



Nondi (Suing as a Personal Representative to the Estate of Walter Arthur Nondi-Deceased) v Standard Chartered Bank of Kenya Ltd & 3 others (Environment and Land Case Civil Suit 13 of 2013) [2025] KEELC 6458 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6458 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT 13 OF 2013
SO OKONG'O, J
SEPTEMBER 25, 2025**

BETWEEN

WALTER ACHIENG NONDI (SUING AS A PERSONAL REPRESENTATIVE TO THE ESTATE OF WALTER ARTHUR NONDI-DECEASED) PLAINTIFF

AND

STANDARD CHARTERED BANK OF KENYA LTD 1ST DEFENDANT

DAMARIS AKINYI NONDI 2ND DEFENDANT

KISUMU COUNTY LAND REGISTRAR 3RD DEFENDANT

SUDHA NEHRA T/A APIC ENTERPRISES 4TH DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit against the 1st and 2nd Defendants through a plaint dated 24th January 2013. The plaint was amended on 20th June 2016 and further amended on 18th October 2023 to add the 3rd and 4th Defendants respectively to the suit. The Plaintiff averred that he was the personal representative of the estate of Walter Arthur Nondi, deceased (hereinafter referred to only as “the deceased”), who died on 10th September 2002. The Plaintiff averred that at all material times the deceased was the registered owner of all that parcel of land known as Kisumu Municipality/Block 5/76 measuring approximately 0.0465ha. (hereinafter referred to only as “the suit property”).
2. The Plaintiff averred that the 4th Defendant purchased the suit property at a public auction sale that was conducted by the 1st Defendant and was registered as the owner of the suit property on 26th May 2015. The Plaintiff averred that during the lifetime of the deceased, the deceased charged the suit property to Barclays Bank to secure a loan that had been advanced to him by the said bank. The Plaintiff averred that at the deceased’s death, the charge against the suit property had been discharged by Barclays Bank, but the bank still held the original title to the property. The Plaintiff averred that



the deceased left behind a widow, four sons and five daughters, namely: Jenifa Ajwang Nondi-widow, Walter Ochieng Nondi, Zebedi Odiwuor Nondi, David Bollo Nondi (deceased), Tito Naman Nondi, Rachel Agwambo Adholla (deceased), Peninah Atieno Onyango, Betty Alice Onginjo, Damaris Akinyi Opondo Nondi and Ruth Ngwono Agwata.

3. The Plaintiff averred that it came to his notice that the 1st Defendant, acting through Legacy Auctioneering Services, had advertised the suit property for sale through public auction on 25th January 2013. The Plaintiff averred that upon conducting a search at the land's office, he discovered that the 2nd Defendant, without any notice to the other dependants of the deceased or any succession process, caused the suit property to be transferred to her name in 2007 and thereafter charged the same to the 1st Defendant to secure several loans that were advanced to her by the 1st Defendant. The Plaintiff averred that the 2nd Defendant could not have transferred the suit property to herself without the knowledge and/or authority of the 3rd Defendant. The Plaintiff averred that the 3rd Defendant acted fraudulently by transferring the suit property to the 2nd Defendant without following the prescribed procedure.
4. The Plaintiff averred that the 2nd Defendant charged the suit property to the 1st Defendant to secure loans of Kshs. 2,100,000/-, Kshs. 895,000/- and Kshs. 755,000/- taken in 2007, 2010 and 2011, respectively. The Plaintiff prayed for judgment against the Defendants for;
 1. A permanent injunction restraining the Defendants by themselves, their agents, or servants from selling or offering for sale or in any other way interfering with the suit property.
 2. A declaration that the transfer of the suit property to the 2nd Defendant and the subsequent charge of the same to the 1st Defendant was null and void and should be cancelled.
 3. An order directed to the 3rd Defendant to cancel the fraudulent transfers of the suit property to the 2nd and 4th Defendants and revert the property to the name of Walter Arthur Nondi, deceased.
 4. Costs of the suit and interest.
 5. Any other relief the court may deem fit to grant.
5. The 1st Defendant filed a statement of defence on 19th August 2016. The 1st Defendant denied all the allegations made against it in the amended plaint. The 1st Defendant averred that it held valid charges over the suit property to secure banking facilities granted to the 2nd Defendant and had since exercised its statutory power of sale over the suit property. The 1st Defendant averred that the suit property was sold by public auction on 25th January 2013 in exercise of the 1st Defendant's statutory power of sale. The 1st Defendant prayed that the suit be dismissed with costs.
6. The Attorney General filed a statement of Defence on behalf of the 3rd Defendant on 3rd December 2018. The 3rd Defendant denied the allegations in the amended plaint, save where the same were expressly admitted. The 3rd Defendant averred that if indeed the suit property was transferred to the 2nd Defendant, then the transfer was done lawfully and procedurally. The 3rd Defendant prayed that the suit be dismissed with costs.
7. The 4th Defendant filed a statement of defence dated 16th November 2023. The 4th Defendant averred that she was the registered owner of the suit property, which she purchased following a successful bid in a public auction. The 4th Defendant averred that the Plaintiff's suit was bad in law, incurably defective, and misconceived. The 4th Defendant averred that the Plaintiff lacked capacity to institute the suit and that the suit was statutorily time-barred under the provisions of the *Limitation of Actions Act*, Chapter



