



REPUBLIC OF KENYA



Kariuki & 3 others (All suing as liquidators of Ndumberi Farmers Co Ltd) v Karania & 2 others (Environment and Land Case 1213 of 2013) [2025] KEELC 6270 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1213 OF 2013
AA OMOLLO, J
SEPTEMBER 18, 2025**

BETWEEN

**EZEKIEL KAMAU KARIUKI 1ST PLAINTIFF
RICHARD IRUBO NJOROGE 2ND PLAINTIFF
PETER NJENGA KIARIE 3RD PLAINTIFF
MOSES MURIU KAHUHO 4TH PLAINTIFF
ALL SUING AS LIQUIDATORS OF NDUMBERI FARMERS CO LTD**

AND

**KETAN KUMAR VINUBHAI KARANIA 1ST DEFENDANT
SETTLEMENT FUND TRUST 2ND DEFENDANT
REGISTRAR OF TITLES 3RD DEFENDANT**

JUDGMENT

1. This is a very old case as it was first filed in the High Court as HCCC 342 of 2006 vide a plaint dated 4th April 2006, and later amended on 31st August 2006. Upon the establishment of the Environment and Land Court through *the Constitution* of Kenya in 2010, the case was transferred to the Court on 7th October, 2013 and registered as ELC case no. 1213 of 2013. Thereafter, the Plaintiff further amended the plaint on 9th November 2017, and further re-amended on 18th October 2022.
2. The Plaintiff is seeking the following reliefs;
 - a. An order directing the 3rd defendant to rectify the registers relating to the properties known as LR numbers 7595,7596, and 9675 Molo, by cancelling the registration of the transfers in



the name of either the 1st or 2nd defendants and/or any other third party(ies) it may have been transferred to and reinstating that of Ndumberi Farmers Co. Ltd the Plaintiff herein.

- b. In the alternative, an order for, The refund of the full value of Land reference numbers 7595, 7596, and 9675 by the defendants jointly and severally based on the prevailing market value as at the time of judgment. Payment of mesne profits/loss of use thereof calculated at 5% of the capital value of the land, being the Government Land rate applicable for both leased and used property per annum and reviewed every 10 years from 1983 to date of actual payment/ date of judgement.
 - c. A declaration that the sale and subsequent transfers of the suit properties LR Nos 7595, 7596, and 9675 by the 1st defendant to the 2nd defendant and subsequent transfer of the said properties by the 3rd defendant to the 2nd defendant and or any subsequent party were fraudulent, unilateral and unprocedural acts and are null and void ab initio.
 - d. General damages
 - e. Costs of this suit
 - f. Any other or further relief that this honourable court may deem fit to grant
3. The Plaintiffs stated that before the 9th March 1998, the properties known as Land reference numbers 7595 I.R No.6837-736 acres, LR. No. 9675 I.R. No. 15924-603 acres and LR. No 7596 I.R No.6841 -312 acres, all totalling 1,651 Acres situated in Mau Summit Nakuru-Molo, known as “the suit properties”, were registered in the name of the Plaintiff (Ndumberi Farmers Company, hereafter referred to as “the company”), currently undergoing liquidation.
 4. That George Kinyanjui Njenga (now deceased), Lazaru Njau Ngugi, Macharia Wanjau, Wilson Martin G. Njoroge (resigned), George N. Kagwara, who is incapacitated, Willian Mbaya (deceased), Gitau Kimani and Mwaura Njuguna were the initial set of appointed joint liquidators to oversee the liquidation of the company.
 5. The Plaintiffs stated that on or about 15th June 1994, in pursuit of their duties as liquidators of the Company, the initial joint liquidators agreed to sell the Company’s suit properties at an agreed price of Ksh—16,500,000 to the 1st Defendant with the firm of Kaai Mugambi & Co. Advocates acting for both parties. The Plaintiffs explained that in execution of the Agreement for sale, the 1st Defendant did not issue any payment to cater for 10% of the purchase price as per clause 3 of the Agreement.
 6. That on or about 24th October 1996, the firm of Otieno Omuga & Ouma Advocates, acting for the 1st Defendant, wrote to the firm of Kaai Mugambi & Co Advocates calling for the documents of title in respect of the suit properties and the same were forwarded on 26th October 1996 together with executed transfers and sale agreements in favour of the 1st Defendant.
 7. The Plaintiffs stated that this was done on the undertaking that Otieno Omuga & Ouma Advocates would hold, return them on demand and not make use of them or part with them until the balance price of Ksh. 15,680,000 was paid.
 8. Further that if the firm of Otieno Omuga & Ouma Advocates made use of the documents, the sum of Ksh 15,680,000/= must be received by the firm of Kaai Mugambi & Co Advocates within 30 days of the registration of the executed transfers.
 9. The Plaintiffs stated that there was a delay on the part of the 1st Defendant in completing the sale agreement without a reasonable explanation, thus, through their Advocates, they wrote calling for the documents of title from the firm of Otieno, Omuga & Ouma Advocates.



