



**Lemaita alias Tetea Ole Kisaa v Maridady Enterprises Limited & 3 others (Environment and Land Case 544 of 2017) [2025] KEELC 6698 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6698 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 544 OF 2017  
MD MWANGI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**NTENTEA OLE LEMAITA ALIAS TETEA OLE KISAA ..... PLAINTIFF**

**AND**

**MARIDADY ENTERPRISES LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**FAULU MICROFINANCE BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR KAJIADO ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By way of a Plaint dated 16th March 2017 and filed in Court on even date, the Plaintiff, Ntetea Ole Lamaita, instituted the present proceedings against the Defendants, namely Maridady Enterprises Limited as the 1st Defendant, the District Land Registrar Kajiado as the 2nd Defendant, the Honourable Attorney General as the 3rd Defendant, and Faulu Microfinance Bank Limited as the 4th Defendant. The Plaintiff describes himself as a male adult of sound mind, residing and working for gain in Kajiado County within the Republic of Kenya. He avers that he is the absolute and indefeasible proprietor of all that parcel of land known as Title Number 340, measuring approximately 60.52 hectares, having acquired the same lawfully and having enjoyed quiet possession and occupation thereof for many years.
2. The Plaintiff avers that sometime on or about 12th November 2015, he discovered that entries in the land register in respect of the suit property had been irregularly and fraudulently altered, resulting in the registration of the 1st Defendant as the proprietor. He avers that he had never executed any instrument of transfer nor authorized the disposition of the property to the 1st Defendant or any other person. According to him, the transfer to the 1st Defendant was a product of fraud, collusion and illegality perpetrated by the 1st Defendant with the active involvement of the 2nd Defendant, the Land



Registrar Kajiado, and with the acquiescence of the 3rd Defendant, the Attorney General, as well as the participation of the 4th Defendant, who subsequently accepted a charge over the property without undertaking the requisite due diligence.

3. The Plaintiff pleads that the fraudulent activities in question included, inter alia, the fraudulent alteration of the land records at the Ngong Land Registry, the unlawful issuance of a Title Deed in favour of the 1st Defendant, the purported transfer of the suit property without his knowledge or consent, and the subsequent charging of the property to the 4th Defendant. He asserts that the Defendants thereby deprived him of his constitutional right to property, exposed him to irreparable loss, and undermined the sanctity of title guaranteed under the law.
4. The Plaintiff further avers that he had lodged a caution over the property to safeguard his proprietary interest, but that the same was ignored or unlawfully lifted, enabling the fraudulent transfer to proceed undeterred. Despite his demand and notice of intention to sue, the Defendants failed, refused and/or neglected to rectify the anomalies or to restore the property to him, thereby necessitating the filing of the present suit. He contends that the actions of the Defendants were actuated by fraud, illegality and bad faith, and that this Court has jurisdiction to entertain and determine the matter as the cause of action arose within Kajiado County.
5. On the basis of the foregoing facts, the Plaintiff seeks judgment against the Defendants jointly and severally, and prays for the following reliefs:
  - a. A declaration that the Plaintiff, Ntetea Ole Lamaita, is the absolute proprietor of Title Number 340.
  - b. A declaration that the alleged Title Deed issued to the 1st Defendant, Maridady Enterprises Limited, on 12th November 2015 purporting to register it as the proprietor of Title Number 340 is null and void.
  - c. A declaration that the 2nd Defendant, the District Land Registrar Kajiado, acted unlawfully in issuing the 1st Defendant with a Title Deed in respect of Title Number 340.
  - d. A declaration that any subsequent dealings in Title Number 340, including the registration of charges in favour of the 4th Defendant or with any party prior to and/or after the filing of this suit, are null and void.
  - e. An order directing that the Title Deed issued in the name of the 1st Defendant be cancelled forthwith by the 2nd Defendant, Land Registrar Ngong.
  - f. An order that the register be rectified and a Title Deed issued in the name of the Plaintiff, Ntetea Ole Lamaita, in respect of Title Number 340.
  - g. An order permanently restraining the Defendants, their servants and/or agents, from entering upon, selling, transferring, disposing of, or in any way dealing with the suit property without the express written consent of the Plaintiff.
  - h. An award of general damages.
  - i. Costs of the suit.
  - j. Such other or further relief as this Honourable Court may deem fit and just to grant.
6. In response to the Plaintiff's claim, the 1st Defendant, Maridady Enterprises Limited, filed a Statement of Defence dated 7th October 2024. Save for what was expressly admitted, the 1st Defendant denied



each and every allegation contained in the Plaint as if the same were set out verbatim and specifically traversed.