- 22 Laws of Kenya. The 4th Defendant averred further that the suit property did not form part of the assets of the estate of the deceased, hence the Plaintiff could not litigate on the same.
8. The 4th Defendant averred that she acquired the suit property at a public auction in which she was the highest bidder and hence the property and title in the suit property passed to her at the fall of the hammer. The 4th Defendant averred that upon paying the purchase price, she acquired a good and indefeasible title in the property. The 4th Defendant averred that the dispute as to how the suit property was transferred from the deceased to the 2nd Defendant was immaterial to the process through which the 4th Defendant acquired proprietary rights over the suit property. The 4th Defendant averred that the Plaintiff had no cause of action against her, as he had no nexus with the process of acquisition of the suit property. The 4th Defendant prayed that the suit against her be dismissed with costs.
 9. At the trial, the Plaintiff gave evidence as PW1. The Plaintiff adopted his witness statement filed in court on 5th October 2018 as part of his evidence in chief and produced the documents attached to his list of documents dated 27th March 2018 filed on the same date as exhibits P.EXH. 1 to 5 respectively. He also produced the documents in his further list of documents dated 4th October 2018 and supplementary list of documents dated 13th July 2021 as P.EXH. 6 to 9 and P.EXH. 10 (a) and 10 (b) respectively. The Plaintiff told the court that his father died on 10th September 2002, and they had not undertaken succession in respect of his estate. He stated that according to P.EXH. 10 (a), his father was the first registered owner of the suit property, while according to P.EXH. 10(b), the 2nd Defendant was indicated as the first registered owner of the suit property. He stated that he did not know how the 2nd Defendant came to be registered as the owner of the suit property. He told the court that the original title deed for the suit property was with Barclays Bank.
 10. On cross-examination by the advocate for the 1st Defendant, the Plaintiff stated that the 2nd Defendant was his sister and that she caused the suit property to be transferred to her name. He stated that he came to know of the transfer of the suit property to the 2nd Defendant when the 1st Defendant put up the suit property for sale by public auction. He told the court that the suit property was charged to Barclays Bank. He stated that it was the 2nd Defendant who authorised the illegal transaction involving the suit property. He stated that he was the personal representative of the estate of his deceased father pursuant to a limited grant of letters of administration that was issued to him on 24th January 2013.
 11. On cross-examination by the advocate for the 4th Defendant, the Plaintiff stated that he had not reported to the police about his sister's alleged acts of fraud. He stated that he had never seen the documents that were used by the 2nd Defendant to transfer the suit property to herself. He stated that he had documents evidencing the fraud by the 2nd Defendant. He stated that he did not know who transferred the suit property to the 2nd Defendant. He stated that the documents he produced in evidence had been examined by the document examiner. He stated that the 4th Defendant was not known to him.
 12. On re-examination, the Plaintiff stated that he did not report the 2nd Defendant's fraud to the police (DCI) because he did not know of the fraud until he saw a notice in the newspaper that the suit property was being auctioned. On examination by the court, the Plaintiff stated that the suit property was still charged to Barclays Bank, which still held the original title in its custody. The Plaintiff stated that he could not remember the term of the original grant to the deceased.
 13. The first to give evidence after the close of the Plaintiff's case was the 4th Defendant, Sudha Nehra (DW1). DW1 stated that she was the registered owner of the suit property. She stated that she had a title deed for the suit property, which she had deposited with her bankers, I & M Bank. She adopted