10. That when they failed to return the documents, the firm of Kaai Mugambi & Co Advocates carried out a search to know the fate of the documents, and the search revealed that the suit properties had been fraudulently been transferred in the name of the 1st defendant on 9th March 1998 using the transfers forwarded to Otieno, Omuga & Ouma Advocates drawn in 1996.
11. The Plaintiffs particularized the 1st and 3rd Defendant's fraud as drawing and dating the transfer 17/2/1998 to defeat the provision of the Stamp Duty Act, failing to pay the required land rent and obtain a land rent clearance certificate.
12. They also added that the 1st and 3rd Defendants acted on an agreement whose life space of 90 days had lapsed with no formal extension whatsoever, fraudulently misrepresenting that the registered transfers were drawn and signed by the firm of Kaai, Mugambi & Co Advocates whereas the same were drawn and signed by G.W.Kaai Mugambi or S.W Kaai Mugambi who are unknown in this matter, appending forged signatures on the transfers and fraudulently making a seal of the company.
13. They stated that the 1st and 3rd Defendants effected transfers using an expired sale agreement contrary to section 8(i) of Cap 302 and without Land Control Board Consent, first from the company to the 1st Defendant, then from the 1st Defendant to the 2nd Defendant.
14. That they appended unauthorised signatures on the transfers, failed to properly establish the Plaintiff's participation in the alleged sale and transfer of the suit properties to the 1st Defendant, transferred the suit properties to the 1st Defendant without paying the consideration to the Plaintiffs and adduced fake receipts for payments of rates and stamp duty.
15. The Plaintiffs further stated that on or about 2001, the 1st defendant fraudulently sold the suit property to the 2nd Defendant, citing that the 2nd Defendant failed to properly establish the 1st Defendant's title before purchasing the same. Thus, it entered into an irregular land sale transaction with the 1st Defendant, considering the history of the suit properties.
16. The Plaintiff stated that they have suffered damages, hence their claim against the defendants jointly and severally for cancellation of the registration of the suit properties to the 2nd Defendant and or any subsequent party(ies) thereof.
17. The 1st Defendant filed an amended statement of Defence dated 7th August 2019 denying every averment by the Plaintiffs. The 2nd and 3rd Defendants also filed a joint statement of defence dated 28th February 2008, generally denying the Plaintiffs' averments and putting them to strict proof thereof.
18. The 1st Defendant pleaded that he has no knowledge of the Plaintiffs and denies that they are the second set and duly appointed liquidators of the company pursuant to members' resolution. Further that the 1st Plaintiff lacks locus by reason that he has never been a member of the company as his name does not appear in the register of shareholders held at the Registrar of Companies.
19. The 1st Defendant avers none of the other Plaintiffs complied with Section 299(1) of the Companies Act nor do they fall within the ambit of Order 8 Rule 3(4) of the Civil Procedure Rules noting that by a letter dated 26th July 2005 from the Registrar General, stated that only Lazarus Njau Ngugi and Macharia Wanjua (deceased) were lawful joint liquidators.
20. The 1st Defendant denies any knowledge of a demand for documents by the firm of Kaai, Mugambi Advocates and denies all the particulars of fraud as itemised against him. He states that after executing an agreement with the liquidators of the company, he realised that the parcels of land he intended to purchase were occupied by a group, Mau Investment Limited, who were also claiming ownership of



- the same. The said plots were a subject of litigation under Civil No.1920 of 1988, thus he declined to purchase until the occupants were removed.
21. The 1st Defendant explained that the liquidators and some other members of the company, fearing that the Government might favour the squatters, approached him in 1996, 2 years after the execution of the agreement for sale, and asked him to act as their proxy by holding the titles to the suit properties for them.
 22. That the arrangement was formalised when the title documents were forwarded to his Advocates, which were held until March 1998, when the Liquidators and 2 members of the company, Burton Kariuki and Mr. Njenga, persuaded him to have the suit properties transferred to him as a proxy.
 23. He avers that he was authorized to source purchasers and offer for sale the suit properties at a commission or take the amounts that would be over and above the purchase price agreed with the liquidators as per the agreement dated 15/6/1994. The 1st Defendant continued that they also requested him to pay Ksh 360,000 for stamp duty, which he gave to Mr.Njenga and executed the transfer, as the same had already been executed by the liquidators who they effected the transfer. He added that once a new purchaser was identified (who is the 2nd Defendant), the liquidators appointed the firm of Kibunja & Associates to act for them in the transaction.
 24. That it was this firm that oversaw the entire transaction, received the entire purchase price of Ksh. 44,829,000 and transferred it to the liquidators of the company. The 1st Defendant stated that between 8th March 1998 and 8th September 2002, nobody made allegations of fraud against him until 9th September 2002, when he insisted on full payment of commission in respect of the transaction, when the Kibunja Advocate alleged fraud against him to shortchange him.
 25. The 1st Defendant stated that by the liquidators accepting to proceed with a transaction that ought to have been rescinded 2 years back, they waived their right to enforce any rescission under the agreement dated 15th June 1994. He contends that he suffered loss of deposit and the commission and denied the Plaintiffs suffering any loss.
 26. The 1st Defendant stated that it is the failure of the liquidators to account for the proceeds of the sale of the suit properties that prompted some of the members to press criminal charges against them and their Advocate vide Criminal Case No. 358 of 2004. That in this case, Ezekiel Kamau Kariuki and Moses Muiro Kahunyo were complainants, who acknowledged the suit properties had been sold, but the liquidators had failed to account, with the 1st Defendant being called by the prosecution as a witness.
 27. The Plaintiffs, in response, filed a reply to the defence dated 24th January 2020 stating that the 1st Plaintiff is a member of the company, being the holder of thirty (35) shares under share certificate No.3495 issued on 31st August 1981.
 28. That by virtue of his membership, he was duly appointed as a liquidator by the members of the company in a meeting held on 29th November 2003, and the Registrar of Companies vide letter dated 1st March 2004, which confirmed them as the 2nd set of liquidators, thus in compliance with Sec 278.
 29. The Plaintiffs stated that they have the capacity to sue as required under Order 8 Rule 3 (4) of the Civil Procedure Rules. They aver that the 1st Defendant did not pay any money for the suit property, and that the deposit that had been presumed to have been paid was on his instructions which were utilised for his advocates.
 30. The Plaintiffs stated that they are strangers to his appointment as a proxy of the company and that the title documents to the suit property were always in the custody of their lawyer Mr.Kaai Mugambi .



They denied changing their lawyers, they are strangers to the averments by the 1st Defendant that the transfer transaction was handled by the firm of M/S Kibunja & Co. Advocates and that any payment transaction to the said Mr.Njenga who is also a stranger to them and not authorized to receive any monies on behalf of the company.

31. The Plaintiffs further deny initiating the use and or enforcement of the sale agreement dated 15th June 1994 and assert that the liquidators of the company are joint liquidators thus cannot transact individually on behalf of the company. They also stated that in the criminal case they pressed against the liquidators of the company, they were found not guilty as the court observed that indeed the 1st Defendant had fraudulently transferred the suit property in his favour.