7. In answer to the substantive allegations at paragraphs 6 to 17 of the Plaint, the 1st Defendant averred that it had approached the Plaintiff with a request to use the suit property, being Title Number 340, as security by way of a third-party charge to secure banking facilities from the 4th Defendant. According to the 1st Defendant, the Plaintiff willingly and knowingly consented to this arrangement, and it was agreed between them that the security would be held for a period of three (3) years after which it would be discharged and the title re-transferred back to the Plaintiff.
8. The 1st Defendant further pleaded that the agreement between itself and the Plaintiff was supported by consideration, namely the payment of Kenya Shillings Three Hundred Thousand (Kshs. 300,000/=) by the 1st Defendant to the Plaintiff in exchange for his consent to use the property as security. It maintained that the said sum was indeed paid, and that proof and details of the transaction would be adduced at the hearing.
9. It was the 1st Defendant's further contention that the existence of the charge registered against the suit property in favour of the 4th Defendant was not the product of fraud or illegality, but was rather premised on terms that had been mutually negotiated and agreed upon between itself and the Plaintiff, and in respect of which consideration was duly paid. To this end, the 1st Defendant pointed to the documents filed by the 4th Defendant in its List of Documents dated 19th September 2023 as corroborative of the transaction.
10. The 1st Defendant also pleaded that it was presently in discussions with the 4th Defendant with a view to fully servicing the banking facility and procuring the discharge of the suit property in favour of the Plaintiff. It therefore categorically denied the allegations of fraud particularized at paragraph 15 of the Plaint and put the Plaintiff to strict proof thereof.
11. The 1st Defendant admitted the averments at paragraphs 18 and 19 of the Plaint but reiterated its foregoing position. In the premises, the 1st Defendant prayed that the Plaintiff's suit be dismissed with costs.
12. The 2nd and 3rd Defendants likewise filed a joint Statement of Defence dated 23rd November 2022. Save for what was expressly admitted, they denied each and every allegation contained in the Plaint as if the same were set out verbatim and traversed seriatim. They admitted paragraphs 1 to 5 of the Plaint in so far as they were merely descriptive of the parties.
13. The 2nd and 3rd Defendants denied the substantive averments at paragraphs 6 through to paragraph 16 of the Plaint, contending inter alia that they were strangers to the alleged dealings between the Plaintiff and the 1st Defendant, and specifically refuting the Plaintiff's assertions that the Land Registrar, Ngong, was involved in any corrupt scheme as alleged at paragraph 13. They also expressly denied the allegations of fraud levelled against the 2nd Defendant and put the Plaintiff to strict proof thereof.
14. It was further pleaded that no statutory demand or notice of intention to sue had been served upon them prior to the institution of the suit. While admitting the contents of paragraph 19 of the Plaint, the 2nd and 3rd Defendants denied that the Plaintiff was entitled to the prayers sought. In the premises, they prayed that the Plaintiff's suit be dismissed with costs.
15. The 4th Defendant equally entered appearance and filed a Statement of Defence dated 11th April 2017. Save for what was expressly admitted, the 4th Defendant denied each and every allegation in the Plaint as if the same were set out verbatim and traversed seriatim. It admitted the descriptive averments



at paragraphs 1 to 5 of the Plaint but clarified that it was a duly licensed microfinance bank lawfully undertaking its business within the Republic of Kenya.

### **Plaintiff's Evidence**

16. The Plaintiff, Ntetea Ole Lamaita, testified before this Court as PW1. He adopted his witness statement dated 24th May 2023 as his evidence in chief and produced the documents filed alongside it. His evidence was that in the year 2015 he discovered that his parcel of land had been transferred into the name of Maridady Enterprises Limited without his knowledge or consent. Upon attempting to conduct an official search, he was informed that the said property had already been transferred and, further, that his title had been used to secure a loan facility of Kenya Shillings Twenty-Five Million (Kshs. 25,000,000) from the 4th Defendant, a microfinance bank.
17. He categorically denied ever signing the charge instrument or guarantee documents in relation to the said facility in 2017. According to him, he was misled into signing documents under the representation that they would facilitate the re-transfer of his property back to him. He maintained that he had never consented to his land being charged or used as security, and that his title was fraudulently utilized. He added that as a form of apology for what had been done, he was given a sum of Kshs. 300,000/- which was deposited into his bank account. His then advocate, one Mr. Lesinkoi, was instrumental in the preparation of the documents; however, upon realizing that the said advocate was misleading him, he sought alternative representation.
18. In cross-examination by counsel for the 1st Defendant, PW1 reiterated that he did not sign the agreement dated 20th December 2017, which had been marked for identification as MFI-1. He acknowledged that the letter dated 3rd August 2016 had been authored by his then advocate, Lesinkoi, and confirmed that the said advocate also participated in the disputed agreement. While conceding that he did meet with directors of Maridady Enterprises Limited when signing the agreement, he insisted that the sole purpose was the restoration of his land. He clarified that he was not calling Lesinkoi as a witness, nor had he lodged a complaint against him with the relevant authorities. His singular interest, he said, was in the recovery of his land. With regard to the sum of Kshs. 300,000 received, PW1 admitted that the same was duly deposited into his bank account as indicated in the payment documents. He, however, stated that he was never informed when his title would be returned.
19. In cross-examination by counsel for the 4th Defendant, PW1 conceded that the property was currently registered in the name of the 1st Defendant and that the title deed had been deposited with the 4th Defendant as security. He reiterated that he had not signed or sanctioned the transfer or charge and maintained that he was assured by both the directors of Maridady and his advocate that the title would eventually revert to him. He acknowledged that he had not lodged any criminal complaint against either his advocate or the directors of Maridady Enterprises Limited. Importantly, he stated that he had never interacted personally with the 4th Defendant, and that the bank was not a party to the purported agreements between him and the 1st Defendant.
20. Upon re-examination, PW1 affirmed that the said agreements were presented to him on the representation that they would facilitate the return of his land. He emphasized that he had never given consent to the transfer of his property, and that the Kshs. 300,000 he received was explained as an apology. He disclosed that he resides on the parcel of land with his three wives and twenty children, and that the property measures approximately 240 acres. He reiterated that his sole interest in the present suit was the restitution of his land, which he alleged was fraudulently alienated without his participation or consent. Having so testified, the Plaintiff closed his case.