- her witness statement as her evidence in chief and produced the documents in her list of documents as D.EXH. 1 to 13, respectively. She told the court that she did not acquire the suit property fraudulently.
14. On cross-examination by the Plaintiff's advocate, DW1 stated that she saw an advertisement in a newspaper and placed a bid. She stated that this was not the first property that she purchased. She stated that she purchased the suit property at a public auction. She stated that she was aware that before purchasing a property, she was supposed to do due diligence. She stated that she did not conduct a search because the sale was through an auction. She stated that she came to know of the court order through the auctioneer. She stated that the suit property was registered in the name of the 2nd Defendant on 29th February 2000. She stated that she bought the suit property from the 1st Defendant. On re-examination, DW1 stated that while purchasing the suit property, she relied on the documents which were held by the 1st Defendant.
 15. The 1st Defendant called Annabel Truphosa Malume (DW2) as its witness. DW2 stated that she was the manager of the 1st Defendant in the retail department. DW2 adopted her witness statement filed in court on 11th December 2018 as her evidence in chief and produced the documents in the 1st Defendant's list of documents filed on 23rd April 2019, as a bundle as D.EXH 14.
 16. On cross-examination by the Plaintiff's advocate, DW2 admitted that the bank had a duty to undertake due diligence before taking a property as security. DW2 stated that she did not have a copy of a certificate of search they undertook before they accepted a charge over the suit property. She stated that the suit property was registered in the name of the 2nd Defendant on 20th February 2007, before the 2nd Defendant created a charge over the property in favour of the 1st Defendant. She stated that they could not have taken a charge over the suit property if the property had a subsisting charge in favour of Barclays Bank. She stated that she did not know if the Grant No. I.R 10754 in favour of Walter Arthur Nondi was for the same property. On re-examination, DW2 stated that they normally do due diligence and that she could not tell whether the Grant shown to her in the name of Walter Arthur Nondi was for the same property against which they registered a charge.
 17. The 3rd Defendant called Nelson Odhiambo (DW3), the Land Registrar, Kisumu, as its witness. DW3 produced the documents in the 3rd Defendant's list of documents filed on 26th April 2022 as a bundle as D.EXH. 15. He stated that the documents were from their parcel file. He stated that there was no transfer of the suit property from the deceased, Walter Arthur Nondi, to the 2nd Defendant. He stated that what happened was that the original lease for the suit property in favour of Walter Arthur Nondi expired in 1999 and a second lease was prepared and issued in the name of the 2nd Defendant, Damaris Akinyi Nondi. He stated that he had a copy of the register for the suit property opened on 20th February 2007 in the name of the Government of Kenya. He stated that the lease in favour of the 2nd Defendant was endorsed on the register on 20th February 2007. He stated that he had two white cards (register for leases), the first of which was opened on 20th February 2007 in the name of the 2nd Defendant as the lessee, and the second one, which was opened on 28th September 1975 in the name of the deceased, Walter Arthur Nondi. He stated that the two white cards were for two distinct leases. He produced certified copies of the white cards as D.EXH. 16.
 18. On cross-examination by the advocate for the 1st Defendant, DW3 stated that the suit property had two leases. He stated that the original lease was for a term of 40 years from 1954, which expired in 1994. He stated that the lease was in the name of the deceased, Walter Arthur Nondi. He stated that the second lease was for a term of 50 years with effect from 1994 and was in the name of the 2nd Defendant. He stated there was nothing unusual in the two leases. He stated that there was a charge, a further charge, and a second further charge by the 2nd Defendant in favour of the 1st Defendant. He stated that the charges were registered on the lease in favour of the 2nd Defendant. DW3 told the court that when a lease



