



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 159 OF 2012

(FORMERLY HCCC No. 335 OF 2011)

1. TABITHA WANJIRU KINYANJUI

2. MOSES NYANJUA KINYANJUI (As administrators of the estate of

Sophia Wambui Kinyanjui (Deceased).....PLAINTIFFS

VERSUS

STEPHEN KINYANJUI MBURU.....DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced on 18th November 2011 when Sophia Wambui Kinyanjui filed plaint in the High Court. The matter was later transferred to this court. Unfortunately, she passed away on 31st May 2018 and was substituted by Tabitha Wanjiru Kinyanjui and Moses Nyanjua Kinyanjui who obtained letters of administration *ad litem* for purposes of this suit in **Naivasha CM Ad Litem No. 241 of 2018**. The plaintiff's case had been heard and closed by the time Sophia Wambui Kinyanjui (hereinafter "Sophia") passed away.

2. Sophia averred in the plaint that she was the proprietor of the parcels of land in Naivasha town known as Industrial Area Plot No. 217, 218 and 219 having inherited them from her late husband. That while processing title documents she discovered that the allotment letters were missing and that the defendant fraudulently transferred the plots to himself with the assistance of her employee. She therefore sought judgment against the defendant for:

a) Declaration that the purported agreements for sale of plot No. 217, 218 and 219 Industrial Area Naivasha are a nullity and invalid.

b) A temporary injunction restraining the Defendant by himself, his servants, agents from interfering with the Plaintiff's quiet enjoyment, use, occupation, development and possession of land parcels known as plot NO. 217, 218 and 219 Industrial Area Naivasha and an interim injunction restraining the Defendant by himself, his servants and/or agents from interfering with the Plaintiff's quiet enjoyment, use, occupation, development and possession of land parcels plot No. 217, 218 and 219 Industrial Area Naivasha pending the hearing of the suit.

c) A permanent injunction restraining the Defendant by himself, his servants, agents from interfering with the Plaintiff's quiet enjoyment, use, occupation, development and possession of land parcels known as plot No. 217, 218 and 219 Industrial Area Naivasha and an interim injunction restraining the Defendant by himself, his servants and/or agents from interfering with the Plaintiff's quiet enjoyment, use, occupation, development and possession of land parcels plot No. 217, 218 and 219 Industrial Area Naivasha pending the hearing of the suit.

d) Costs of this suit.

e) Interest on (d) above at court rates.

f) Any other or further relief as the court may deem fit to grant.

3. The defendant filed defence and counterclaim. He admitted that Sophia was the proprietor of the properties but added that she sold them to him through a sale agreement dated 8th November 2010 and that she thereupon surrendered to him the original letters of allotment and other documents for purposes of transfer. He denied the allegations of fraud and averred that contrary to the sale agreement dated 8th November 2010, Sophia had failed to give him vacant possession of the plots together with the stock and fittings therein. He prayed for the following

orders:

a) A declaration that parcels of land known as Naivasha Municipality plots Numbers 217, 218 and 219 Industrial Area belongs to the defendant (plaintiff in counter claim).

b) An order of eviction to remove the plaintiff (defendant in counter claim) her agents, and servants from plots numbers 217, 218 and 219 Industrial Area Naivasha Municipality.

c) A permanent injunction to issue to restrain the Plaintiff (defendant in counter claim) from reselling or offering for sale properties plots numbers 217, 218 and 219 Industrial Area Naivasha Municipality, retraining (sic) the Plaintiff (Defendant in counter claim) herself, her servants and or agents or anyone claiming through her from disposing by way of sale, curios, art facts (sic), hardwoods (sic), softwood crafts and all other stocks including furniture and fittings or removing the said items from plots numbers 217 and 218 that were sold to the defendant (plaintiff in counter claim) together with the running business.

d) Damages for breach of contract together with mesne profits.

e) The plaintiff's (defendant in Counter claim) suit against the Defendant (plaintiff in counter claim) be and is hereby dismissed in view of the counter claim herein with costs to the defendant (plaintiff in counter claim).

f) Costs of this counter claim

4. Sophia testified as PW1. She stated that she was a businesswoman and a director of Silver View Hotel in Naivasha town. That plot numbers 217, 218 and 219 Industrial Area Naivasha Municipality initially belonged to her late husband and that when she went to pay rates at the local authority she discovered that they had been transferred to the name of Stephen Kinyanjui Mburu, the defendant. She reported the matter to the police. She further testified that she used to keep allotment letters in her office where she had a secretary by the name Pauline Wanjiru Muturi who knew that the allotment letters were kept in the office. That when she enquired from the secretary about the allotment letters the secretary insulted her and quit employment. She was later called by her lawyer by the name Ngure who informed her that there were sale agreements in respect of the plots. She denied ever signing any agreement or ever meeting the defendant at any lawyer's office over any such sale. She confirmed that she operated a joint bank account in her name and John Mwaura Kinyanjui, her son. According to her, the account was opened to enable John Mwaura Kinyanjui access funds for their hotel business. She further stated that she had never withdrawn any money from the account and that she did not know if the defendant deposited any money into it.

5. Under cross examination, Sophia stated that plot numbers 217 and 218 had a curio shop while plot 219 had a beer depot and that she did not remember the date when she discovered that the plots were in the name of the defendant. She denied ever meeting with the defendant about the plots at Jaza Hotel. She stated that despite reporting to the police about the loss of the allotment letters, the police never investigated or charged anybody. Instead, she was charged at Naivasha Court together with her nephew Moses Nyanjui Gachie with the charge of giving a false report to police. The case was concluded and they were fined KShs 80, 000 in total. When defence counsel showed her three sale agreements dated 8th November 2010 in respect of the properties, each with a purchase price of KShs 6,000,000, she denied signing them or receiving any money in respect of the purchase price. She equally stated that signatures on petty cash vouchers alleged to be part payments were not her signature since according to her, she signed documents by just writing her name. When shown bank funds transfer forms issued in favour of the joint account with her son John Mwaura Kinyanjui at Equity Bank Naivasha, she stated that she did not remember the account number, whether the funds reached the account or even whether the account was later closed.

6. Next to testify was Moses Kiriani Kinyanjui (PW2) who stated that Sophia was his mother with whom he was working at the hotel in Naivasha town. He added that he knew the defendant. He denied ever signing any sale agreement in respect of plot numbers 217, 218 and 219 or ever appearing before any advocate for that purpose.