## 1st Defendant's Evidence

21. The 1st Defendant, through DW1, Mr. Eric Mwangi Ngigi, a director of Maridady Enterprises Ltd, testified in support of its case. He adopted his witness statement dated 24th October 2024 together with the list of documents as his evidence in chief.
22. DW1's testimony was that the 1st Defendant came into possession of the suit title through the involvement of a broker, one Nicholus, who in 2015 informed him that he could procure an individual willing to offer his title as security for the 1st Defendant's benefit. According to DW1, the broker presented the title to him and on that basis the 1st Defendant processed the transaction and subsequently secured a financial facility from the 4th Defendant. He stated that he continued to service the said loan until 2017, when financial challenges arose, prompting him to seek a restructuring of the facility. At that juncture, the 4th Defendant allegedly informed him that the title had a caution registered against it.
23. DW1 narrated that when he followed up, it was discovered that the broker, Nicholus, had not fully compensated the Plaintiff for the use of the land as earlier promised. A reconciliatory meeting was held, and the outcome was that the Plaintiff would be paid Kshs. 300,000/- to extend the use of his title until 2020. He testified that he duly complied with this arrangement and that despite the payment, the Plaintiff refused to remove the caution. He further claimed that the Plaintiff became unresponsive to his advocate, Mr. Lesinko, after the payment.
24. He confirmed that the 1st Defendant entered into an agreement dated 20th December 2017 (DW1 EX 1), pursuant to which the Plaintiff was to extend the use of the title as security. He contended that he was still in negotiations with the 4th Defendant to restructure the loan without the subject title and expressed his willingness to release the title to the Plaintiff once the outstanding issues with the bank were resolved.
25. During cross-examination by Counsel for the Plaintiff, DW1 admitted that the suit property was originally registered in the Plaintiff's name and was transferred to Maridady Enterprises Ltd on 12th November 2015. He conceded that he had no written agreement executed directly between the Plaintiff and the 1st Defendant, save for his dealings with the broker, Nicholus. He further admitted that he had not produced before this Court the transfer instrument executed by the Plaintiff, nor any consent from the Land Control Board authorizing the said transfer. Additionally, DW1 conceded that no documentary evidence of payment of stamp duty had been availed to this Court.
26. He further confirmed that the agreement dated 20th December 2017 was executed after the institution of the present proceedings in April 2017, and that the said agreement related to the provision of security by way of a guarantee and indemnity. He acknowledged that he executed a charge instrument dated 15th December 2015 with the 4th Defendant using the suit property, being parcel number 340, as collateral, despite admitting that the parcel did not belong to him. He reiterated that to date, he had not transferred the suit property back to the Plaintiff as earlier agreed.
27. Notably, DW1 conceded that in his own witness statement he had acknowledged that the Plaintiff was approached by the 1st Defendant to allow his property to be charged by way of a third-party charge. He also acknowledged that a third-party charge does not require a transfer of the title into the name of the borrower. He admitted that the complaint regarding Nicholus had been lodged with the Directorate of Criminal Investigations.
28. In cross-examination by the State Counsel, DW1 conceded that he did not know who executed the transfer instrument on behalf of the Plaintiff, and that he relied on the broker, Nicholus, to procure



the Plaintiff's signature. He confirmed that once he signed his part of the transfer, he returned the document to the broker without verifying its authenticity or confirming that Nicholus had authority to act on behalf of the Plaintiff. He also admitted that Nicholus never presented any formal authority from the Plaintiff confirming that he was his duly appointed agent.

29. The 2nd and 3rd Defendants, though having filed defences, did not call any witnesses in support of their cases, and their pleadings therefore remain as mere statements.

#### **4th Defendant's Evidence**

30. The 4th Defendant called one witness, DW2, Fredrick Nyabuti, a legal officer with the 4th Defendant Bank, who confirmed his witness statement dated 19th January 2024 and adopted it together with the list of documents filed, as his evidence in chief. He testified that the 1st Defendant was a client of the Bank, and that the suit property, 340, had been offered as security for a loan facility of Kshs. 25,000,000/- by way of a charge duly registered in favour of the Bank. Subsequently, the 1st Defendant sought an additional facility which was to be secured by a further charge, but the same did not materialize after the Bank discovered that a restriction had been registered against the title.
31. DW2 testified that at the time the initial charge was created, the Bank conducted due diligence, which revealed that the title was in the name of the 1st Defendant. The Bank had no information whatsoever regarding the Plaintiff's interest in the land, nor had it been contacted by the police prior to 2015 concerning the suit property. He further stated that the loan secured by the charge had not been fully repaid, and that the outstanding balance stood at over Kshs. 28,000,000/-. According to DW2, the Bank acted as an innocent chargee for value without notice of the Plaintiff's alleged claim, and its only debtor remained the 1st Defendant.
32. DW2 admitted that although he is an Advocate of the High Court, the Bank usually instructs external advocates to transact on its behalf and to conduct due diligence. Other than an official search, no further inquiry was made by the Bank or its advocates regarding the previous ownership of the suit property. He conceded that the 1st Defendant had also offered fifteen (15) motor vehicle logbooks as part of the securities for the loan, as per the letter of offer, and acknowledged that the Bank retained the right to pursue recovery against the 1st Defendant for default. He confirmed that the Bank never had any interaction with the Plaintiff, and only dealt directly with the 1st Defendant. He also acknowledged that no search certificate from 2015 had been produced in court.
33. DW2 maintained that due diligence was conducted at the time of granting the facility through the Bank's instructed advocates, who confirmed that the title was clear and in the 1st Defendant's name. He also confirmed that a valuation of the property had been undertaken prior to advancing the loan. He emphasized that the Bank does not ordinarily conduct historical searches beyond the current register. DW2 reiterated that proprietorship of the suit property was not an issue at the time of granting the loan, as the title reflected the 1st Defendant as the registered owner, and the Bank therefore proceeded in good faith

#### **Analysis of Submissions**

34. The Plaintiff's submissions present his case as one anchored on the principle of indefeasibility of title and the exceptions thereto, contending that his proprietary rights were unlawfully divested through a fraudulent, irregular, and wholly unprocedural process. Counsel submitted that the Plaintiff has at all material times been the lawful and absolute proprietor of land parcel number 340, having been registered as such upon adjudication in 2009, and that he neither sold, transferred, nor authorized any dealings over the suit land. The Plaintiff discovered the fraudulent transfer in December 2015 upon conducting an official search, which revealed the 1st Defendant as the registered proprietor. He



placed a caution immediately thereafter and obtained a Green Card which confirmed the impugned registration on 12th November 2015.