expires, the property the subject thereof can be leased to another person, and this was what happened in the case before the court. He stated that the suit property was transferred from the 2nd Defendant to the 4th Defendant on 26th March 2015, and there was nothing irregular in the transfer.

19. On cross-examination by the advocate for the 4th Defendant, DW3 stated that upon expiry of the lease in favour of the deceased, Walter Arthur Nondi, and the same not having been renewed, a new lease was issued in favour of the 2nd Defendant. He stated that that was the lease that was transferred to the 4th Defendant. He stated that the 4th Defendant was the lawful registered owner of the suit property.
20. On cross-examination by the advocate for the Plaintiff, DW3 stated that it was illegal to backdate documents. He stated that the lease in favour of the deceased, Walter Nondi was issued in 1954 and was to expire on 1st March 1994. He stated that an application for the renewal of a lease can be made. He stated that if there is no such application, a new lease can be processed. He stated that a white card must be based on documentation. He stated that the white card for the 2nd Defendant was opened on 20th February 2007, and there must have been documents on which the entry in favour of the 2nd Defendant was based. He stated that the parcel file should contain all documents relating to a particular parcel of land. He told the court that the documents which he produced in court were from their parcel file. He stated that there were two certificates of lease in favour of the 2nd Defendant. He stated that the first lease was transferred from the deceased, Walter Nondi, to the 2nd Defendant, and the second lease was issued directly to the 2nd Defendant. He stated that the first lease was erroneous because an expired lease cannot be transferred.
21. DW3 stated further that the entry about the transfer of the lease from the deceased to the 2nd Defendant was made on 29th February 2000, and he did not know who made the entry. He stated that the transfer of an expired lease was erroneous and, as such, null and void. He stated that the land registrar who registered the purported transfer did not know what he was doing. He stated that the lease in favour of the 2nd Defendant commenced on 1st March 1994. He stated that the lease and the certificate of lease in favour of the deceased were surrendered. He told the court that they keep surrendered leases in Nairobi. He stated that the surrender was made in Nairobi and that the file held in Nairobi was not the same as the one they kept in Kisumu.
22. After the close of evidence, the parties made closing submissions on writing.

The Plaintiff's submissions

23. the following issues for determination;
 1. Whether the transfer of the suit property to the 2nd Defendant on 20th February 2007 was lawful and procedural;
 2. Whether this suit is time-barred; and
 3. Who is to bear the costs of this suit?
24. On the first issue, the Plaintiff submitted that the 2nd Defendant failed to appear and defend the suit. The Plaintiff submitted that all the averments in the plaint and the evidence tendered against the 2nd Defendant were not controverted by the 2nd Defendant. The Plaintiff submitted that a party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or set of facts has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. The Plaintiff submitted that the suit property was registered in the name of the deceased as at the time of his death, and no grant of letters of administration in respect of his estate had been taken out as at the time the property was registered in the name of the 2nd Defendant. The Plaintiff submitted that