7. Under cross-examination and re-examination, PW2 stated that there was no meeting at Jaza Hotel between the defendant and his mother. That Silver View Hotel was earlier on known as Naivasha Silver Hotel. When defence counsel showed him payment vouchers for KShs 2,000,000 and KShs 4,000,000, he acknowledged that they bore the stamp of Naivasha Silver Hotel. He further stated that he did not sign the sale agreements and that the signature appearing in them is not his.

8. PW3 was Tabitha Wanjiru Kinyanjui. She stated that Sophia was her mother and that in the year 2009, the defendant sent her cousin Ibrahim Gitau to tell her that a friend of her father called Stephen Kinyanjui wanted to meet one of the family members to brief them what he had discussed with their late father. The defendant suggested they meet at Naivasha Club Heritage at 7.00pm. PW3 went with her cousin Ibrahim. When the defendant arrived, she realized that he was a familiar person. She added that the defendant told her that he was her father's friend and that he wanted to help her. He instructed her to go home and take the title deeds for the Silver Hotel plot, another for the rental houses and lastly for Kinango Shamba plot. He told her he could help her to have the plots transferred from her family to her personal names. PW3 further testified that she told him that she could not do that. She informed her mother and her uncle. She added that those events happened in the year 2009. That after that their secretary Pauline told her that the defendant used to call her in the year 2010 asking for PW3's number. That from 2010 Pauline started being irregular at work and would sometimes not show up. That she neither signed any of the sale agreements nor appeared before any advocate for that purpose.

9. Under cross-examination, PW3 stated that her mother, she and her family never had any meeting with the defendant at Jaza Hotel and that they never went to the office of Mary Mburu Advocate in Naivasha to sign any sale agreement. That her mother's lawyer showed her payment records claiming that payments were made through the family hotel bank account and her mother's account. She added that she was never involved in running the hotel and that her brother John Mwaura was involved in running it as well as running the hotel's bank account.

10. Next on the witness stand was Moses Nyanjua Kinyanjui (PW4) who testified that the defendant used to go to the family Curio Shop to

purchase items. He could not remember the year when the defendant went to the shop. He added that the defendant bought items worth KShs 200,000 and paid by depositing the money in PW4's bank account at Co-operative Bank. He denied ever signing any sale agreements in respect of plots 217, 218 and 219.

11. Under cross-examination, he stated that the family never had any loans in the year 2010 and that their father's loans were paid by insurance companies upon his death. That his brother John Mwaura Kinyanjui was running Silver View Hotel. That the curio shop was called Naivasha Ebony Factory and it had its own bank account. That he told the defendant to pay the KShs 200,000 for purchase of items at the curio shop to his (PW4's) personal bank account because the curio shop account did not accept cash transactions. It was only for card transactions. He added that he never issued any receipt for the KShs 200,000/= because it was not paid through card.

12. Next was Emanuel Kenga (PW5), a retired police officer and a forensic document examiner. He stated that he had 27 years' experience as a forensic document examiner and that he had investigated thousands of cases of signature malpractice. He retired at the rank of an Assistant Commissioner of Police. He stated that he received exhibits with questioned signatures for examination and that upon examining them, came to the conclusion that the questioned signatures were written by a different author compared to the known and specimen signatures. He prepared a report dated 28th September 2012 which he produced (PExb 1).

13. He was then cross-examined by defence counsel. He stated that he did the analysis at the request of Ngure Mbugua & Co. Advocates who sent to him two sets of documents as questioned documents. He was supplied with photocopies of 3 sale agreements and photocopies of two petty cash vouchers dated 8th November 2010. One petty cash voucher was for KShs 4 million while the other was for KShs 2 million. The specimen signatures and known signatures were sent to him by the advocates and the people never presented themselves to him to give known signatures. He examined the specimen and known signatures and found no agreement in them. He further stated that he knew an officer by the name Chief Inspector Daniel Gutu who is also a document examiner and who he had trained. When shown a forensic document examiner's report by Chief Inspector Daniel Gutu dated 30th September 2017, he stated that the sale agreements in Chief Inspector Daniel Gutu's report were the same ones which were in his report save for one dated 27th January 2011 which was not in his report.

14. The last plaintiff's witness was Mary Njeri Mburu (PW6). She stated that she was an advocate who was admitted to the bar in 1992 and who started her law firm in the year 2000 in Nairobi. She later established a branch in Naivasha. She was based in Nairobi and would visit the Naivasha office twice a week. She kept all her files in Nairobi. She employed Ambrose Mulandi, Advocate, at a later stage. He was stationed in Nairobi and she sent him to Naivasha to attend court. She added that she never had any clients by the name Sophia Wambui Kinyanjui or Stephen Kinyanjui Mburu and that she had never taken any instructions in regard to plots No. 217, 218 and 219 Naivasha Township.

15. When shown a sale agreement dated 8th November 2010 in respect of plot 217, she stated that the stamps at page 7 of the agreement looked like her stamp but the signature was not hers. She added that she became aware of the document in the year 2017 when an officer from Directorate of Criminal Investigations visited her. She further testified that there was practically nothing going on in her Naivasha office and that she used to keep the stamp and would travel with it to Naivasha. That if a payment was to be made in her absence a receipt would be issued and the office would inform her. That during the period 2010 to 2011 she was mostly out of office and left Ambrose Mulandi to run it. She was not in touch with the office every day during that period, she was never asked for her stamp during that period to witness the sale agreement and she was not informed that a sum of KShs 100,000 was paid for any sale agreements.

16. Under cross-examination, PW6 stated that Ambrose Mulandi used to take care of all her files in both Nairobi and Naivasha during the year 2010 and that the stamp on the sale agreement looks like hers. That the police asked for a sample of her stamp but did not get back to her on the outcome of the investigations.

17. The plaintiff's case was then closed. Pursuant to orders made on 6th December 2018, Sophia was substituted by Tabitha Wanjiru Kinyanjui and Moses Nyanjua Kinyanjui.