35. It was further submitted that the 1st Defendant's director candidly admitted during cross-examination that he had never met the Plaintiff prior to 2017, and could not avail any conveyancing instruments, Land Control Board consent, or stamp duty receipts to support the transfer. Instead, he attributed the transfer to one Nicholas Sankok, an alleged agent whose authority was neither pleaded, nor evidenced, nor tested in court. This, it was argued, exemplifies a fraudulent design by the 1st Defendant to unlawfully acquire the Plaintiff's land and subsequently charge it to the 4th Defendant, Faulu Microfinance Bank Limited, for a loan of Kshs. 25,000,000.
36. On the question of fraud, the Plaintiff placed reliance on the decision in *Tum & 2 others v Towett & 5 others* [2022] KEELC 13790 (KLR), where the Court adopted the statement of the Court of Appeal in *Katende v Haridas & Company Limited* (2008) EA 173 that:
- “To establish fraud in land registration, the claimant must link the fraud to the transferee either by showing direct involvement, knowledge and benefit from another's fraud, or by proving the transferee condoned or used the fraud to deprive the rightful owner.”
37. Counsel argued that the 1st Defendant's conduct falls squarely within this test. The Defendant obtained title without the participation of the Plaintiff, used it to secure financial gain through a loan facility, and thereafter sought to retroactively regularize the illegality by inducing the Plaintiff to sign a deceptive agreement in 2017 under the guise of an apology and compensation. These actions, it was contended, amount to direct involvement in and benefit from fraud.
38. Further reliance was placed on *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, where the Court of Appeal held that:
- “When a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is being challenged and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title.”
39. Applying this principle, the Plaintiff submitted that the 1st Defendant's reliance solely on the title deed, in the absence of a single supporting transfer instrument or statutory consent, renders its root of title irredeemably infirm. The absence of documentary evidence, combined with the mysterious introduction of Nicholas Sankok during trial, was cited as irrefutable evidence of fraud.
40. With respect to the 2nd Defendant, the District Land Registrar, it was submitted that the Registrar abdicated its statutory duty under the *Land Registration Act* by effecting a transfer without verifying the mandatory instruments, including a duly executed transfer, Land Control Board consent, and payment of stamp duty. This omission, according to the Plaintiff, facilitated the fraud and placed the Plaintiff's land at risk of disposal under the charge registered in favour of the 4th Defendant.
41. The Plaintiff further relied on Section 80(1) of the *Land Registration Act*, 2012, which provides that:
- “Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
42. It was thus urged that this Court is clothed with jurisdiction to rectify the register by cancelling the title registered in the name of the 1st Defendant and restoring the Plaintiff as the absolute proprietor.



43. Conclusively submitted that the transfer of the suit property to the 1st Defendant was fraudulent, illegal, and irregular, aided by the 2nd Defendant, and that the subsequent charge in favour of the 4th Defendant was equally tainted. He therefore prayed that the Court grant all the declaratory and injunctive reliefs sought in the plaint, together with costs.
44. The 2nd and 3rd Defendants, through counsel, submitted that the impugned transfer of title in favour of the 1st Defendant was patently irregular, fraudulent, and unprocedural, thus falling squarely within the exceptions to indefeasibility of title under Section 26(1) of the *Land Registration Act*, 2012. It was contended that whereas the law grants sanctity to a registered title, such protection does not extend to titles obtained by fraud, misrepresentation, or through illegal and corrupt schemes.
45. Counsel underscored that the 1st Defendant himself conceded in his testimony that he neither participated in the conveyancing process nor executed any requisite transfer documents, but instead relied entirely on an alleged agent, one Nicholas Sankok, who was never called to testify, nor shown to have had any lawful authority from the Plaintiff. The absence of a letter of authority or power of attorney, coupled with the Plaintiff's lack of knowledge or consent, was urged as clear evidence that the transfer was effected contrary to the law and in violation of the principle of consensual land transactions.
46. On the element of fraud, the 2nd and 3rd Defendants drew from Black's Law Dictionary definition of fraud as a knowing misrepresentation of the truth or concealment of a material fact, submitting that the purported agent's concealment of the Plaintiff's non-participation in the transaction amounted to a deliberate deceit upon the Land Registry. It was further argued that the 1st Defendant could not shield himself under the doctrine of bona fide purchaser for value without notice, as he had produced no sale agreement, no proof of consideration, and no transfer instruments executed by either party.
47. In support, reliance was placed on the Court of Appeal's pronouncement in *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others* [2015] eKLR, where it was stated that:

“It is not enough to plead that one is an innocent purchaser for value. One must go further and demonstrate that they conducted proper due diligence and that the transaction was free from irregularities.”
48. Applying that principle, counsel submitted that the 1st Defendant's failure to make any inquiries into a transfer he did not initiate, coupled with his blind reliance on an agent of dubious authority, demonstrated willful blindness, if not outright collusion, in the fraudulent scheme.
49. Further, on the law of agency, it was argued that a principal is liable for the acts of his agent, and where those acts are fraudulent or dishonest but are ratified by the principal through acceptance of the benefits, the law imputes the fraud upon the principal. In the instant case, the 1st Defendant ratified the alleged agent's conduct by accepting registration of the title in his name, and subsequently charging it to the 4th Defendant for financial gain, thus binding himself to the fraudulent acts.
50. The 2nd and 3rd defendants therefore urged the Court to declare the 1st Defendant's title null and void, to order its cancellation, to direct reversion of the property to the Plaintiff as the lawful proprietor, and to award costs of the suit to the Plaintiff.
51. The 4th Defendant submitted that no restraining order can issue merely because there is a dispute on the amount due or interest payable. They contend that such an injunction is only available where the outstanding sums are deposited in court or where the amount demanded is shown to be excessive. Reliance was placed on authorities which establish that once a chargor defaults, the chargee's statutory power of sale arises and the court will only intervene if the statutory process is abused. In *Mafuta*