the burden was on the 2nd Defendant to tell the court how the suit property was registered in her name. In support of this submission, the Plaintiff cited Section 107 of the *Evidence Act*, *North End Trading Company Limited (Carrying on the business under the Registered name of Kenya Refuse Handlers Limited) v. City Council of Nairobi* [2019] eKLR, *Motex Knitwear Limited v. Gopitex Knitwear Mills Limited Nairobi* (Milimani) HCCC No. 834 of 2002, and *Karuru Munyororo v. Joseph Ndumia Muarge & Another Nyeri*, HCCC No. 95 of 1988. The Plaintiff submitted that the transfer of the suit property to the 2nd Defendant was unprocedural and fraudulent. The Plaintiff submitted that the 3rd Defendant connived with the 2nd Defendant in the said fraud. The Plaintiff submitted that the suit property should have been dealt with in accordance with the law of succession. In support of this submission, the Plaintiff cited *Babola Mkalindi v. Michael Seth Kiseme & 2 Others* [2012] eKLR. The Plaintiff submitted that the transfer of the suit property to the 2nd Defendant and the subsequent charging of the property in favour of the 1st Defendant amounted to intermeddling in the estate of a deceased person, contrary to Section 45 of the *Law of Succession Act*, Chapter 160 Laws of Kenya.

25. On the second issue, the Plaintiff submitted that he discovered the 2nd Defendant's fraud in 2013 upon conducting an official search at the Land Registry and this suit was filed thereafter within the 12 years limitation period provided in Section 7 as read with Section 26 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya which provides for the extension of limitation period in cases of fraud. In support of this submission, the Plaintiff cited *Kenya Ports Authority v. Timberland (K) Ltd.* [2017] eKLR, *Githaka Kiandingu v. Mary Naomi Mwangi & Another* [2020] eKLR and *Mwaniki Muchira v. Godfrey Muchangi* [2018] eKLR.
26. On the issue of costs, the Plaintiff cited Section 27 of the *Civil Procedure Act* and submitted that costs follow the event.

The 3rd Defendant's Submissions

27. The 3rd Defendant filed submissions dated 19th December 2024. The 3rd Defendant submitted that the main issue for determination was whether the transfer of the suit property to the 2nd Defendant was fraudulent. The 3rd Defendant cited Section 107 of the *Evidence Act* and submitted that a party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or set of facts has a legal obligation to provide evidence that will best facilitate the proof of existence of those facts. The 3rd Defendant submitted that the burden is always on the party who alleges fraud to prove the same. In support of this submission, the 3rd Defendant cited *Kuria Kiarie & 2 Others v. Sammy Magera* (2018) eKLR and *Gichinga Kibutha v. Caroline Nduku* [2018] e KLR. The 3rd Defendant submitted that the Plaintiff made allegations of fraud against the 3rd Defendant but failed to adduce evidence in support of those allegations. The 3rd Defendant submitted that the land registrar is tasked with verifying whether a document meets the registration criteria outlined in sections 44, 45, and 46 of the *Land Registration Act* 2012 concerning proper execution and verification. The 3rd Defendant submitted that the detection of fraud is beyond the land registrar's mandate, which is predominantly administrative. The 3rd Defendant submitted that the Plaintiff did not prove his case against the 3rd Defendant.

The 4th Defendant's submissions

28. The 4th Defendant filed submissions dated 13th December 2024. The 4th Defendant framed the following issues for determination;
 - a. Is this suit statutorily time-barred, incompetent and bad in law?