The Evidence of Parties:

32. PW1, James Githaiga Thirikwa, a valuer trading as Camp Valuers, testified in support of the Plaintiff's case. He stated that he did the valuation whose report is dated 27/4/2015, produced as Pexh1 pursuant to instructions received from the Plaintiff's Chairman liquidator. The instructions were to value the properties of the Plaintiff situated at Mau Summit in Nakuru, L.R. no.7595, 7596, and 9675, known as Kamara Farm.
33. He stated that he searched two properties that were in the name of Settlement Fund Trustees. That L.R. No 9675 was owned by the 1st Defendant, who transferred the same to the 2nd Defendant, while L.R. 7595, measuring 736 acres and is owned by the Plaintiff as per the last entry in the register, but did not conduct a search on 7596.
34. Pw1 stated that in his valuation, he was to cover 4 areas: open market value, which he valued at Ksh 1,136,100,100, an amount he reached after considering the value of the properties in the neighborhood, noting it is strategically located. That he also considered items which had been destroyed, which he valued at Ksh 50,000,000, noting that he did not consider livestock, wheat and potatoes.
35. That the land had been taken by the government, thus he applied a 15% statutory charge for compulsory acquisition, which came to Ksh 177,915,000. He added that he considered the loss of use between 1983 to 2015 which he assessed at Ksh. 1,872,208,921 with the total coming up to Ksh 3,232,223,921 as at 27/4/2015.
36. The three parcels of land measure 1623 acres. When he visited, an acre was being sold at Ksh.300,000 and Ksh. 400,000 for those without titles and those with titles were going for Ksh.700,000 per acre. During cross-examination, the witness stated that the Plaintiff acquired L.R. No. 9675 on 18/8/1986, although they valued the loss of use from 1983, the year when Kamara Farm was invaded.
37. He also testified that there is an error in the dates of some copies of the valuation reports. That it was one Ezekiel Kariuki who had conducted the two searches and given them to him but the ones attached to the report shows that it was Esther Wanjira Mathenge who applied for them. He stated that the search for L.R.7595 was made on 6/1/2015 and the owner was the Plaintiff.
38. The witness also testified that he was told that no payment had been made for the land and that when he visited the farm, he was not able to enter to ascertain the position of the beacons because of hostility, and he was not accompanied by a surveyor deeming it unnecessary.
39. The valuer stated that there are roads that pass through the land and it is through the said roads that he used. He added that he did not see the houses which are mentioned in his report, but were there when the Plaintiff purchased the land, clarifying that he got the information from the Land Office where he worked between 1980 and 1982.



40. Pw2, Ezekiel Kamau Karaura, a shareholder and appointed liquidator of Ndumberi Farmers Co. Ltd, testified stating that he is the chairman/Secretary of the Plaintiff, and before him, the chairman of the liquidation committee was John Bosco Njuguna.
41. He adopted a witness statement filed in court on 22/5/2015 as evidence in chief and produced the bundle of documents dated 17th May 2013 as PExh2 consisting of: share certificate No.3495, list of directors dated 1st March 2004, Company resolution Min. No. 6/1983, Notice of Appointment of Liquidator and the Payment receipt, Cheque of Ksh.820,000/- dated 16th November 1993, Pleadings in Nairobi HCCC 1920/88, Order issued on 28th July 1989, Order issued on 25th October 1991, proceedings and judgement in criminal case No.358/2004, letter dated 24th October 1996 by M/S M.O Omuya, letter dated 17th April 1998 and searches on L.R No.9675,7596 and 7595, pleadings in Nairobi HCCC 581/1999, Letter dated 20th November 2000 by M/S Kibunja & Co Advocates, Letter dated 3rd April 2001, 13th March 2002, 26th April 2000, 1st July 1998, 5th September 2002 by R.M Kariuki to M/S Kibunja, Extract of the Agriculture Act Sec 167, Extract of the Land Control Act Cap 302, Extract of the Agriculture Act Sec 177 and Assorted payment vouchers.
42. He stated that the company had a register of members kept by the secretary of the original directors and that the second set of liquidators came to find out that the register was not complete, with some members' names missing while other names were duplicated. PW2 states that he was a subscriber to the company holding certificate dated 31/8/1981 at page 1 of the Plaintiff's bundle filed on 23/5/2013.
43. That he paid for his membership and produced the receipts of payment; contributed towards repairs to the office, and the Memorandum and Articles of Association at Ksh 20 and joining fees at Ksh 120, as shown at page 7 of the Plaintiff's supplementary list of documents. He gave his share certificate number, which is 3495. He stated that he was elected as one of the liquidators of the company and that he could not be appointed as one if he was not a member of the company.
44. PW2 added that the CR12 dated 1/3/2004 at page 2 of the Plaintiffs' bundle contains the names of the directors and that the company was then in self-liquidation with him being named as one of the second set of liquidators. That the Agreement dated 15/6/1994 was in regard to LR. No 7595,7596 and 9676 Molo noting that 9676 did not belong to the company and what should have been on the agreement was 9675.
45. He asserted that the purchase price was Ksh.16,500,000 with the completion date being 15/9/1994. The sellers were liquidators of the company, the 1st Defendant was the buyer and the Advocates for the parties being Kaai, Mugambi and Co.Advocates. When the 2nd set of liquidators came on board, they found that the suit properties had been transferred to the 1st Defendant and further to a third party without any consideration being paid. Hence, they reported the matter to the police and a criminal case No. 358/2004 was instituted.
46. That in the criminal case the 1st Defendant testified that he did not pay any money for the suit properties but the same were transferred to him with the firm of Kibunja & Associates acting for him as evidenced in the letter to R.M.Kariuki Advocates. He relied on the evidence of Stephen Kaai in the criminal case at page 81 of the proceedings stating that the firm of Kaai Mugambi was acting for the company and the 1st Defendant but the 1st Defendant moved to Otieno Omunga & Co Advocates.
47. That the firm of Otieno Omuga then requested the title documents to be forwarded to them with an undertaking that no transfers will be effected unless full payment is done, an undertaking they did not honour. PW2 continued with his testimony that it is the firm of Kaai Mugambi that kept the company seal and that if the transfer to the 1st Defendant had the company seal the same was a forgery.



