



**Integrated Development Programmes Company Limited v David (As Personal Representative Ad Litem of Mbatha Nzinga - Deceased) & another (Environment and Land Case 91 of 2010) [2025] KEELC 6196 (KLR) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6196 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND CASE 91 OF 2010**  
**NA MATHEKA, J**  
**SEPTEMBER 23, 2025**

**BETWEEN**

**INTEGRATED DEVELOPMENT PROGRAMMES COMPANY LIMITED ..... PLAINTIFF**

**AND**

**PAUL ITOTIA DAVID (AS PERSONAL REPRESENTATIVE AD LITEM OF MBATHA NZINGA (DECEASED)) ..... 1<sup>ST</sup> DEFENDANT**  
**MBUKONI HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff claims that by an Agreement in writing, entered into on 30<sup>th</sup> June, 1998 between the Plaintiff and the 1<sup>st</sup> Defendant, the Plaintiff purchased a parcel of land known as Land Reference Number 12715/634 from the 1<sup>st</sup> Defendant at an agreed purchase price of Kshs. 2,250,000.00 and paid the 10% deposit in line with the agreement entered into. The Plaintiff maintains that it was agreed by and between the parties to the aforementioned agreement that upon execution, the Plaintiff was at liberty to enter into vacant possession and carry out sub-division, which the Plaintiff did.
2. The Plaintiff states that as at 31<sup>st</sup> October, 2003, the full purchase price had been paid to the 1<sup>st</sup> Defendant which payment was duly acknowledged by the 1<sup>st</sup> Defendant. On the 13<sup>th</sup> February, 2004, the 1<sup>st</sup> Defendant filed CMCC No. 1328 of 2004 at the Chief Magistrate's Court, Milimani seeking specific performance of the contract, a breakdown of the payments made and sought any balance found due plus costs of the suit. The Defendant herein vide a Notice of Withdrawal of Suit dated 5<sup>th</sup> October, 2006 and filed in court the same day withdrew CMCC No. 1328 of 2004 wholly against the Plaintiff herein. The Plaintiff states that the 1<sup>st</sup> Defendant has incomplete breach of the agreement entered into with the Plaintiff on 30<sup>th</sup> June, 1998 unlawfully entered into a Sale agreement with the 2<sup>nd</sup> Defendant



purporting to sell LR. No. 12715/634 at a sum of Kshs. 4,500,000/= and on the basis of the said sale the 2<sup>nd</sup> Defendant has now unlawfully entered into LR. No. 12715/634 and has even proceeded to register a caveat over the said parcel of land hence preventing the Plaintiff herein from carrying out any lawful transactions in relation to the said parcel of land. The 2<sup>nd</sup> Defendant has proceeded to unlawfully enter into LR. No. 12715/634, carry out subdivision and affix beacons notwithstanding that the Plaintiff had in line with the agreement entered into with the 1<sup>st</sup> Defendant subdivided the land, fixed beacon and disposed of the said portions to 3<sup>rd</sup> parties and the 2<sup>nd</sup> Defendant's unlawful act is causing the Plaintiff great anguish and suffering and unless the unlawful actions of the Defendant are restrained by the court the Plaintiff is bound to suffer irreparable loss and damage and further open unsuspecting innocent parties and/or members of the public to the 2<sup>nd</sup> Defendant's deceit.

