal title in trust for the purchaser.
66. It is not in dispute that the 1<sup>st</sup> Defendant subdivided and sold the suit property to the Plaintiffs herein via various valid sale agreements between the years 2005 and 2006. That the Plaintiffs had conducted



due diligence before entering into the agreement wherein they paid the purchase price. That the land was unoccupied wherein they were put into possession and occupation therein, developed the same where they have been living to date as evidenced by the Chief's letters. Further evidence on record was that to date, they have lived peacefully on the suit land with no interference by the 1<sup>st</sup> Defendant. It is clear that the Plaintiffs' possession of the suit property constituted an overriding interest over the property, which created a presumptive and constructive trust in their favour, them having lived on the said parcels of land as purchasers for more than 20 years after buying it. The said constructive trust thus became an overriding interest over the land.

67. It is known that a vendor may refuse to issue titles to the purchaser for various reasons steaming from the vendor's default, a change in mind, a better offer, or an inability to deliver a clean title etc, however in this case, owing to the failure by the Defendants to defend the suit, the court is at a loss to understand why the titles were not issued to the Plaintiff/purchases for more than 20 years.

68. Section 30(g) of the Registered *Land Act*, Cap 300 (now repealed) provided that the rights of a person in possession or actual occupation were overriding interests as follows:

“Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted in the register (a) the rights of a person or actual occupation of land to which he is entitled in right only by such possession or occupation, save where inquiry is made of such person and the rights are not disclosed”

69. This was the applicable law when the Defendants occupied the suit land where their rights as persons in actual occupation were key overriding interest which meant that they as purchasers in possession, even without a formal title, had a protected interest that a subsequent buyer or chargee would take notice of. They were thus protected against fraudulent vendors attempting to sell the same land multiple times.

70. In the decision in *William Kipsoi Sigei v Kipkoech Arusei & Another* [2019]eKLR , the Court of Appeal, held as follows

“We come to the conclusion that in the circumstances of this case the equitable principles of constructive trust and proprietary estoppel were applicable and enforceable to land subject to the *Land Control Act*. We therefore agree with the learned Judge of the Environment and Land Court that despite the lack of the consent of the Land Control Board, the doctrine of constructive trust applied to the agreement between the Appellant and the 1<sup>st</sup> respondent.”

71. Having found that there was a constructive trust over the parcels of land, which became an overriding interest over the land, I find that this constructive trust is a necessary equitable remedy to enable the Plaintiffs obtain justice as against the unconscionable conduct of the Defendants. I therefore find in favour of the Plaintiffs' suit and grant the orders therein sought with costs at a lower scale since the suit was undefended.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