48. Also, he contends that the company did not pay the stamp duty as ordinarily, it is the buyer who pays for the same. Therefore the receipt of Ksh.333,200 dated 6/3/1998 showing that the company paid for stamp duty is not genuine. He also testified that the transfer from the company to the 1st Defendant was not sealed and witnessed by an Advocate. That also there was no land control board consent for the transaction and that the transfer was fraudulently done.
49. PW2 stated that there is no agreement between the company and the 2nd Defendant and that there is a transfer from the 1st Defendant to the 2nd Defendant dated 8/6/2002 drawn by Kibunja & Associates executed by the 1st Defendant. That also the payment voucher at pages 172 to 177 of the Plaintiffs' bundle filed on 23/5/2013 shows the first payment voucher dated 29/6/2001 of Ksh.4,482,900, 10% deposit, has no payee.
50. That the second voucher for Ksh.10,086,525 and the payee was Kibunja & Associates on behalf of the company and also the remaining payments noting the firm was not acting for the company. The witness insisted that the company did not receive any amounts despite the firm of Kibunja & Associates falsely indicating that they were acting for the company by their letter dated 9/19/2002 addressed to R.M.Kariuki Advocates.
51. The witness also confirmed that the firm of Kaai Mugambi received a deposit of Ksh.820,000 from the 1st Defendant which the firm held as its fees. He produced Plaintiffs' bundle of documents filed on 23/5/2013,19/5/2017 and 30/11/2017 respectively as PWExh2,3 and 4.
52. During cross examination, PW2 stated that he became a shareholder of the company in 1977 admitting that in the register his wife's name appears twice but his name was not there although he owns one of the suit properties. He confirmed that there was no hand over that was conducted between the 1st set of liquidators and the 2nd set That the 1st set of liquidators never used to hold AGMs until the shareholders decided to convene one.
53. That the mandate of the liquidators was to qualify the members, value the property and call AGM to get authority to sell. That the 1st property to be sold was Karen plot with the highest bidder was the 1st Defendant and the liquidators convinced the 1st Defendant to turn its interest to the suit properties.
54. PW3, Richard Irubu Njoroge testified by adopting his witness statement dated 18th January 2013 as evidence in chief. He stated that he became a member of the company in the year 1976 and have a share certificate no.1527 correcting the number from 1545 indicated on his statement.
55. He testified that the company went into liquidation because its original directors did not call any meetings, did not update members on the ongoing and failed to maintain a proper register. That when liquidators were elected, they were to sell 3 farms but no money was received by the company. He stated that the first set of liquidators were elected in 1983 after an AGM was held but he became a liquidator in March 2004.
56. PW4, Moses Muiru testified and adopted his witness statement dated 18/1/2013 14/12/2012 as evidence in chief. He stated there was a meeting of the Plaintiff at the chief's Office in the year 2003 where Mr. Kariuki was elected as secretary to the committee, John Bosco as the Chairman and members of the committee as Richard Irungu, Benson Chege, Richard Mungai and himself together forming the second set of liquidators as confirmed by AG in their letter dated 2/2/2004.
57. He stated that after the death of John Bosco, Ezekiel Kariuki took over as the Chairman. He added that after the first set of liquidators disagreed on the sale of the suit properties and that after they sold some of the company properties, two liquidators approached the firm of Kibunja Stephen who purported to receive money from the settlement Fund Trustees.



58. He confirmed that Stephen Kibunja received money, Ksh.44,828,000 having been instructed by Macharia Njao and Lazano, the first set of liquidators but was not sued for refund. Instead, a criminal case was preferred against him. The witness stated that as per the letter at Page 165, it says that Kibunja was not acting for V.V Shah but at page 162, the letter of 16/5/2003, Kibunja states he is acting for V.V Shah.
59. The 1st Defendant did not call any witness to support its defence so there is evidence only of the 2nd Defendant's witnesses. The first witness in favour of the 2nd Defendant is Edwin Wafula who testified by adopting his written statement dated 23/9/2014 as evidence in chief and produced the documents in the list dated 23/1/2012 as defence exhibits Dex1-8.
60. He stated that at Par 4 of his statement he has identified the 3 parcels of land in dispute and the LCB Consent granted to VV Shah from the company. He stated that he was not aware of the fraud between the Plaintiffs and the 1st Defendant. Also the transaction between the 1st Defendant and 2nd Defendant was exempted from L.C.B requirements.
61. During cross examination, DW1 confirmed that in a land transaction, it is the buyer who pays for the stamp duty for the transfer but argued that, the company, the alleged seller being the one that made the stamp duty payment does not prove fraud. That there is no time limit for presenting a transfer form and that penalties on the transfer accrue after one month. That he had not seen any receipt for the penalty but its absence does not invalidate the title.
62. He admitted that if the 1st transaction was not proper, the second transfer is also invalid. That in the sale between the 1st and 2nd Defendant, there is reference to payment of Ksh.45 Million and a balance of Ksh.28 Million, while the transfer at page 19 of Defendant's bundle reads Kshs. 19,948,338, at page 38 is Ksh.16,373,038 and page 44 refers to Kshs. 12,249,000.
63. The witness stated that he has produced evidence of rent clearance certificate and that consent cannot be issued without it. Thus, rent payment is an obligation which supersedes any transfers.
64. DW2, named Lilian Ogolla testified and adopted her witness statement dated 26/2/2025 as evidence in chief and produced a list containing 14 documents as DEXh9-23. She stated that SFT, the 2nd Defendant purchased the suit properties from V.V Shah as per the sale agreement dated 28/6/2001 produced at the purchase price of Ksh.44,829,000 signed by Mr.Mburu on their behalf.
65. However, the transfer at page 7 is dated 8/6/2002 while the transfer to SFT is dated 19/6/2002. That the letter dated 20/11/2000 gives a chronology on how the payments were made to the 1st Defendant with the purchase price being Ksh.44,829,000. She stated that entry no 13 on the title is a transfer to the 1st Defendant and entry number 17 is to the 2nd Defendant.
66. During cross examination, she explained that the 2nd Defendant receives requests either from the government or individuals to purchase land and that in this case, it received the request from the government (D.C). They stated that in the letter dated 14/4/1998, it indicates that the company bought it from the previous owner James Onanu and that the 2nd Defendant was to pay the aggrieved farmers but made the payment to Kibunja & Associates.
67. That they did due diligence and confirmed that the 1st Defendant was the owner of the suit properties, thus the letter of 16/6/1998 from the 1st Defendant was valid. The witness stated that in the letter of 17/6/1998 written by the 1st Defendant, the purchase price is stated as Ksh.73 Million but as of that time, they were still negotiating the price and in the letter of 30/11/2000, the amount of Ksh.73 Million was not paid.