3. The Plaintiff prays for Judgment against the Defendants jointly and severally for:-
  - a. A declaratory order that the purported sale of LR No. 12715/634 to the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant is unlawful and the Plaintiff herein is the lawful purchaser of the said land.
  - b. A permanent order of injunction restraining the Defendants herein, their servants and/or agents from alienating, entering, sub-dividing or in any manner whatsoever interfering with the Plaintiff's occupation and/or use of LR. No. 12715/634.
  - c. An order directing the 1<sup>st</sup> Defendant to execute transfer documents in favour of the Plaintiff and in default Executive Officer, Milimani Commercial Courts to execute the said transfer.
  - d. Costs and interest.
  - e. Any other relief, which this Honourable Court may deem fit in the circumstances.
4. The 1<sup>st</sup> Defendant admits having entered into an agreement to sell the Plaintiff her parcel of land being No. 12715/634 for Kshs. 2,250,000/= but denies having been paid Kshs. 225,000/= being 10% deposit as averred and each and every allegation of her receiving the sum of Kshs. 225,000/= as deposit. The 1<sup>st</sup> Defendant states that she was paid Kshs. 125,000/=. The 1<sup>st</sup> Defendant states that it was a term of the said agreement that the 1<sup>st</sup> Plaintiff was to enter the land and carry out sub-division, at its own risk as to attendant consequences of non-payment thereto. The 1<sup>st</sup> Defendant avers that the Plaintiff did not fulfil the condition of payment of the full payment of the purchase price. The 1<sup>st</sup> Defendant states that she caused to be filed CMCC No. 1328 of 2004 for accounts and other orders, and subsequently withdrew it due to aggravated frustration on her interest not being secured.
5. The 1<sup>st</sup> Defendant further states that the revocation of the same agreement was occasioned by failure of the Plaintiff to adhere to the conditions as stipulated in the Sale Agreement and subsequent notices and as such, the suit has since been overtaken by events. Further, the 1<sup>st</sup> Defendant states that if the Plaintiff sold the sub-divided parcel of land to third parties, which fact is nonetheless denied as the 1<sup>st</sup> Defendant has no notice of the same, then the Plaintiff moved on a frolic of its own without authorization by the 1<sup>st</sup> Defendant and without relevant consents being obtained as such, the Plaintiff stands solely responsible to third parties as averred for any action that may arise out of its own actions. The Defendants pray that the Plaintiff's suit be dismissed with costs.
6. This court has considered the evidence and the submissions therein. The 1<sup>st</sup> Defendant has demonstrated that he was the registered proprietor of the suit property having been issued with a certificate of title and according to the provisions of sections 24, 25 and 26 of the [Land Registration Act](#) his rights were unassailable. The said sections provide as follows:



7. Section 24 of the [Land Registration Act](#) No 3 of 2012 provides as follows:

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 25 (1) of the said [Act](#) further provides that:

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this [Act](#), and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.”

Section 26 of the same [Act](#) provides that:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except

- a. on grounds of fraud, or misrepresentation to which to which the person is proved to be a party; or
- b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

8. He submitted that the Plaintiff had failed to prove his claim as he had breached the sale agreement upon which he relied on. Section 3 (3) of the [Law of Contract Act](#). The said section provides as follows:

“Section 3(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 has been attested by a witness who is present when the contract was signed by such party; provided that this section shall not apply to a contract made in the casus of a public auction by an auctioneer within the meaning of the [Auctioneers Act](#) (Cap 526) of the Laws of Kenya, nor shall anything in it affect the creation of a resulting t, implied or constructive trust”

9. The 1<sup>st</sup> Defendant stated that pursuant to the Sale Agreement in writing dated the 30<sup>th</sup> of June, 1998, the 1<sup>st</sup> Defendant agreed to sell and the Plaintiff agreed to buy the 1<sup>st</sup> Defendant’s demised property being IR. 12715/634 situated at Machakos District in the Republic of Kenya for the sum of Kshs. 2,250,000/=. The said agreement provided for *inter alia*, that the Plaintiff to pay Kshs. 225,000/= to the 1<sup>st</sup> Defendant as deposit on the said land; The sale be subject to the 1989 Law Society Conditions



of Sale insofar as they were not inconsistent with conditions contained in the agreement for sale; The completion period date to be ninety (90) days from the date of signing the agreement.