- Products Ltd v Barclays Bank of Kenya Ltd [2017] eKLR, the court held that a chargee is entitled to exercise the power of sale upon default but must comply with procedure and substantive law. Similarly, in Joseph Okoth Waudi v National Bank of Kenya (C.A. No. 77 of 2004), the Court of Appeal declined to issue an injunction where default was proved and there was no evidence of oppression in the exercise of the statutory power. The reasoning from these authorities is that equity will not restrain a lawful mortgagee from exercising its right unless there is clear illegality, oppression, or abuse of process.
52. The 4th Defendant further argued that the Plaintiff failed to discharge the burden of proof for fraud. Citing *Kimanthi Kilonzo v Susan Wangari Kiiru* [2019] eKLR and *Hanniel Gichina Mwangi v Joe Mwaniki Mwangi* [2018] eKLR, it was emphasized that under sections 107–109 of the *Evidence Act*, the burden of proof rests on the person alleging fraud. Courts have consistently held that fraud must not only be pleaded but strictly proved, to a standard higher than on a balance of probabilities but short of beyond reasonable doubt, as affirmed in *R.G. Patel v Lalji Makanji* [1957] EA 314. In the present case, the Plaintiff did not adduce expert evidence or credible material to prove forgery or fraud. As such, the allegations remain unsubstantiated.
  53. The Defendant also invoked the doctrine of estoppel under section 120 of the *Evidence Act*, urging that the Plaintiff, having knowingly entered into contractual arrangements, cannot now renege on his obligations. Cases such as *Esther Akinyi Odidi v Sagar Hardware Stores Ltd* [2006] eKLR and *Ayman Hijjawi v Anwar Hussein* [2014] eKLR were cited to show that one who causes another to rely on their word or deed cannot later deny its truth. This principle underscores the sanctity of commercial transactions, which courts are enjoined to uphold.
  54. On the sanctity of contracts, reliance was placed on *Jopa Villas LLC v Overseas Private Investment* [2009] eKLR and *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd* [2002] EA 503, where the courts reiterated that courts should not rewrite contracts freely entered into by parties. The charge instrument signed by the Plaintiff's counterparty binds them to its terms, and default therein entitles the bank to enforce its rights. Equity does not relieve a party from a bad bargain unless there is evidence of coercion, fraud, or undue influence, none of which has been proved here.
  55. As to costs, the 4th Defendant invoked section 27 of the *Civil Procedure Act*, arguing that costs follow the event unless there are good reasons otherwise. The principle, as reinforced in *Party of Independent Candidate of Kenya v Mutula Kilonzo* [2013] eKLR, is that successful parties are entitled to costs as a matter of course, subject to the court's discretion.
  56. The 1st Defendant in his submissions contends that the Plaintiff's case is unmerited, having been founded on bare allegations devoid of evidential support. It is his case that there existed a valid contract between himself and the Plaintiff, which was voluntarily executed on 20th December, 2017. The 1st Defendant points out that the Plaintiff, then represented by counsel, executed the agreement for sale and received consideration thereunder. In his view, the essential elements of a valid contract – namely offer, acceptance, and consideration – were present, thereby rendering the agreement binding upon both parties. To buttress this position, he relies on *William Muthee Muthami v Bank of Baroda* [2014] eKLR, where the Court observed that an aggrieved party must prove the existence of offer, acceptance and consideration before bringing a claim in contract. He also draws from the definition of “contract” and “consideration” in *Black's Law Dictionary*, submitting that the Plaintiff received value in the form of monetary consideration, while the 1st Defendant obtained the benefit of using the property as security, hence the agreement was valid and enforceable.
  57. On the allegation of fraud, the 1st Defendant submits that the same has neither been pleaded with the required particularity nor proved to the requisite standard. He relies on the definition of fraud in *Black's Law Dictionary* as “a knowing misrepresentation of the truth or concealment of a material



fact to induce another to act to his or her detriment.” In addition, reliance is placed on *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi JA emphasized that fraud must not only be specifically pleaded but also strictly proved, and that it is impermissible to leave it to be inferred from the facts. The 1st Defendant asserts that the Plaintiff, by his own admission, executed the sale agreement and transfer documents, and even created a power of attorney to facilitate the transaction, yet later alleged that he did not fully understand the contents. In his view, such an assertion cannot amount to fraud, for fraud denotes deliberate dishonesty, which was neither alleged with particularity nor proved to the requisite standard.

58. The 1st Defendant further relies on *Alfred Kioko Muteti v Timothy Miheso & Another* [2015] eKLR, where the Court held that the burden of proof lies on the party who would fail if no evidence were given, and that pleadings are not evidence. He argues that the Plaintiff failed to discharge this burden under sections 107 and 108 of the *Evidence Act*, having neither reported the alleged fraud to the police nor lodged any complaint against his advocate with the relevant disciplinary bodies. To reinforce this point, reliance is also placed on Edward Muriga through *Stanley Muriga v Nathaniel D. Schulter*, Civil Appeal No. 23 of 1997, where the Court of Appeal held that where a party adduces no evidence in support of its assertions, those assertions remain mere allegations incapable of sustaining a claim.
59. On relief, the 1st Defendant maintains that prayers and remedies are only available where the Plaintiff has successfully proved his case, which is not the position here. He therefore submits that the Plaintiff is not entitled to any of the reliefs sought in the plaint. On the question of costs, the 1st Defendant invokes section 27 of the *Civil Procedure Act*, submitting that costs ordinarily follow the event, and since the Plaintiff has failed to prove his case, he ought to bear the costs of the suit.