18. The first defence witness was Stephen Kinyanjui Mburu, the defendant. He described himself as a businessman engaged in hotel, real estate and farming business. He stated that he knew Sophia in the year 2005 and that her late husband Johnson Gitau was his friend. He adopted his witness statement dated 1st December 2011 as his evidence in chief. He stated as follows in the said statement:

I am the above named person and a resident of Nairobi. I know Sophia Wambui Kinyanjui and even her late husband Johnson Kinyanjui Gitau (now deceased).

On or about 6th November, 2010, the daughter of the deceased called Tabitha Wanjiru Kinyanjui called me on my mobile phone through her mobile No. 0720807698 and informed me that the family wanted to dispose off some properties within Naivasha to clear some outstanding debts which the father's estate was owing and to revamp their businesses. I asked her which properties they were selling and she told me six properties to choose from.

We agreed that I was to travel from Nairobi and meet with the family members. The following day 7th November, 2010 I travelled to Naivasha and met her at Jaza Resort with her 3 brothers namely Moses Nyanjua Kinyanjui, John Mwaura Kinyanjui and Moses Kiriani Kinyanjui and their mother Sophia Wambui Kinyanjui whereby we discussed at length how they were going to come out of the financial crisis. Out of the 6 properties they offered for sale, I was interested in 5 properties but at this meeting we agreed on 3 properties that is plots Nos. 217, 218 and 219 Naivasha Industrial area.

We also agreed on the purchase price at KShs 6,000,000/= per property. The properties were being sold with all the development and the businesses therein except plot No. 219 which they had leased to a beer distributor known as BENJUMA BEER DISTRIBUTORS.

Plot Nos. 217 and 218 had a running business and the terms of the sale was “walk in, walk out” upon the transfer of the property.

Plot No. 219 which had already been leased, we agreed I was to give 6 months notice to the tenant either renew his lease on new terms or vacate since it was a leased premises.

After the discussion, we agreed to meet the following day so that I could make some payments as they had pressing financial needs. We agreed that I was to prepare a sales agreement on the terms we had agreed upon. They gave me the property details which were copies of letters of allotment for the 3 plots and their full names and identity card Nos.

On 8th November, 2010 at 10.30 a.m, we met again at Jaza Resort, though I arrived at 10.00 a.m as we had agreed. In the meeting were Sophia Wambui Kinyanjui, Moses Nyanjua Kinyanjui, Gitau Kinyanjui, Tabitha Wanjiru Kinyanjui, Nelly Wambui Kinyanjui, John Mwaura Kinyanjui, Milka Njoki Kinyanjui, Moses Kiriani Kinyanjui and their secretary Pauline Wanjiru Muturi where I paid KShs 2,000,000/= for plot No. 217, KShs 4,000,000/= for 218 and KShs 4,000,000/= for 219. All the monies were paid in cash and acknowledged in 3 petty cash vouchers signed by Sophia Wambui Kinyanjui and stamped by the stamp of Silver Hotel. (Total paid on 8th November, 2010 was KShs 10,000,000/=.

They requested me to deposit a further 400,000/= the following day in the Equity Bank in the joint account of Sophia Wambui Kinyanjui and John Mwaura Kinyanjui A/C No. 0200293288477 Equity Bank Naivasha Branch which I did. I was given all the documents of the 3 plots after I had paid the 10,000,000/= to enable me start the process of transfer but I was to pay the other monies as and when they required the money.

On 15th November, 2010 they requested a further KShs 500,000/= which I transferred in the same account and same bank. On 26th November, 2010 I transferred KShs 120,000/=, on 9th December, 2010 I transferred a further 200,000/=, on 8th December, 2010 I paid KShs 150,000/= to her son John Mwaura Kinyanjui and he signed petty cash on instructions from Sophia Wambui Kinyanjui through her mobile No. 0711663177. On 18th December, 2010 I transferred KShs 100,000/=, on 24th December, 2010 I transferred a further KShs 250,000/= upon their request, and on 5th January, 2011, they requested a further 150,000/= which I transferred to the same account. On 16th May, 2011, I was requested by Sophia Wambui Kinyanjui to transfer KShs 200,000/= to account of his son Moses Nyanjua Kinyanjui account No. 01109116123700 Co-operative Bank Naivasha Branch which I did.

On 20th May, 2011 the said Sophia Wambui Kinyanjui requested me to pay cash the balance of both plots 217 and 218 of KShs 4,780,000/= to the son Moses Nyanjua Kinyanjui which I did and the money was received by Moses Nyanjua Kinyanjui in a petty cash voucher dated 20th May, 2011 and stamped by their business stamp Naivasha Ebony Factory and Art Gallery. The money was received in presence of Sophia Wambui Kinyanjui at the Ebony Shop hence the amp for the factory.

I visited the premises sometimes in October, 2011. I went to the premises with a view of taking possession since I had cleared the payments, that is when Sophia Wambui Kinyanjui suggested that they were of the view that they sold the properties at a lower price and they had a person who was offering 1½ times the price I had paid. They wanted me to return the documents so that they could resell them to other persons and refund the entire amount that I had paid. I refused because I had completed the transaction and the transfers had been effected she called the police that I was trespassing their property. The police came and we all went to the police station and after explaining under what circumstances I was at the premises and they also explained their side of the story, we were all given an opportunity to report to the police station the following day and bring with us all supporting documents of ownership. I went back to the police station the following day with all the documentary evidence to prove ownership of the parcels of land but they never turned up for the meeting at the police station.

Thereafter I got information that they were arrested for giving false information and obtaining police abstracts on purportation (sic) that they had lost various documents including the letters of allotment they had given me on 8th November, 2010.

I was requested by the police to record my statement on how I obtained the documents and after giving a detailed account, and I was then requested to be a prosecution witness in the criminal case facing Sophia Wambui and Moses Nyanjua.

The allegations before this Honourable court that I obtained the documents fraudulently is not true. I bought the parcels and paid in full, the plaintiff/Applicant is just but a greedy person who wants to regenerate the agreement entered between myself and them after getting a higher offer for the parcels.

That is all.

19. The defendant produced the original sale agreement for plot 217 (DExb 1), for plot 218 (DExb 2) and for plot 219 (DExb 3). He stated that the agreements were drafted by Njeri Mburu & Co. Advocates and were attested by Ambrose Muthama Mulandi Advocate. That he paid KShs 100, 000 as legal fees for the 3 agreements. He further produced a petty cash voucher (DExb 4) in respect of KShs 2 million for plot 217 paid on 8th November 2010, another petty cash voucher (DExb 5) in respect of KShs 4 million for plot 218 paid on 8th November 2010, a petty cash voucher (DExb 6) for KShs 4 million paid on 8th November 2010 in regard to plot 219.