10. DW1 testified that on the 30<sup>th</sup> day of August, 1998, the Plaintiff paid the 1<sup>st</sup> Defendant, his grandmother the sum of Kshs. 125,000/= instead of the stated deposit of Kshs. 225,000/=. That despite various visit to the Plaintiff premises by the 1<sup>st</sup> Defendant and her authorized agents, including various verbal request the Plaintiff failed, neglected and/or refused to pay the full sum. That by a letter dated 9<sup>th</sup> December, 2003, the 1<sup>st</sup> Defendant called upon the Plaintiff to complete the said purchase on or before the 30<sup>th</sup> of January, 2004 which was in itself a reasonable time or, in the circumstances, provide accounts evidencing full payment of the sale price as alleged by the Plaintiff. The 1<sup>st</sup> Defendant further stated that vide CMCC No. 1328 of 2004, the 1<sup>st</sup> Defendant through her counsel on record sought various declaratory reliefs against the Plaintiff and he is not aware she withdrew the case.
11. That vide a series of verbal communications and letters culminating in a letter dated 5<sup>th</sup> October, 2007, the 1<sup>st</sup> Defendant, through its advocates on record rescinded the Sale Agreement as she was entitled to do and the Plaintiff subsequently forfeited the sum of Kshs. 225,000/= being the requisite deposit and became entitled to the subsequent sums paid in excess of the deposit. That the last installment was made in 2007. The 1<sup>st</sup> Defendant prays:
  - a. A declaration that the Sale Agreement between the 1<sup>st</sup> Defendant and the Plaintiff dated 30<sup>th</sup> June, 1998 has since been duly rescinded and the sum equivalent to deposit forfeited.
  - b. Costs of this suit.
12. PW1 testified that by an Agreement in writing, entered into on 30<sup>th</sup> June, 1998 between the Plaintiff and the 1<sup>st</sup> Defendant, the Plaintiff purchased a parcel of land known as Land Reference Number 12715/634 from the 1<sup>st</sup> Defendant at an agreed purchase price of Kshs. 2,250,000.00 and paid the 10% deposit in line with the agreement entered into and took possession and carry out sub-division as per the agreement. The Plaintiff states that as at 31<sup>st</sup> October, 2003 they paid the last and final installment and produced PEx 3,4,5 and 6 to prove the same. On the 13<sup>th</sup> February, 2004, the 1<sup>st</sup> Defendant filed CMCC No. 1328 of 2004 at the Chief Magistrate's Court, Milimani seeking specific performance of the contract, a breakdown of the payments made and sought any balance found due plus costs of the suit. The Defendant herein vide a Notice of Withdrawal of Suit dated 5<sup>th</sup> October, 2006 and filed in court the same day withdrew the suit after reconciliation of the accounts. I have perused the court record and find that by an order dated 10<sup>th</sup> May 2022 Justice C. Ochieng ordered that the Plaintiff to present the documents in dispute herein to the National Registration Bureau for verification and the 1<sup>st</sup> Defendant was granted leave to file a supplementary list of documents. By a report dated 7<sup>th</sup> July 2022 it was confirmed that the thumbprint of the 1<sup>st</sup> Defendant was the same as the one on the sale agreement and some of the payment vouchers. The Plaintiff also had an analysis of all the payments showing full payment which was acknowledged by the 1<sup>st</sup> Defendant. Indeed, the action of the 1<sup>st</sup> Defendant receiving the payments as late as 2003 show she had not rescinded the contract.
13. The 1<sup>st</sup> Defendant stated that pursuant to the failure of the Plaintiff to fully pay the purchase sum and interest arising thereto due to late payments and on expiry of the notice given to the Plaintiff to settle the amounts due the 1<sup>st</sup> Defendant exercised her unfettered option and rescinded the agreement entered into with the Plaintiff. The 1<sup>st</sup> Defendant states that, after revoking the Sale Agreement between herself and the Plaintiff, she subsequently entered into an agreement to sell the said parcel of land, being LR. No. 12715/634 to the 2<sup>nd</sup> Defendant with interests accruing to the Plaintiff fully catered for.



14. Section 109 of the [Evidence Act](#) Cap 80 is clear that;

"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

15. The well-known mantra "he who asserts must prove." Was well pointed out by the Court of Appeal in [Jennifer Nyambura Kamau vs Humphrey Mbaka Nandi](#) (2013) eKLR as follows;

"We have considered the rival submissions on this point and state that Section 107 and 109 of the [Evidence Act](#) places the evidential burden upon the appellant to prove that the signature on these forms belong to the respondent. Section 107 of the [Evidence Act](#) provides that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist." Section 109 stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness. The appellant did not discharge the burden and as Section 108 of the [Evidence Act](#) provides, the burden lies on that person who would fail if no evidence at all were given on either side."

16. In [James Muigai Thungu vs County Government of Trans-Nzoia & 2 others](#) (2022) eKLR it was held that;

"It is now settled law that whosoever asserts the existence of a legal right or liability is vested with the burden to prove it except in so far as the law may expressly exempt him or her.