68. That the payment vouchers total to Ksh.44,829,000 but confirmed that after adding the figures at pages 19, 37 and 43 of the Defendants' bundle, the amounts total to Ksh.48,570,376. He affirms that there was no addendum to the sale agreement. She also contends that the payments were made to Kibunja & Associates because the D.C told them that the company had already sold the suit properties to the 1st Defendant. That the failure to pay considerations does not invalidate the transfer because the Plaintiff consented to the same.

Submissions by the Parties:

69. The Plaintiffs filed submissions dated 26th May 2025 while the 2nd and 3rd Defendants filed submissions dated 27th May 2025. The Plaintiffs highlighted their case, stating that it revolves around the fraudulent acquisition of the suit properties by the late V.V. Shah, who purportedly entered into a sale agreement with the liquidators of the company but failed to pay the required deposit and or full purchase price.
70. That despite this non-payment, the suit properties were fraudulently transferred to Shah in 1998 using unauthorized documents. The Plaintiffs argue that Shah, having acquired no valid title, could not legally transfer the properties to the 2nd and 3rd defendants, to whom he sold them in 2001.
71. Hence, they seek cancellation of all such transfers and reinstatement of the company as the rightful owner and in the alternative, they demand a full market value refund of the properties, along with mesne profits for loss of use.
72. They submit that the 1st defendant, the late V.V. Shah, filed a defence and documents before he died in 2020. His son, who substituted as the administrator of the estate, failed to participate further, leaving the plaintiffs' claims unchallenged by him.
73. The plaintiffs asserted that, as the duly elected liquidators of the company since 1st March 2004, they have the locus standi to bring this suit. Despite challenges raised regarding PW2's membership, he and other witnesses (PW3 and PW4) provided credible evidence of his valid membership, including proof of paid-up shares and a share certificate, while explaining the company's poor record keeping. That PW2 was duly elected in an AGM and certified by the Registrar of Companies. Further, there is no record of his removal from office. The irregular sale of the suit properties was only discovered after the plaintiffs assumed their roles.
74. In reliance to Nairobi Court of Appeal, CA. No. 64 of 2007 Guardian Bank Limited v Deposit Protection Fund Board and another [2010] 1 KLR 107, the Plaintiffs submitted that liquidators have the authority to initiate legal proceedings on behalf of a company in liquidation thus they have proper legal standing to bring this suit against the Defendants.
75. On whether the deceased (V. V. Shah), the 1st Defendant acquired good title from the company, the Plaintiffs submit that he did not acquire a valid or good title to the suit properties due to fraudulent dealings.
76. That despite being registered as the proprietor, no consideration was paid as per the 1994 sale agreement and evidence from Criminal Case No. 358 of 2004 confirms that the deceased admitted under oath to not paying for the properties.
77. That further irregularities included the use of forged transfer documents, lack of Land Control Board (LCB) consent, expired sale agreement, breach of professional undertakings, and absence of stamp duty payment.



78. The Plaintiffs submitted that Courts have consistently held that title documents obtained through fraud or illegal means are defeasible, as held in *Munyu Maina v Hiram Gathiha Maina* (CA 239/2009), and *Galaxy Realtors Ltd v Kenya Forest Service* (CA 41/2020), establishing that one must prove the legality of acquisition beyond mere registration.
79. On whether the 2nd and 3rd Defendants acquired good title from the 1st Defendant, the Plaintiffs submitted that since his title was defective and obtained fraudulently, he could not transfer a valid title to them.
80. The Plaintiffs argue that the 2nd and 3rd defendants failed to undertake reasonable due diligence to verify the root of title, a requirement highlighted in *Said v Shume & 2 Others* (CA E050/2023) and *Dina Management Ltd v County Government of Mombasa*.
81. That payment vouchers naming the company who were not part of the subsequent transaction raise suspicion and the failure to name V. V. Shah, the 1st Defendant in financial documents and the late production of a dubious sale agreement point to a scheme to sanitize an unlawful transfer.
82. The Plaintiffs submitted that in light of the fraudulent transfers, they seek cancellation of the impugned titles and, alternatively, compensation based on the current market value and loss of user.
83. That PW1, a valuer, assessed the suit properties which are 1,623 acres of agricultural land with developments at Kshs. 700,000 per acre, with loss of user calculated at 10% per year since 1983.
84. They submitted that given the occupation of the suit properties by squatters and the issuance of sub titles during litigation as shown in PExb 3, they proposed monetary compensation as an equitable alternative and in support cited the case of *Murang'a ELC No. 3/2020 Joseck Thiai Mukuha v James Thungu Kanyuga*.
85. The Plaintiffs also seek mesne profits and assert that the alternative remedy is justifiable due to the impracticality of evicting squatters and enforcing a purely declaratory judgment.
86. On the other hand, the 2nd and 3rd Defendants submit that they were not privy to the contract between the Plaintiff and the 1st Defendant and therefore cannot be bound by its terms or be held liable for any alleged breach.
87. That under the doctrine of privity of contract, as affirmed in *Aineah Liluyani Njirah v Agha Khan Health Services* [2013] KECA 481 (KLR) and *City Council of Nairobi v Wilfred Kamau Githua T/ A Githua Associates* (2016) eKLR, only parties to a contract can sue or be sued on it.
88. The 2nd Defendant submitted that they lawfully purchased the suit properties from the 1st Defendant after conducting due diligence, including official land searches, and paying the full purchase price thus acquiring a valid and indefeasible title under Section 26 of the *Land Registration Act, 2012*, as reinforced by the Court of Appeal in *Galaxy Realtors Ltd v Kenya Forest Service* [2024] KECA 1304.
89. That further, as held in *Munyu Maina v Hiram Gathiha Maina* [2013] Eklr, when title is challenged, the proprietor must prove the legality of acquisition, which the 2nd and 3rd Defendants did by producing documentary evidence, including sale agreements, consent letters, rent clearance certificates, and payment receipts.
90. They stated that the Plaintiffs failed to prove any fraud, illegality, or collusion involving the 2nd and 3rd Defendants and no credible evidence was tendered regarding forgery and the criminal proceedings cited by the Plaintiffs did not result in any convictions or findings of fraud against the 2nd and 3rd Defendants.