20. He further produced an application for funds transfer (DExb 7) for KShs 400,000 transferred on 9th November 2010 from his account at Equity Bank to the account of Sophia Wambui Kinyanjui and John Mwaura Kinyanjui at Equity Bank Naivasha account No. 0200293288477, an application for funds transfer dated 15th November 2010 (DExb 8) for transfer of KShs 500,000 to the same bank account, an application for funds transfer dated 26th November 2010 (DExb 9) for transfer of KShs 120,000, an application for funds transfer dated 9th December 2010 (DExb 10) for transfer of KShs 200,000, an application for funds transfer dated 18th December 2010 (DExb 11) for transfer of KShs 100,000, an application for funds transfer dated 24th December 2010 (DExb 12) for transfer of KShs 250,000 and yet

another application for funds transfer dated 5th January 2011 (DExb 13) for transfer of KShs 150,000. All those transfers were to the account No. 0200293288477 operated by Sophia Wambui Kinyanjui and John Mwaura Kinyanjui at Equity Bank Naivasha. Additionally, he produced an application for funds transfer dated 16th May 2011 (DExb 14) for transfer of KShs 200,000 to Moses Nyanjui Kinyanjui's account No. 01109116123700 at Co-operative Bank Naivasha.

21. The defendant further testified that after the last bank payment, Sophia, Moses Nyanjui Kinyanjui and he met, did a reconciliation and found that the balance of the purchase price was KShs 4,780,000 which sum he paid in cash on 20th May 2011 to Moses Nyanjui Kinyanjui on Sophia's instructions and in her presence. He produced a petty cash voucher (DExb 15). He added that none of the 3 properties had titles. Instead, they had letters of allotment. That the vendors told him they had misplaced the original and that he was given a photocopy of letter of allotment for plot No. 217 (DExb 16). In respect of plot No. 218, the vendors gave him the original of the letter of allotment a copy of which he produced (DExb 17). As regards plot 219, the vendors gave him an informal transfer document from Tom Openda from whom their father had bought the plot, a certificate of showing the beacons, statement of payment of rates and 3 receipts in respect of payment for the plot. He produced copies of all those documents as a bundle (DExb 18). He further stated that Sophia gave him copies of her national identity card, KRA PIN Certificate, Certificate of Confirmation of Grant in HC Succession Cause No. 133 of 2008, her late husband's national identity card, his KRA PIN and his death Certificate, all of which he produced (DExb 19). He added that as at the date of his testimony the curios in plot 217 and 218 had been totally vandalized and the vendors were selling the stones contrary to an order made by the court on 8th February 2010. That he reported the matter to the police and Moses Kiriani Kinyanjui was charged with offence of breaking and stealing in Naivasha Criminal Case No. 373 of 2017, which case was still pending.

22. Under cross-examination and re-examination, the defendant stated that the sale agreements were drawn by Ambrose Muthama Mulandi at Njeri Mburu's office in Naivasha. That Ambrose Muthama Mulandi attested the signatures of the vendor, purchaser and the witnesses. That he paid the Kshs.10 million cash before they went to the lawyers to sign the agreements and that he had withdrawn the money from Equity Four ways Towers Branch in Nairobi at around 8.00am that same morning. When referred to the applications for funds transfers that he had produced, he acknowledged that some were verified by the bank while others were not. He further stated that Sophia signed transfer and that the properties are now registered in his name. He did not however produce any document showing that Sophia signed the transfer.

23. Ambrose Mulandi testified next as DW2. He stated that he is an advocate admitted to the bar on 4th March 2010 and practicing as Managing Partner of Mulandi Kisabit & Associates Advocates. That in the year 2010 he was working with Njeri Mburu & Co. Advocates which had the head office at St. George's House in Nairobi with a branch at Diplomat House in Naivasha. That on 8th November 2010 while on duty in Naivasha, Sophia went to his office accompanied by her 6 children and the defendant. They told him that they had reached an agreement regarding sale of plot numbers 217, 218 and 219 at an agreed purchase price of KShs 6 million per plot. He drafted an agreement for sale in respect of each plot which Sophia and the defendant signed in his presence and he attested their signatures. That the stamp on the agreement is that of Mary N. Mburu who was his boss while the signature of the attesting advocate was his. He added that he used her stamp since it was the stamp that was available in the office and which they used to use for agreements. He further stated that the parties had done the payment by the time they went to his office. Under cross-examination and re-examination, he stated that he had previously drafted for the parties another agreement in respect of Naivasha Municipality Block 5/613, which agreement he also attested using the same stamp.

24. The last defence witness (DW3) was No. 231663 Chief Inspector Daniel Gutu, a Forensic Document Examiner working at the headquarters of Directorate of Criminal Investigations. He stated that on 29th September 2017, he received the following disputed documents from Robert Ndubi & Co. Advocates: sale agreement dated 8th November 2010 in respect of Naivasha Township plot No. 217 between Sophia and the defendant, another sale agreement between the same parties in respect of plot number Naivasha Township plot No. 218, sale agreement between the same parties in respect of Naivasha Township plot number 219, a petty cash voucher dated 8th November 2010 for property No. 217 Naivasha, a petty cash voucher for KShs 4 million dated 8th November 2010 for property No. 218, a petty cash voucher dated 8th November 2010 for KShs 4 million in respect of plot 219. He also received specimen signatures of Sophia Wambui Kinyanjui, Peter Gitau Kinyanjui, Moses Nyanjua Kinyanjui, Tabitha Wanjiru Kinyanjui, Nelly Wambui Kinyanjui, Milka Njoki Kinyanjui, John Mwaura Kinyanjui and Moses Kiriani Kinyanjui in a letter from Ngure Mbugua & Co. Advocates dated 4th August 2012; known documents containing known signatures being a sale agreement dated 5th November 2010 for plot 24 Low Density Lake View Naivasha Municipality between Sophia Wambui Kinyanjui and Loise Wasu Kamatu, documents containing signatures of Sophia Wambui, Peter Gitau, Moses Nyanjua, Tabitha Wanjiru, Nelly Wambui, John Mwaura and Moses Kiriani, a replying affidavit dated 15th February 2012 prepared by Mirugi Kariuki & Co. Advocates and filed in ELC 159 of 12, a sale agreement between Sophia Wambui and Stephen Kinyanjui Mburu dated 27th January 2011 for property No. Naivasha Township Block 5/613 containing known signatures of Sophia Wambui, Peter Gitau Kinyanjui, Moses Nyanjua Kinyanjui, Tabitha Wanjiru Kinyanjui, Nelly Wambui Kinyanjui, Milka Njoki Kinyanjui, John Mwaura Kinyanjui and Moses Kiriani Kinyanjui, a supporting affidavit dated 16th November 2011 sworn by Sophia Wambui and plaintiff's witness statement dated 16th November 2011 filed in ELC 159 of 12 containing known signature of Sophia Wambui. He added that he received 8 requests for examination. He did the examination and concluded that all the disputed signatures were signed by Sophia Wambui Kinyanjui and that no signature was forged. He prepared a report dated 30th September 2017 which he produced (DExb 20).