Section 107 of the [Evidence Act](#) Chapter 80 Laws of Kenya succinctly states:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Also, further, Section 108 of the [Act](#) states thus:

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Again Section 109 of [Act](#) refers to the burden of proof of a particular fact. It states that:

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

17. The 1<sup>st</sup> Defendant did not adduce any evidence that the amount was not paid in full by 2003. The 1<sup>st</sup> Defendant did not challenge the report from the National Bureau of registration. Their subsequent conduct of withdrawing the case CMCC No. 1328 of 2004 at the Chief Magistrate's Court, Milimani seeking specific performance of the contract, a breakdown of the payments made and sought any balance found due plus costs of the suit was a clear indication that they were satisfied with the reconciliation of accounts.

18. DW2 the 5<sup>th</sup> Interested party testified on behalf of the 1<sup>st</sup> to the 7<sup>th</sup> Interested Parties. He stated that they were innocent buyers and that he bought his plot in 1998 from the Plaintiff. They submitted



- that they have been in possession since 1998/1999 and have made significant developments on their respective plots. That they have continued paying rates to Machakos County Government.
19. DW3 the 8<sup>th</sup> Interested Party, testified on behalf of the 8<sup>th</sup> to 10<sup>th</sup> Interested Parties and stated that he bought the land in 2008 from the 2<sup>nd</sup> Defendant. He has not paid in full because there was a complication. The Interested Parties submitted that they were not in possession were *bona fide* purchasers as the sale agreement to the Plaintiff had been rescinded and the 1<sup>st</sup> Defendant was free to do as he wished with the suit land.
  20. The definition of *bona fide* purchaser for value without notice is;  

“that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest”.
  21. *Bona fide* is a Latin word meaning good faith, without fraud, sincere, genuine. See ([\*Black's Law Dictionary\*](#) 9<sup>th</sup> Edn Page 199) A *bona fide* purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller's title. See (page 1355 [\*Black's Law Dictionary\*](#) 9<sup>th</sup> Edn).
  22. It is trite law that a person who relies on the defence of *bona fide* purchaser for value without notice has the burden to prove that he or she acted in good faith. The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice cover both actual and constructive notice of fraud.
  23. In the case of [\*Jones vs Smith\*](#) (1841) 1 Hare 43, the Chancery Court held;  

“a purchaser has constructive notice of fraud if he had actual notice, that there was some encumbrance and a proper inquiry would have revealed what it was (but if) it abstained either deliberately, carelessly from making those inquiries which a prudent purchaser would have made...then the defence cannot be available to him or her”
  24. In [\*Yakobo M. N Senkungu & Others vs Cresencio Mukasa\*](#) Civil Appeal No 17 of 2014. The court reaffirmed the law regarding the importance of due diligence in land transactions holding that;  

“...Lands are not vegetables which are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only on land but also of the owner before the purchase.”
  25. Once the root of the title has been challenged, a party cannot derive benefit from the doctrine of bona fide purchaser. I find that the suit land had already been sold to the Plaintiff in 1998 and was not available for sale to the 2<sup>nd</sup> Defendant in 2007. Indeed, DW3 stated in evidence that he never saw the title before getting into the sale agreement. On perusal of the title it is clear that the 2<sup>nd</sup> Defendant placed a caveat on the suit land on the 2<sup>nd</sup> March 2006 claiming purchasers' interest through a sale agreement dated 14<sup>th</sup> February 2006. I find that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant were being fraudulent knowing very well the land was not available for sale and trying to outsmart the Plaintiff. I find that the defence of bona fide purchaser is not available to the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Interested Parties. I find that the Defendants have failed to prove case and counter claim on a balance of probabilities and I dismiss it with costs. I find that the Plaintiff has proved their case on a balance of probabilities and I grant the following orders;
    1. A declaratory order that the purported sale of LR No. 12715/634 to the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant is unlawful and the Plaintiff herein is the lawful purchaser of the said land.



2. A permanent order of injunction restraining the Defendants herein, their servants and/or agents from alienating, entering, sub-dividing or in any manner whatsoever interfering with the Plaintiff's occupation and/or use of LR. No. 12715/634.
3. An order directing the 1<sup>st</sup> Defendant to execute transfer documents in favour of the Plaintiff within the next 30 days and in default the Deputy Registrar to execute the said transfer.
4. The Defendants to bear the costs of this suit.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**N. A. MATHEKA**

**JUDGE**