91. The 2nd and 3rd Defendants submit that the company, having freely entered into a sale agreement, received full payment, and facilitated possession of the suit properties, cannot later renege on the transaction by alleging lack of Land Control Board consent.
92. In support they cited the case of *George Chayuga Aliaza v Zephania Khisa Saul* [2022] KECA 583 (KLR), where the Court of Appeal held that it would be inequitable for a vendor to benefit from a transaction and later deny it on the basis of missing consent, especially where the vendor failed to apply for it. The 2nd Defendant concluded by submitting that since the consent was in fact obtained and produced in court, the Plaintiffs' claims are not only inequitable but also factually baseless.

Analysis and Determination:

93. After reading the pleadings, analysing the evidence, and considering the submissions, the questions I formulate for the determination of this dispute are as follows:
 - a. Whether the transfer of the suit properties to the 1st Defendant was fraudulent.
 - b. Whether the transfer of the suit properties to the 2nd Defendant was lawful
 - c. Whether the reliefs sought should be granted.
 - d. Cost

Whether the transfer of the suit properties to the 1st Defendant was fraudulent:

94. The properties in dispute are LR. Nos. 7595, 7595, 7595,7596 and 9675, of which there is no contention that the original owner was Ndumberi Farmers Co. Ltd, the company. The core of the dispute is the manner in which the transfer to the 1st Defendant was done, which the Plaintiffs plead was fraudulent. On its part, the 1st Defendant pleaded that it was regular as per the arrangements entered into with the company's liquidators' directions.
95. From their evidence, the Plaintiffs affirmed that the company liquidators, George Njenga Kinyanjui, Lazaru Njau Ngugi, Macharia Wanjau, Wilson Mwaura Njuguna, Gitau Kimani, entered into an agreement dated 15/6/1994 with Vinubhai Virpal Shah (the 1st Defendant), for the sale of LR. 7595, 7596 and 9676 Molo for a consideration of Ksh. 16,500,000. That the advocate representing both of them during the impugned transaction was the firm of Kaai, Mugambi and Co. Advocates.
96. It is discernible from the evidence that the initial property that was intended to be sold to the 1st Defendant was situated in Langata, Nairobi. However, that sale did not come through, hence the agreement to purchase the suit properties. The Plaintiff confirm that during that initial sale, the 1st Defendant had paid Kshs. 820,000 as a deposit, which the parties agreed was converted a partial payment of the 10% deposit in the sale of the suit properties. Further, clause 3 of the impugned agreement dated 15/6/1994 provided that a deposit of 10% of the purchase price was paid to Kaai, Mugambi & co as stakeholder (which the Plaintiffs said was incorrect). It is therefore incorrect for the Plaintiff's to aver that the 1st Defendant did not pay any deposit.
97. This claim is premised on allegations of fraud, and it is trite law that allegations of fraud must be strictly proved. One of the grounds of fraud alleged was the drawing and dating of the transfer 17/02/1998 to defeat the provision of the *Stamp Duty Act*. The 2nd and 3rd Defendants filed the impugned transfer vide their list dated 23rd September, 2014, which documents the Plaintiff denied its authenticity.



98. On the face of the impugned transfer, it bears signatures of persons referred to as liquidators, with some of the signatures reading names of Njau, Ngugi and Wachira, and the signatures have some similarity with those appearing in the sale agreement dated 15.6.1994.
99. I have analysed the written statement of Ezekiel Kamau Kariuki (PW2), and he does not speak to the drawing of the impugned transfer. Instead, he avers that the transfer was fraudulent because it was done based on a sale agreement which had lapsed. He also stated that the 1st Defendant had not paid the 10% deposit, no consent had been obtained, and that rent clearance certificates had not been issued.
100. Although Mr Kaai stated in his evidence in the criminal trial that the transfers he drew were returned to him, this does not solely discredit the document. He also said at page 85 of the proceedings, thus;
- “I realised the transfers lodged at the land registry were forgeries. The liquidators purportedly signed the transfers. The liquidators had started behaving funny, sometimes going behind my back.”
101. With the above statement, it was necessary to provide evidence that the signatures of the liquidators on this document were forged (as pleaded under 13(e)) and go further to provide evidence that the seal of the company used was forged (pleaded under para 13(f)). Mr Kaai stated that he realised the transfers were forgeries, but did not go further to disclose what, according to him, was forged. This is taking into consideration the contents of his letter dated 3rd April, 1998, at paragraphs 5 and 6, thus:
- “Your said undertaking was confirmed by your letter of 29th October, 1996, as read with that of 28th October, 1996, addressed to us.
- The transfers as drawn and sent to you had no dates except the year. That is how documents are drawn. They are dated on presentation for assessment of stamp duty.
- What you did thereafter is to draw fresh transfers, which you executed and presented for registration to avoid payment of the penalty on stamp duty.
102. He did not testify in the current proceedings, and none of the accused persons in the criminal trial were found guilty of the fraud. The magistrate pointed out certain gaps in the investigation that required the plaintiff to do more to prove the alleged fraud. Thus, the evidence presented is inconclusive to enable me to reach a finding that the impugned transfer is a forgery.
103. The second aspect of the fraud alleged is that the registration was fraudulent. From the typed proceedings in the criminal case (including the evidence from witnesses), there was no dispute that Mr Kaai released to Ouma, Omuga & Co. Advocates, duly executed transfers and the title deeds of the suit properties to hold as stakeholder.
104. The letter of undertaking dated 24th October 1996 from Ouma, Omuga and Co, upon which Mr Kaai acted, reads in part thus;
- “since you are holding the signed transfers and the documents of title of the same awaiting the consents, we hereby call upon you to release the same to ourselves today for custody only pending the procurement of the consents”
105. Mr Omuga who gave evidence as PW5 in the criminal trial confirmed that he did not register the transfer in favour of the 1st Defendant. It is in his evidence where he mentions that Mr Kaai Mugambi served him with searches showing the transfers in favour of the 1st Defendant were on 9.3.1998. The said advocate, however, denied carrying out the registration in favour of the 1st Defendant.