25. Under cross-examination and re-examination, he stated that the documents were taken to him by the defendant and that he did not know where they originated from. When referred to the Forensic Examination Report (PExb 1) prepared by Emmanuel Kenga (PW5), he stated that the said report was written on the letter head of Kenya Police and that his report and Mr Kenga's conflict. He added that Mr Kenga is totally wrong in his conclusion that the disputed were not signed by Sophia Wambui Kinyanjui. He reiterated that none of the disputed signatures were forged and that they were signed by the people who were to sign.

26. Defence case was then closed. Parties then filed and exchanged written submissions.

27. The plaintiffs identified four issues for determination in their submissions: whether there was a valid sale agreement, whether there was consideration, whether the court should rely on the forensic report of the experts or any of them or reject all of them and finally who bears the costs of the suit.

28. On the issue of whether there was a valid sale agreement, the plaintiffs argue that there is contradiction in the defence evidence as to who drafted the agreements. They cite the testimony of Mary Njeri Mburu (PW6) the proprietor of Njeri Mburu & Co Advocates who denied knowledge of the agreements and who stated that she had her stamp with her in Nairobi. They further cite the provisions of **Section 3 (3)** of the **Law of Contract Act** and the case of **Charles Njihia Ndung'u v Mercy Wamaitha Kaburi [2018] eKLR** and argue that the agreements are null and void for want of attestation of the signatures of the parties to the agreements. They also placed reliance on some parts of the witness statement of one Pauline Wanjiru Muturi. It must however be noted that the said Pauline Wanjiru Muturi did not testify hence her witness statement does not constitute evidence in this case.

29. Regarding whether there was consideration, the plaintiffs cite **Chitty on Contracts, Vol. 1, General Principles, 29th Edition at paragraph 3-004** and point out that the defendant claims to have paid a large amount of KShs 10 million in cash on 8th November 2010 without producing any proof of withdrawal of the said amount while small amounts were paid through bank transfer. They therefore argue that no consideration was paid.

30. As to whether the court should adopt any of the forensic reports or reject all of them the plaintiffs relied on the cases of **Amosam Builders Developers Ltd v Betty Ngendo Gachie & 2 others [2009] eKLR** and **Rose Kaiza v Angelo Mpanju Kaiza [2009] eKLR** and argued that experts are ordinarily paid by their clients and that they may therefore be inclined to give an opinion that is favourable to the client. They left it to the court to determine which report to accept or reject.

31. In conclusion, the plaintiffs urged the court to enter judgment in their favour as prayed, with costs.

32. In response, the defendant identified the same issues for determination as the plaintiffs.

33. On whether the sale agreements are valid, the defendant argued that the testimony of Ambrose Mulandi (DW2) is clear that he drafted the agreements and attested the signatures using the stamp of his employer Mary Njeri Mburu which was the only stamp available in the office and that therefore the agreements meet the requirements of **Section 3 (3)** of the **Law of Contract Act**. It is further argued that Mary Njeri Mburu confirmed in her testimony that she was away from the office most of the time during 2010 and that it was Ambrose Mulandi who was running it. It is also argued that Sophia's contention that she got to know of the existence of the sale agreements through Ngure Mbugua Advocate cannot be factually correct since the said advocate came on record on 16th July 2012 having taken over from Mirugi Kariuki & Company yet she had annexed the 3 agreements to an affidavit that she filed alongside the plaint on 18th November 2011. According to the defendant, the source of the agreements and other documents that Sophia relied on to commence this case is her copies which she retained from the transaction.

34. On whether there was consideration, the defendant argued that the sale agreements had express clauses that the initial down payments were to be made in cash since Sophia was the administrator of her late husband's estate, which estate had loans as both Tabitha Wanjiru Kinyanjui (PW3) and Moses Nyanjui Kinyanjui (PW4) confirmed even if they claimed that the loans were settled by insurance. It is further argued that it was not uncommon to find parties transacting in cash in huge sums in 2010 since anti-money laundering and terrorist financing regulations were not in force by then. Additionally, it is argued that despite Sophia acknowledging being signatory to the joint account to which bank transfer payments were made, she casually stated that she did not know if the funds reached the account without producing bank statements to show that there were no payments. Citing the cases of **Hassan Zubeidi v Patrick Mwangangi Kibaiya & another [2014] eKLR** and **Areva T & D India Lmited v Priority Electrical Engineers & Another [2012] eKLR**, the defendant argued that the court cannot rewrite contracts for parties.

35. As to whether the court should adopt any of the forensic reports, the defendant argued that unlike Sophia who submitted only the three sale agreements and two petty cash vouchers for analysis, the defendant submitted the tree sale agreements, all petty cash vouchers, specimen signatures obtained by Ngure Mbugua & Company, undisputed sale agreements from other transactions involving Sophia as well as affidavits and statements filed in this case and that consequently, Chief Inspector Daniel Gutu (DW3) had more materials for a comprehensive analysis compared to Emanuel Kenga (PW5). Relying on **Stephen Kinini Wang'ondu v The Ark Limited [2016] eKLR** and **Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko [2006] eKLR**, the defendant urged the court to consider the two reports alongside the entire evidence.