### Issues for Determination

60. Having carefully considered the pleadings, the oral and documentary evidence tendered, and the written submissions, the Court is of the view that the following issues arise for determination:
- I. Whether the Plaintiff was the lawful proprietor of Title No. 340 and whether the subsequent registration of the 1st Defendant was lawful or tainted by fraud, illegality, or unprocedural dealings.
  - II. Whether there existed any valid authority, consent, or transaction to transfer the suit property to the 1st Defendant or to charge it, and the legal effect of the absence of statutory requirements such as a sale agreement, Land Control Board consent, and stamp duty.
  - III. Whether the 1st Defendant can properly rely on the defence of a bona fide purchaser for value without notice, and whether such defence is sustainable in the circumstances.
  - IV. Whether the 4th Defendant lawfully acquired and can enforce the charge registered against the suit property, and the effect of any irregularities in the 1st Defendant’s title on the Bank’s interest.
  - V. Whether the 2nd and 3rd Defendants bear any responsibility for the impugned registration, and whether the register ought to be rectified by cancellation of the 1st Defendant’s title and encumbrances.
  - VI. Whether the Plaintiff is entitled to the reliefs sought, including cancellation of title, reversion of ownership, injunction, damages, and costs.



## Analysis and Determination

61. The first issue for determination is whether the Plaintiff was the rightful registered proprietor of Title No. 340, and whether the subsequent registration of the 1st Defendant was lawful or was tainted by fraud, illegality, misrepresentation, or unprocedural dealings.
62. Section 26(1) of the [Land Registration Act](#), No. 3 of 2012 provides as follows:

“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 and 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 the ground of fraud or misrepresentation 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.”
63. In *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others* [2015] eKLR, the Court of Appeal held:

“It is not enough to plead that one is an innocent purchaser for value. One must go further and demonstrate that they conducted proper due diligence and that the transaction was free from irregularities.”
64. Similarly, in *Elijah Makeri Nyang’wara v Stephen Mungai Njuguna & Another* [2013] eKLR, Mutungi J. stated:

“The law is extremely protective of title and provides only two instances for challenge of title: first, where the title is obtained by fraud or misrepresentation to which the person is proved to be a party; second, where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
65. The Plaintiff tendered evidence, supported by the official search and Green Card records, showing that he was the registered proprietor of the suit property prior to the impugned transfer. His proprietorship was not contested. The burden then shifted to the 1st Defendant to demonstrate that his acquisition was lawful.
66. The 1st Defendant admitted during cross-examination that he did not personally participate in the transfer process but instead relied on an alleged “agent.” This agent was never called as a witness, nor was any power of attorney or letter of authority produced to confirm the agency relationship. The absence of documentary evidence confirming the Plaintiff’s consent to the transfer is fatal to the 1st Defendant’s claim.
67. Further, the alleged transfer was not supported by any sale agreement, consideration, or executed instrument of disposition, contrary to the mandatory provisions of Sections 37 and 45 of the [Land Registration Act](#), 2012, which require such instruments to be in writing and duly executed by the transferor.
68. The failure to involve the Plaintiff in the transfer process, coupled with reliance on a purported agent without authority, points squarely to unprocedural dealings, concealment, and fraud. The principles



set out in Arthi Highway Developers (supra) apply here: the 1st Defendant failed to demonstrate due diligence and instead benefited from an irregular and unlawful transfer.

69. Therefore, the title held by the 1st Defendant is impeachable under Section 26(1)(a) and (b) of the *Land Registration Act*, being procured unprocedurally and tainted by fraud. The Plaintiff remains the lawful proprietor entitled to protection of his rights under Article 40 of *the Constitution* of Kenya, 2010.

70. The second issue is whether the transfer of the suit property to the 1st Defendant and its subsequent charging to the 4th Defendant Bank was backed by any lawful authority, consent, or valid transaction, and what the legal effect is of the absence of statutory requirements such as a sale agreement, Land Control Board consent, and payment of stamp duty. Section 3(3) of the *Law of Contract Act*, Cap 23 Laws of Kenya provides:

“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 was present when the contract was signed by such party.”

Section 6(1) of the *Land Control Act*, Cap 302 provides:

“Each of the following transactions— (a) the sale, transfer, lease, mortgage, exchange, partition, or other disposal of or dealing with any agricultural land which is situated within a land control area, is void for all purposes unless the Land Control Board for the land control area in which the land is situated has given its consent in respect of that transaction.”

71. Section 19(1) of the *Stamp Duty Act*, Cap 480 provides:

“No instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except— (a) in criminal proceedings, and (b) in civil proceedings by a collector, unless it is duly stamped.”

72. In *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, the Court of Appeal held:

“Any transaction involving agricultural land in a land control area without the consent of the Land Control Board is void for all purposes and incapable of conferring any rights.”

73. In *David Sironga Ole Tukai v Francis Arap Muge & 2 others* [2014] eKLR, the Court of Appeal observed:

“Without a written agreement and Land Control Board consent, there can be no valid transfer of interest in agricultural land. Parties cannot rely on equitable doctrines to sanitize what statute expressly renders void.”

74. The Plaintiff testified that he never executed any sale agreement, transfer, or instrument of disposition in favour of the 1st Defendant. The 1st Defendant on his part relied on an alleged “agent” who supposedly handled the transfer. No sale agreement was produced in Court to demonstrate that consideration passed between the Plaintiff and the 1st Defendant. This is in contravention of Section 3(3) of the *Law of Contract Act*, which requires contracts for disposition of land to be in writing, signed, and witnessed.