106. However, part of the letter of professional undertaking provided for registration of the suit properties to effected before payment of the purchase price. I stating thus;

“To this extent, we hereby give you our irrevocable professional undertaking that upon receipt of the said documents of title and transfers, we shall hold them to your order awaiting being furnished with the relevant consents where upon we shall lodge the same with the Commissioner of Lands for registration and thereafter within 10 (Ten) days of receipt of documents of title duly registered in our client’s name and fulfilment by your clients of the rest of their obligation in the agreement of sale dated 15.6.1994, pay to you the entire balance of the purchase price.” (underline mine for emphasis)

107. Although the Plaintiff’s witnesses stressed the statement of the 1st Defendant (in the criminal proceedings) that the property was transferred to him without a penny, per se the statement does not prove fraud. Why? Because once the documents were released to the 1st Defendant’s advocate, he had the authority to register the transfer before paying the purchase price. From a reading of the letter of undertaking, the payment of the balance of purchase price was not just subject to the registration of the titles in the name of the 1st Defendant, but also the handing over of vacant possession of the suit properties. Again, the witnesses affirmed that the properties were occupied by squatters even before the sale, and they (Plaintiff) never handed over vacant possession.

108. Further grounds of fraud pleaded against the 1st Defendant were: failing to pay the required land rates nor obtaining a land rent clearance certificate, and acting on an agreement whose life span of 90 days had lapsed with no formal extension. These failures/defaults in my view does not amount to fraud as defined by the Black’s Law Dictionary thus;

“Fraud consists of some deceitful practice or willful device resorted to with intent to deprive another of his right, or in some manner to do him an injury.”

109. The grounds can be used to impeach the title of the 1st Defendant but not based on fraud. In any event, by the time the documents were released by the Kaai, Mugambi & co advocates in late 1996, the Ninety (90) days being pleaded had long lapsed. The Plaintiff in the same breath are relying on this agreement for payment of the market value of their land (thus probating and approbating). If the time had lapsed, they have their advocate to blame for releasing the title documents and since they did not sue their said advocate, they cannot turn around to accuse parties who acted on those impugned documents. In my opinion, and I so hold, the Plaintiff acquiesced by conduct to the extension of time as specified in the special conditions, “completion date may be extended by mutual agreement of the parties.”

110. Lastly, under the particulars of fraud, it is pleaded that the 1st Defendant failed to appreciate that the Plaintiff did not apply for the requisite land board consent and if ever it was purported to do so, the same was fraudulent. There is produced in evidence a copy of the Land Control Board Consent dated 15.2.1996 and Rents Clearance Certificate dated 5.3.1998, both bearing the name of the Plaintiff.

111. It was incumbent on the Plaintiff to demonstrate that the two documents were not acquired on their behalf. The law does not permit them to shift the burden of proof when they are the ones making the allegations. The current liquidators took over the office after the impugned transaction was completed, and they chose not to sue the first set of the liquidations. Hence, it was their burden to prove that it was not the first set of the liquidators who processed the letter of consent and the rates clearance certificates.



112. In the case of *Ndolo vs Ndolo* (2008)eKLR, it was held that,

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

113. Under paragraphs having failed to produce a copy of the transfer form alleged to have been drawn on 17/2/1998 and in light of the evidence that some executed transfers had been released by the firm of Kaai, Mugambi & Co Advocates, I am unable to find proof of fraud on this ground.

Whether or not to cancel the 2nd Defendant’s titles of the suit properties:

114. The Plaintiff’s claim, in my opinion, stems from the failure to honour the terms of the professional undertaking that had been given if the balance of the purchase price for the suit properties was not paid to them. The 1st Defendant did not give evidence because the Plaintiff reported that he had died. However, he pleaded vide his amended statement of defence that the Plaintiff was paid through monies paid out by the 2nd Defendant. The 2nd and 3rd Defendants also denied the claim and all the particulars of fraud levelled against them.

115. It is not in dispute that no monies were paid within the 10 days post-registration of the suit properties in favour of the 1st Defendant. It is clear that the Plaintiff, through their advocate, became aware of the transfer to the 1st Defendant within one month of his registration (on 9th March, 1998). Mr Kaai wrote the letter of 3rd April 1998 to Ouma, Omuga & Co, advocates, accusing him of acting unprofessionally and subsequently filed a suit (HCCC 581/1999) seeking to have him honour the terms of the professional undertaking.

116. The evidence on record indicates that the originating summons HCCC 581 of 1999 was withdrawn by consent of the parties therein. Despite the withdrawal of that suit, the Plaintiff initiated this suit to recover either their land back or be paid its equivalent value. On their part, the Defendants insisted that the Plaintiff was already paid the purchase price in full.

117. To determine whether or not the money was eventually paid as alleged by the Defendants, I have analysed the correspondences exchanged between the 1st Defendant and the 2nd Defendant. It is discernible from these documents that the 1st Defendant was either not interested in paying the full purchase price because the land was fully occupied by squatters or because he was unable to raise the money. Somehow, he agreed with the first set of squatters that he could source for a buyer and he (1st Defendant) did get one in the 2nd Defendant.

118. I did not come across the sale agreement executed between the 1st and 2nd Defendants but both the Plaintiff and the 2nd Defendant have produced payment vouchers evidencing the 2nd Defendant paid for the land at an agreed purchase price of Kshs 44, 829, 000. The 2nd and 3rd Defendants submitted that The plaintiff having benefited from the sale agreement and deposit assuming without prejudice of the deposit from the Langata property, then without refund and terminating the contract cannot be allowed to enjoy unjust enrichment and is therefore estopped from raising such.

119. It is also the 2nd and 3rd Defendant’s humble submission that they were not privy to the agreement for sale between Ndumberi Farmers Company Limited and Vinubhai Virpal Shah for sale of Land L.R.



7595 IR 6837, L.R 7596 IR 6841, LR 9675 IR 15924. Additionally, the 2nd and 3rd Defendants were not parties to the Criminal case number 358 of 2004. They further stated that the Plaintiff's claim is caught by the limitation of time.

120. In light of the above submissions, the court ventures into the question whether the 2nd Defendant was aware of the transaction between the 1st Defendant and the Plaintiff. In a letter dated 14th April 1998 drawn by the Provincial Commissioner, Rift Valley and addressed to the Permanent Secretary, Ministry of Lands, it was referenced thus;

“RE: Valuation of Nduberi Farmers Company Farms- Nakuru District – LR NO. 7595, 7596, 9675

Para 2: In order to resolve the dispute, the government has decided that the SFT takes over the farms, pays off the aggrieved companies and let the Kalenjin and the few non-Kalenjin farmers meet their obligations to SFT in the normal way.”