36. In conclusion, the defendant argued that he had established his counterclaim on a balance of probabilities and that the counterclaim should therefore be allowed and the plaintiffs' case dismissed. It is further argued that KShs 4.7 million was transferred to Sophia's joint account yet she is seeking nullification of the sale agreements without showing that the money did not reach the account and without proving her allegations of fraud.

37. The plaintiffs also filed supplementary submissions whose contents I have noted. I observe however that the supplementary submissions largely attempt to introduce evidence which, needless to state, cannot be done through submissions.

38. I have considered the pleadings, the evidence and the submissions of parties. The issues that emerge for determination are whether there were valid sale agreements; secondly, if the sale agreements were valid, whether there was consideration and lastly, whether the parties are entitled to the reliefs sought.

39. A reading of paragraphs 7, 8 and 9 of the plaint shows the plaintiffs' case against the defendant is largely built around allegations of collusion, fraud and forgery in so far as the sale agreements dated 8th November 2010, the petty cash vouchers and the circumstances in which the defendant obtained the allotment letters are concerned.

40. Fraud is a serious allegation which beyond being pleaded and particularised, must be strictly proven. See **Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR**. The burden of proof facing a party alleging fraud is higher than the usual one in civil cases of proof on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See **John Mbogua Getao v Simon Parkoyiet Mokare & 4 others [2017] eKLR**.

41. The three sale agreements that are the subject of this case are all dated 8th November 2010. The subject of the agreements is three parcels of land: Plot No. 217 Naivasha Municipality Industrial Area, Plot No. 218 Naivasha Municipality Industrial Area and Plot No. 219 Naivasha Municipality Industrial Area. Each plot has its own separate agreement.

42. The agreements generally had similar terms. In respect of Plot No. 217 and Plot No. 218, the agreements provided in part as follows:

1. Sale by Transfer

The sales are stated to be “by way of transfer of the vendor’s original letter of allotment, the plot itself and all the development therein in the said property and all other interest in the properties; since in this property there is a running business for curio, artifacts, hardwood, softwood crafts and all other stocks including furnitures and fittings, shall be properties of the Purchaser once the Vendor receives in full and final payment of the entire purchase price of this sale agreement.

This will be a walking out for the Vendor and a walking in basis for the Purchaser, without any other additional cost or payment to be made by the Purchaser to the Vendor, apart from the total agreed purchase price agreed here below.

2. Purchase Price

Purchase Price of the plot to the purchaser shall be Kenya Shillings Six Million (KShs. 6,000,000/=) which sums shall be paid by the purchaser as follows:

The purchase price of the property-plot together with the running business and all other development therein shall be Kenya Shillings Six Million KShs. 6,000,000/= which sums shall be paid by the Purchaser as follows;

3. (A) PAYMENT SCHEDULE

(i) The sum of KShs Six Million only (KShs. 6,000,000/=) to be paid and distributed as per the vendor’s instruction, which are as below

(ii) KShs. Four Million (KShs. 4,000,000) only to be paid in cash upon signing this sale agreement to the Vendor and in exchange of original letter of allotment to be surrendered to the Purchaser.

(iii) KShs. Two Million (KShs. 2,000,000/=) only to be paid in into two Accounts for the vendor in the following banks

(iv) KShs. One Million (KShs. 1,000,000) only to be paid into Account No 1619278 in Barclays Bank of Kenya Ltd, Naivasha Branch in the name of Sophia Wambui Kinyanjui.

(v) KShs. One Million (KShs. 1,000,000/=) only to be paid into a joint account No. 0200293288477 in Equity Bank Ltd, Naivasha Branch in Naivasha Township in the names of Sophia Wambui Kinyanjui and John Mwaura Kinyanjui.

(vi) John Mwaura Kinyanjui ID No. 27291933 is a son of Mrs. Sophia Wambui Kinyanjui and the late Johnson Kinyanjui Gitau (deceased) he is also a witness to this whole sale agreement as well witnessing being a beneficiary.

(vii) Moses Nyanjua Kinyanjui ID No. 21741659 is a son of Mrs. Sophia Wambui Kinyanjui and the late Johnson Kinyanjui Gitau (deceased). He is also a witness to this whole sale agreement as well as witnessing being a beneficiary.

(viii) Tabitha Wanjiru Kinyanjui ID No. 24724749 is a daughter of Mrs. Sophia Wambui Kinyanjui and the late Johnson Kinyanjui Gitau (deceased). She is also a witness to this whole agreement as well as witnessing being a beneficiary.

43. The agreement in respect of Plot No. 219 had no reference to any running business or stocks.

44. Both sides in the matter relied on expert opinion of a forensic document examiner to either affirm or deny that Sophia signed the sale agreements and the petty cash vouchers. Not surprisingly, each expert reached a conclusion that favours the party that instructed him. As such, this court is faced with two conflicting expert opinions.

45. Expert opinions though useful, are not binding on the court. The court must ultimately reach its own conclusion, having taken into account the totality of the evidence and may reject such opinion if the evidence and circumstances call for it. The Court of Appeal stated as follows in **Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko [2006] eKLR:**

... [Expert] opinions are not binding on the court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified. But a court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so. ...

46. Upon considering the evidence of the two forensic document examiners and the entire evidence on record, I find it more probable that Sophia and the other witnesses listed in the sale agreements signed the said agreements as well as the petty cash vouchers. I note that Sophia stated in her testimony that she usually signed documents by just writing her name. Looking at the sale agreements and the petty cash vouchers, the signature appearing against her name is simply her handwritten name. I further say that it is more probable that Sophia and the

other witnesses listed in the sale agreements signed the said agreements as well as the petty cash vouchers signed the said documents because Sophia's as well as the other beneficiaries' conduct from 8th November 2010 aligned with the terms of the agreements.