75. Further, the suit property, being agricultural land, fell within a land control area. The 1st Defendant did not produce any consent from the Land Control Board sanctioning the transfer. In law, the absence



- of such consent renders the transfer void for all purposes as per Section 6(1) of the *Land Control Act* and the decision in *Willy Kimutai Kitilit (supra)*.
76. Additionally, no evidence was produced of payment of stamp duty in respect of the alleged transfer. Under Section 19(1) of the *Stamp Duty Act*, an unstamped instrument cannot be admitted in evidence or confer any legal effect.
  77. In sum, the purported transfer was not backed by any written sale agreement, lacked the mandatory Land Control Board consent, and was unsupported by proof of payment of stamp duty. The transaction was therefore void ab initio and incapable of conferring any proprietary rights on the 1st Defendant or of forming a valid charge to the 4th Defendant Bank.
  78. The Court finds that there existed no valid authority, consent, or lawful transaction to transfer the suit property to the 1st Defendant or to charge it. The absence of a written sale agreement, Land Control Board consent, and stamp duty payment renders the transaction null and void ab initio. Consequently, the 1st Defendant acquired no valid title capable of being charged to the 4th Defendant, and the Plaintiff's proprietary rights remain unaffected.
  79. The third issue is whether the 1st Defendant was a bona fide purchaser for value without notice, and if that defence shields him from the allegations of fraud and irregularity in the acquisition of the suit property.
  80. A bona fide purchaser for value without notice is one who acquires property in good faith, for valuable consideration, and without knowledge of any fraud, irregularity, or defect in the vendor's title. The defence requires the purchaser to show that due diligence was undertaken, including verifying ownership, ensuring valid documentation, and confirming compliance with statutory requirements. The principle rests on equity: one who innocently purchases without notice of defects should not be penalized. However, the defence is not available where the purchaser ignores obvious irregularities, participates in, or benefits from fraud.
  81. In the present case, the 1st Defendant did not produce evidence of any sale agreement, consideration, or documentation to prove the transfer of ownership was consensual. He admitted to relying on an alleged agent whose authority was neither written nor proved in court. This lack of verifiable documentation undermines the claim that he acted in good faith.
  82. Moreover, the transfer of such property, being agricultural land, required Land Control Board consent and payment of stamp duty. No evidence was furnished to demonstrate that these statutory requirements were complied with. A genuine purchaser acting diligently would have ensured that these processes were followed before accepting registration.
  83. Further, the 1st Defendant conceded that he did not personally participate in the transaction but allowed an unnamed agent to carry out the entire process. This conduct shows willful blindness, as he failed to inquire into the legitimacy of the transfer or to question why the registered owner (the Plaintiff) had not executed any transfer instruments.
  84. The absence of due diligence, combined with unexplained reliance on an unidentified agent, strips the 1st Defendant of the protection afforded to innocent purchasers. The circumstances point more to collusion or negligence rather than genuine, good-faith purchase.
  85. As to whether the 4th Defendant, as chargee, lawfully acquired and holds a valid and enforceable charge over the suit property, and further, whether defects in the 1st Defendant's root of title invalidate the



charge and disentitle the Bank from enforcing its statutory power of sale; The law governing the validity of a charge and the rights of a chargee is set out in Section 79(1) of the *Land Act*, 2012, which provides:

“A proprietor may by an instrument, in the prescribed form, charge the interest in the land, lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money’s worth or the fulfillment of a condition.”

86. Further, Section 25(1) of the *Land Registration Act*, 2012 provides that the rights of a proprietor, including as chargee, are indefeasible except as provided by the Act:

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration, or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject— (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”

87. However, the validity of a charge is dependent upon the validity of the title creating it. In *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held:

“When a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title.”

88. In the context of charges, the Court in *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others* [2015] eKLR, further held:

“If the root of the title is challenged as fraudulent or illegal, then any subsequent transaction founded upon it, however innocent, cannot stand. Fraud unravels everything.”

89. The same principle was echoed in *Lawrence P. Mukiri t/a Mukiri & Co Advocates v Attorney General & 4 Others* [2013] eKLR, where the Court stated:

“Where the chargee’s interest is founded upon a title that is shown to have been unlawfully or fraudulently obtained, such charge cannot enjoy statutory protection under the *Land Registration Act*.”

90. In the present case, the 4th Defendant contended that it conducted due diligence through its appointed advocates, who confirmed the 1st Defendant as the registered proprietor of the suit property. A valuation was also carried out before the loan was advanced, and no irregularities were apparent from the face of the title at that time.

91. However, evidence before this Court demonstrates that the 1st Defendant’s registration as proprietor was tainted with fraud, illegality, and lack of statutory compliance. The 1st Defendant never lawfully acquired the suit property from the Plaintiff, there being no sale agreement, no Land Control Board consent, and no payment of stamp duty. Consequently, the title in the 1st Defendant’s name was defective ab initio.