121. Further, in another letter to the Permanent Secretary dated 29th November, 2000 by Kibunja and Associates, the advocate writes thus;

“Enclosed, find a detailed write up on the matter.

The current position is that to completely secure the titles free from any liability, the following sums of money have to be paid by the registered proprietor.

1. To Victoria Bank.... Kshs 21,320,000
2. To M/s Kaai Mugambi & Co on a/c of Plainiff... Kshs 18,509,000
3. To Legal Fees....Kshs 3,000,000

122. The Director of Land Adjudication wrote to Kibunja and Associates vide a letter dated 26th April, 2001 giving their final offer price of Kshs 44,829,000 and a breakdown which included a payment to be made to the Plaintiff fixed at Kshs 18, 509,000. The letter by the DLA also referred to an encumbrance that was registered on the title which they wanted to be lifted. All these correspondences were exchanged before the agreement between the 1st and 2nd Defendant was executed on 28th June, 2001. The 2nd Defendant cannot therefore run away from the knowing the interest of the Plaintiff over the suit property. They were informed of the Plaintiff's interest in the suit properties by the provincial administration, and hence their inclusion in the breakdown of the payments.

123. According to the payment details produced by the 2nd Defendant, all the monies were released to Kibunja and Associates. The said Kibunja had given them (2nd Defendant) a break down that Kaai, Mugambi & co was to receive payments on behalf of the Plaintiff. Since the Plaintiff has demonstrated that they were never paid by the 1st Defendant and subsequently, no monies were paid by the 2nd Defendant, the burden shifted to the Defendants to prove how the Plaintiff was paid.

124. It is my considered opinion and I so hold, that the 1st Defendant could only pass a good title to the 2nd Defendant if he had honoured his part of the bargain of paying the balance of the consideration upon registration of the title in his name in March of 1998. The 2nd Defendant came into the picture in June of 1998 (approximately 3 months after the 1st Defendant acquired the titles) when they began negotiating for the purchase price. In doing their due diligence, they learnt from the Provincial Commissioner that the Plaintiff was to be paid hence they cannot plead the doctrine of innocent purchaser.



125. The cases cited on indefeasibility of title (e.g Galaxy Realtors Limited v Kenya Forest Service (Civil Appeal 41 of 2020) [2024] KECA 1304 (KLR) (20 September 2024) (Judgment) or innocent purchaser (Katende v Haridar & Company Ltd [2008] 2 EA 173) do not favour the 2nd Defendant who entered into the sale agreement while aware of the encumbrance like the Plaintiff's interest and also one registered on the suit titles.
126. The 1st and 2nd Defendants owe the Plaintiff balance of the purchase price whether its Kshs 15680000 or Kshs 18509000 which remains unpaid to date. I would be hesitant to cancel the titles except if these Defendants are unwilling to complete the payment outstanding. It was not upon the Plaintiff to join Kibunja and Associates in these proceedings but the party who paid out monies to him.

Whether the Plaintiff's suit is statute-barred:

127. On the objection of limitation of actions raised by the 2nd Defendant, the claim here was recovery of the balance of the purchase price. and or land. I hold the same is not because it appears from the conduct of the parties that time was extended. The agreement of 15.6.1994 provided for a completion date of 90 days. The Plaintiff's advocates forwarded the completion documents some two years later, and the 1st Defendant acquiesced to the extension by registering the transfer on 9.3.1998.
128. It would be inequitable to let the Defendants benefit from an agreement that had lapsed by holding on to the land but refusing to settle the balance because the claim was brought after the expiry of six years. The time could not be fixed, only the letter of professional undertaking, which has a time run from 9.3.1998, as the said letter did not constitute the entire contract between the parties.
129. For instance, both the sale agreement and the letter of undertaking provided for payment of the balance upon the Plaintiff's surrendering vacant possession of the suit properties. The Plaintiff did not surrender vacant possession as the 2nd Defendant bought the properties as is for the purposes of settling the people already in occupation.
130. I hold that the suit is not statute-barred on the basis that it was not discernable when to say time expired. I also rely on the decision of Madan, JA (as he then was) in Chase International Investment Corporation and Another vs. Laxman Keshra and Others [1978] KLR 143; [1976-80] 1 KLR 891 as cited in Munyu Maina v Hiram Gathiha Maina [2013] KECA 94 (KLR) held that:

“If the circumstances are such as to raise equity in favour of the plaintiff and the extent of the equity is known, and in what way it should be satisfied, the plaintiff is entitled to succeed. When the ghosts of the past stand in the path of justice clanking their medieval chains the proper course of the judge is to pass through them undeterred”.

What reliefs should be granted?

131. From the foregoing analysis, I conclude that the registration of the transfer in favour of the 1st Defendant was not fraudulently undertaken. Rather, the 1st Defendant was in breach of their agreement for failing to pay the balance of the purchase price. I also hold that the 1st Defendant did not misrepresent to the 2nd Defendant that the suit titles were free from encumbrances as he made disclosures in regard to the debt due to the Plaintiff.
132. Thus, the 2nd Defendant purchased the properties while aware of the interests and having not produced evidence of payment to settle the encumbrance, I find that the Plaintiff is entitled to the alternative prayer under (b) for refund of purchase price not prevailing market price. I also find they are entitled to



general damages under paragraph (d) for the inconveniences suffered and interest on the refund from the date of filing of this suit in the year 2006.

133. Consequently, I enter judgment for the Plaintiff against the 1st and 2nd Defendants jointly and severally as follows;
- a. The 1st and 2nd Defendants shall, within 4 months of this judgment refund Kshs 18,509,000, being the balance of the purchase price due and owing to the Plaintiff over Land reference numbers 7595,7596, and 9675.
 - b. Pay to the Plaintiff general damages assessed at Kshs Two (2) Million
 - c. Interest at court rates on (a) from 4.4.2006 and on (b) from date of this judgment.
 - d. In default, execution to issue
 - e. Costs of the suit to the Plaintiff

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025

A.OMOLLO

JUDGE