47. The agreements provided that part of the purchase price would be paid into account No. 0200293288477 Equity Bank Ltd, Naivasha Branch operated in the joint names of Sophia and her son John Mwaura Kinyanjui. The defendant produced bank transfer forms showing that he transferred a total of KShs 1,720,000 into the said account in 7 different transactions between 9th November 2010 and 5th January 2011. It is noteworthy that the first transfer took place the day after the date of the agreements. Sophia admitted in her testimony that she held the said account. When asked about the funds she was non-committal and sought to shift responsibility for explaining what happened to the funds to her son John Mwaura Kinyanjui. She failed to call John Mwaura Kinyanjui to testify on her behalf. Supposing the funds were never received, nothing would have been easier than producing a bank statement in respect of the said account. Being a party making serious allegations of fraud, she must have known that she had a higher burden of proof which would necessitate producing such a bank statement. Her evasive conduct leads me to conclude that the funds were received and retained, obviously pursuant to the agreements.

48. Sophia's son Moses Nyanjua Kinyanjui admitted receiving KShs 200,000 from the defendant on 16th May 2011 through his account at Co-operative Bank. I find his explanation that the amount was payment for items purchased by the defendant at the curio shop to be improbable since the shop had its own account yet the money was paid into his personal account. Further, he did not produce any list of items purchased or even a receipt to back his explanation. His conduct of receiving such a significant amount from the defendant on a date that falls after the date of the sale agreements in which he is named as a beneficiary is indication that the funds were paid, received and retained pursuant to the agreements.

49. I further note that the agreements provided that the sales were by way of transfer of the originals of the letters of allotment to the defendant. Parties are in agreement that the defendant got the said originals of the letters of allotment. While the plaintiffs claim that the defendant fraudulently obtained them, Sophia admitted that her report to the police in which she accused the defendant of fraudulently obtaining the allotment letters, resulted in her being charged together with her nephew Moses Nyanjui Gachie with giving a false report to the police. She admitted that the case was concluded and they were convicted and fined KShs 80,000 in total. It is thus apparent that the defendant came to possess the letters of allotment pursuant to the agreements.

50. Further, besides the defendant and Sophia, the agreements had 7 other signatories who were Sophia's witnesses in addition to being her children and beneficiaries. I doubt if it would have been possible to get all those family members to sign if there was no agreement.

51. Regarding the 3 petty cash vouchers dated 8th November 2010, I note that each of the agreements provided that a deposit of KShs. 4,000,000 was to be paid in cash to Sophia upon signing of the agreements and in exchange of the original letter of allotment. The petty cash vouchers indicate that the payments totalling KShs. 10,000,000 were made to Sophia as first instalments for the respective plots. Whereas the defendant submitted all 3 petty cash vouchers to his expert for analysis, the plaintiffs only submitted the ones in respect of plot 219 and 217. To the extent that the agreements provided for payment of deposits in cash, I agree with the defendant's forensic document examiner that Sophia signed the 3 petty cash vouchers dated 8th November 2010.

52. The plaintiffs also contend that the agreements are null and void for want of attestation of the signatures of the parties thereto pursuant to the provisions of **Section 3 (3)** of the **Law of Contract Act**. The section provides in part as follows:

(3) No suit shall be brought upon a contract for the disposition of an interest in land unless –

(a) the contract upon which the suit is founded –

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

53. A perusal of the agreements shows that the parties thereto were Sophia as vendor and the defendant as purchaser. Their signatures were attested by Ambrose Mulandi Advocate who it is not disputed was then employed by Ms Mary Njeri Mburu practising as Njeri Mburu & Co. Advocates. Mary Njeri Mburu acknowledged that the attestation stamps in the agreements looked like hers. Besides attestation by Mr Mulandi, Sophia's children were present and also signed as witnesses. I am satisfied that the agreements meet the criteria under **Section 3 (3)** of the **Law of Contract Act** and are therefore neither null nor void for want of attestation.

54. In view of the foregoing, the first issue for determination as to whether there were valid sale agreements is answered in the affirmative: the parties had valid sale agreements.

55. The second issue for determination is whether there was consideration. The authors of *Chitty on Contracts, Vol. 1, General Principles, 29th Edition* define consideration at paragraph 3-004 as follows:

The traditional definition of consideration concentrates on the requirement that 'something of value' must be given and accordingly states that consideration is either some detriment to the promisee (in that he may give value) or some benefit to the promisor (in that he may receive value). Usually, this detriment and benefit are merely the same thing looked at from different points of view. Thus payment by a buyer is consideration for the seller's promise to deliver and can be described either as a detriment to the buyer or as a benefit to the seller; and conversely delivery by a seller is consideration for the buyer's promise to pay and can be described either as a detriment to the seller or as a benefit to the buyer. It should be emphasized that these statements relate to the consideration for each promise looked at separately. For example the seller suffers a 'detriment' when he

delivers the goods and this enables him to enforce the buyer's promise to pay the price.

56. In the present transaction, Sophia agreed to sell the three parcels to the defendant at a consideration of KShs 6,000,000 per plot. The agreements further provided that a deposit of KShs. 4,000,000 per plot was to be paid to Sophia in cash upon signing of the agreements in exchange for the original letter of allotment for the respective plot. As noted earlier, the defendant received the letters of allotment. Additionally, parties are in agreement that the plots were transferred to the defendant. Further, the balance of KShs 2,000,000 per plot was to be paid in batches of KShs 1,000,000 into bank accounts whose details were specified in the agreements.

57. So as to fully discharge his obligations to Sophia, the defendant was required under the agreement to pay a total of KShs 18,000,000 as purchase price within 180 days from 8th November 2010. Earlier in this judgment, I found that pursuant to 3 petty cash vouchers dated 8th November 2010, Sophia received a total of KShs. 10,000,000 from the defendant as deposit on 8th November 2010. I also found that between 9th November 2010 and 5th January 2011, Sophia received from the defendant a total of KShs 1,720,000 through bank transfers into the joint account operated by her and her son John Mwaura Kinyanjui and further that her other son Moses Nyanjua Kinyanjui received KShs 200,000 from the defendant on 16th May 2011 through his account at Co-operative Bank. All those payments add up to KShs 11,920,000 thus leaving a balance of KShs 6,080,000.

58. Did the defendant pay the remaining KShs 6,080,000? I am not persuaded that the amount was paid. Besides the deposits which were to be paid on 8th November 2010, the agreements clearly provided that the balance totalling KShs 6,000,000 was to be paid into specific bank accounts: account No. 1619278 operated by Sophia at Barclays Bank of Kenya Ltd Naivasha Branch and account No. 0200293288477 operated jointly by Sophia and her son John Mwaura Kinyanjui at Equity Bank Ltd Naivasha Branch. The defendant has not produced any evidence showing that he transferred KShs 6,080,000 to the accounts.