92. Since the 1st Defendant's title was void, the charge created in favour of the 4th Defendant cannot be said to confer any enforceable rights against the Plaintiff. A chargee cannot acquire better rights than those of its chargor. Put differently, *nemo dat quod non habet*—one cannot give what one does not have.
93. While the Bank may argue that it was an innocent lender for value, the law, as settled in *Arthi Highway Developers and Munyu Maina*, is that a void title cannot sustain subsequent transactions. Thus, however innocent the Bank may have been, its interest falls with that of the 1st Defendant.
94. That said, the Bank retains the right to pursue the 1st Defendant personally for recovery of the outstanding loan balance, as the loan contract remains valid between them, but the suit property cannot lawfully be used as security for enforcement of the same.
95. The Court finds that the 4th Defendant's charge over Title No. 340 is invalid, having been founded upon a defective title held by the 1st Defendant. The Bank cannot enforce the charge or exercise statutory power of sale against the suit property. The Bank's remedy lies in pursuing recovery directly from the 1st Defendant under the loan contract.
96. The fourth issue is whether the 2nd and 3rd Defendants bear any responsibility for the impugned registration, and whether the register ought to be rectified by cancellation of the 1st Defendant's title and encumbrances.
97. The law under Section 80(1) of the *Land Registration Act* provides that:
- “Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that the registration was obtained, made or omitted by fraud or mistake.” Further, Section 80(2) stipulates that: “The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”
98. It is clear from the evidence that the 1st Defendant's registration was effected without compliance with mandatory statutory requirements, including execution of a valid sale agreement, the obtaining of Land Control Board consent, and payment of stamp duty. These were matters falling squarely within the purview of the 2nd Defendant as Land Registrar and the 3rd Defendant as Surveyor. Their duty, as emphasized by the Court of Appeal in *Chemey Investment Ltd v Attorney General & 2 Others* [2018] eKLR, was to exercise due diligence and ensure that no irregular or fraudulent transaction was reflected in the register. Their failure to call any witness to account for the registration leaves the Court with the irresistible inference that they either acquiesced in or failed in their statutory duty to prevent the impugned dealings. . The Land Registrar proceeded to register the title of the suit property in the 1<sup>st</sup> Defendant's name without the supporting documents showing that the Plaintiff had indeed transferred it to the 1<sup>st</sup> Defendant.
99. In the circumstances, the Court finds that the 2nd and 3rd Defendants bear responsibility for having facilitated or failed to prevent the unlawful registration. It therefore follows, pursuant to Section 80 of the *Land Registration Act*, that the register is liable to rectification. The 1st Defendant's title together with all subsequent encumbrances created thereon, including the charge registered in favour of the 4th Defendant, shall be cancelled, thereby restoring ownership of the suit property to the Plaintiff.



100. Turning to the final issue, which is whether the Plaintiff is entitled to the reliefs sought, including cancellation of title, reversion of ownership, injunction, damages, and costs, the Court must consider the scope of relief available in law. Section 13(7) of the *Environment and Land Court Act*, 2011 provides that:
- “In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as it deems fit and just, including—(a) interim or permanent preservation orders including injunctions; (b) prerogative orders; (c) award of damages; (d) compensation; (e) specific performance; (f) restitution; (g) declaration; or (h) costs.”
101. From the evidence on record, it has been demonstrated that the Plaintiff was the rightful owner of the suit land and that the title subsequently obtained by the 1st Defendant was tainted with fraud, illegality and unprocedural dealings. As was held by the Court of Appeal in *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others* [2015] eKLR:
- “Fraudulent titles cannot be sanctified by registration. Courts are bound to order cancellation and rectification of the register where fraud or illegality is proved.”
102. The Plaintiff is therefore entitled to an order cancelling the 1st Defendant’s title and rectifying the register in his favour.
103. The Plaintiff further seeks a permanent injunction restraining the Defendants from interfering with the property. Having established his ownership and the unlawful deprivation of his rights, there is sufficient basis to grant the injunctive relief to protect his proprietary interest.
104. On the question of damages, the Plaintiff has suffered great inconvenience, distress, and violation of proprietary rights occasioned by the fraudulent dealings. The 1<sup>st</sup> Defendant admitted that the initial agreement with the Plaintiff was to use his title only as a security. However, the 1<sup>st</sup> Defendant without the consent and the authority of the Plaintiff proceeded to registered the title in its name and subsequently charged it in favour of the 4<sup>th</sup> Defendant all to its advantage without the Plaintiff’s knowledge. The Court, exercising its powers under Section 13(7) of the *Environment and Land Court Act*, finds that the Plaintiff is entitled to a modest award of general damages against the 1<sup>st</sup> Defendant which the court assesses at Kshs.1,000,000/-.
105. Finally, on costs, Section 27 of the *Civil Procedure Act* provides that costs shall follow the event. The Plaintiff having succeeded in his claim, he is entitled to the costs of this suit together with interest.
106. In the result, the Court finds that the Plaintiff is entitled to the full spectrum of reliefs sought, namely cancellation of the 1st Defendant’s title and encumbrances, reversion of ownership, permanent injunction, restitution of monies and motor vehicle, damages, and costs.
107. In view of the foregoing analysis and findings, the Court enters judgment in favour of the Plaintiff against the Defendants and makes the following orders:
- a. It is hereby declared that the Plaintiff was and remains the lawful proprietor of Title No. 340.
  - b. The registration of the 1st Defendant as proprietor of Title No. 340 is declared unlawful, fraudulent, null and void, and is hereby cancelled together with all consequential entries and encumbrances thereon, including the charge in favour of the 4th Defendant.



- c. The Land Registrar, being the 2nd Defendant herein, is directed forthwith to rectify the land register by cancelling the title of the 1st Defendant and restoring the Plaintiff as the registered proprietor of Title No. 340.
- d. A permanent injunction is hereby issued restraining the 1st Defendant, its agents, servants, or any persons claiming through them from interfering in any manner whatsoever with the Plaintiff's ownership, possession, and use of Title No. 340.
- e. The Plaintiff is awarded general Damages of Kshs. 1,000,000/- against the 1<sup>st</sup> Defendant with interest at court rates from the date of this judgement until payment in full.
- f. Costs of the suit are awarded to the Plaintiff as against the 1st, 2nd, and 3rd Defendants jointly and severally with interest at court rates from the date of this judgement until payment in full.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Chacha h/b for Mr. Pareno for the Plaintiff

Mr. Dadu for the 1<sup>st</sup> Defendant

Ms. Ngira for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