59. I am aware that the defendant testified that Sophia, Moses Nyanjui Kinyanjui and he met, did a reconciliation and found that the balance of the purchase price was KShs 4,780,000, which sum he claimed he paid in cash on 20th May 2011 to Moses Nyanjui Kinyanjui on Sophia's instructions and in her presence and that Moses Nyanjui Kinyanjui signed a petty cash voucher dated 20th May 2011. I do not accept the defendant's explanation. Even though I found as valid a payment of KShs 200,000 which the defendant made on 16th May 2011 to Moses Nyanjua Kinyanjui, there are a few distinguishing factors. The said payment was made to Moses Nyanjua Kinyanjui's account at Co-operative Bank and Moses admitted receipt. In contrast, the purported payment of KShs 4,780,000 was allegedly made to Moses Nyanjui Kinyanjui in cash and receipt has been denied. The agreements were clear that payments of the balance were to be made to Sophia through specified bank accounts. Equally, the agreements were clear that the purchase price was a total of KShs 18,000,000. As I have shown above, a balance of KShs 6,080,000 and not KShs 4,780,000 remains unpaid. Since the parties had written agreements, it is not permissible for the defendant to attempt to introduce oral evidence to the effect that it was agreed orally that the balance was KShs 4,780,000 or that it was agreed orally that he pays the balance to Moses Nyanjui Kinyanjui and not Sophia. I therefore find that the defendant did not fully pay the agreed consideration. A sum of KShs 6,080,000 remains outstanding.

60. The last issue for determination is whether the parties are entitled to the reliefs sought. The plaintiffs seek judgment against the defendant for a declaration that the purported agreements for sale of the suit properties are a nullity and invalid, and a permanent injunction restraining the defendant by himself, his servants, agents from interfering with their quiet enjoyment, use, occupation, development and possession of the suit properties. I found earlier in this judgment that the sale agreements herein are neither null nor void. They are valid. The plaintiffs' prayer for nullification of the agreements cannot issue. I further found that the plaintiffs through Sophia received from the defendant a total of KShs 11,920,000 as part of the purchase price of KShs 18,000,000. The defendant's activities on the suit properties are pursuant to the sale agreements. There is therefore no basis upon which to issue a permanent injunction against him as is sought by the plaintiffs.

61. On his part, the defendant counterclaimed for a declaration that the suit properties belong to him, an order of eviction to remove the plaintiffs, their agents and servants from the suit properties, a permanent injunction to restrain the plaintiffs from reselling or offering for sale the suit properties, restraining the plaintiffs, their servants and or agents or anyone claiming through them from removing or disposing by way of sale the curios, artefacts and all stocks including furniture and fittings from plots numbers 217 and 218, damages for breach of contract and mesne profits. Since the defendant has not paid the purchase price in full, his prayers for the declaration, eviction and a permanent injunction cannot issue unless and he discharges his payment obligations.

62. Even if I had found that the defendant had fully paid the purchase price, I would not have issued a declaration that the suit properties belong to him since such an order would be inaccurate and even misleading to him and to third parties. The defendant did not produce any title deed or certificate of title in respect of the suit properties. He only referred to letters of allotment. A letter of allotment is not title to land. The allottee would have to follow it up, comply with all the conditions of the offer before he gets issued with a title document. In **Wreck Motor Enterprises v Commissioner of Lands & 3 others [1997] eKLR**, the Court of Appeal stated:

... Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.

63. The plaintiffs have not sought judgment in respect of the balance of the purchase price. Nevertheless, they seek under prayer (f) of their plaint for "any other or further relief as the court may deem fit to grant".

64. The duty of the court to see to it that a just, expeditious, proportionate and accessible resolution of disputes is attained and that substantive justice prevails is emphasized under **Section 3** of the **Environment and Land Court Act**, **Sections 1A** and **1B** of the **Civil Procedure Act** and **Article 159 (2)** of the **Constitution**. Since both parties have partly performed their obligations under the agreements, the just, expeditious, proportionate and accessible resolution of the dispute herein favours an outcome where the defendant pays the balance of the purchase price so that the transaction is completed. I will enter judgment in favour of the plaintiffs for the balance of the purchase price. Although the agreements had a provision that interest in respect of the balance be calculated at 3% over and above the prevailing base rate of the Barclays Bank of Kenya Limited, the plaintiffs did not tender any evidence on such prevailing base rate. I will therefore award interest at court rates.

65. I am alive to the fact that the plaintiffs do not hold a full grant in respect of the estate of Sophia Wambui Kinyanjui (deceased). All they have is letters of administration *ad litem* for purposes of prosecuting this suit. They have no power to distribute the estate.

66. In the result, I make the following orders:

a) Judgment is hereby entered against the defendant and in favour of the estate of Sophia Wambui Kinyanjui (deceased) for KShs 6,080,000 (Kenya Shillings Six Million Eighty Thousand) being balance of the purchase price together with interest thereon at court rates to be calculated from the date of filing of this suit.

b) Since each party contributed to the dispute that led to the filing of this suit, I order that each party bears own costs.

c) The sums in (a) above to be deposited in court and will be released to the administrators of the estate of Sophia Wambui Kinyanjui (deceased) who will have obtained a full grant in respect of the said estate pursuant to the provisions of the Law of Succession Act.

d) Upon the defendant depositing the sums in (a) above in full:

(i) An order of eviction shall issue to remove the plaintiffs, their agents and servants from plot numbers 217, 218 and 219 Industrial Area Naivasha Municipality.

(ii) A permanent injunction shall issue to restrain the plaintiffs from reselling or offering for sale properties plot numbers 217, 218 and 219 Industrial Area Naivasha Municipality; restraining the plaintiffs, their servants and or agents or anyone claiming through them from disposing by way of sale the curios, artefacts, hardwoods, softwood crafts and all other stocks including furniture and fittings or removing the said items from plots numbers 217 and 218 Industrial Area Naivasha Municipality.

67. It is so ordered.

Dated, signed and delivered at Nakuru this 5th day of November 2020.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Oluoch holding brief for Mr Ngure for the plaintiffs

Mr Ndubi for the defendant

Court Assistants: B. Jelimo & J. Lotkomoi