- b. Upon expiry of the lease in the name of the deceased, Walter Arthur Nondi, did the deceased retain any interest in the suit property that the Plaintiff could litigate over?
- c. Has the Plaintiff proved his case as to entitle him to the reliefs sought in the plaint?
- d. Who bears the costs of this suit?
29. The 4th Defendant submitted that the suit was time-barred under Sections 7 and 9 of the Limitation of Actions Act, Chapter 22, Laws of Kenya. The 4th Defendant submitted that the lease in the name of the deceased, Walter Arthur Nondi (the deceased), expired on 1st March 1994. The 4th Defendant submitted that the Plaintiff filed the present suit in 2013, approximately 19 years later. The 4th Defendant submitted that the deceased's interest in the suit property expired by effluxion of time, and as such, the property could not form part of the deceased's estate. In support of this submission, the 4th Defendant cited *Suleiman Murunga v. Nilestar Holdings Limited & Another* [2014] eKLR. The 4th Defendant submitted that upon expiry of the lease in the name of the deceased, the suit property escheated to the government and became public land. The 4th Defendant submitted that the lease could either be renewed in favour of the deceased if he applied for renewal, or the suit property could be allocated to another person upon application.
30. The 4th Defendant submitted that the Plaintiff alleged that the entire process leading to the registration of the 2nd Defendant as the leasehold proprietor of the suit property was fraudulent, illegal and irregular. The 4th Defendant submitted that after the expiry of the lease over the suit property in favour of the deceased, the lease in favour of the 2nd Defendant was registered in 2007 and was effective from 1st March 994. The 4th Defendant submitted that the process leading to the registration of the 2nd Defendant as the lessee of the suit property was lawful and regular. The 4th Defendant submitted that the Plaintiff did not prove the allegations of fraud pleaded against the Defendants. In support of this submission, the 4th Defendant cited *Kinyanjui Kamau v. George Kamau* [2015] eKLR, *Kuria Kiarie & 2 Others v. Sammy Magera* [2018] eKLR and *Abdi Adan Hussein & 2 Others v. Attorney General & 2 Others* [2017] eKLR. The 4th Defendant submitted that she was not obligated to undertake any due diligence before buying the suit property at a public auction. The 4th Defendant submitted that the rights she acquired were protected under the doctrine of innocent purchaser for valuable consideration in an overt market without notice of any irregularity in the sale or prior adverse claims. The 4th Defendant cited *Katende v. Haridar & Company Limited* [2008]2 E.A. 173 in support of this submission. The 4th Defendant urged the court to dismiss the Plaintiff's suit against her with costs.

Analysis and Determination

31. I have considered the pleadings, evidence and submissions by the parties. The main issues arising for determination in this suit are whether the suit property, Kisumu Municipality/Block 5/76, was registered in the name of the 2nd Defendant illegally and fraudulently with the connivance of the 3rd Defendant, whether the charges that were created by the 2nd Defendant over the property in favour of the 1st Defendant were illegal, whether the sale of the suit property by the 1st Defendant to the 4th Defendant in exercise of its statutory power of sale was illegal, and whether the Plaintiff is entitled to the reliefs sought in his amended plaint. I will consider all these issues together as they are intertwined.
32. The facts of this case that would make or break the Plaintiff's case are not disputed. The deceased, Walter Arthur Nondi, was registered as the leasehold proprietor of the suit property for a term of 40 years from 1st March 1954. This means that the lease in favour of the deceased lapsed by effluxion of time on 1st March 1994. The deceased died on 10th September 2002. The deceased did not apply for the



extension or renewal of the lease during his lifetime. Before the death of the deceased but after the expiry of the lease, the expired lease was purportedly transferred to the 2nd Defendant on 29th February 2000. Having noted the futility of acquiring an expired lease, the 2nd Defendant surrendered the purported lease and was issued with a new lease for the suit property in her name for a term of 50 years from 1st March 1994, which was the date of expiry of the deceased's lease. The 2nd Defendant's lease was registered on 20th February 2007, and she was issued with a certificate of lease on the same date. It was the 2nd Defendant's leasehold interest in the suit property that she charged, further charged and further charged to the 1st Defendant on 29th May 2007, 14th July 2010 and 5th April 2011 to secure loans that were advanced to her by the 1st Defendant. When the 2nd Defendant defaulted in her loan repayment obligations to the 1st Defendant, the 1st Defendant sold the suit property by public auction in exercise of its statutory power of sale to recover the outstanding loan. The 4th Defendant was the auction purchaser of the suit property. All these facts are not disputed and are based on the evidence on record.

33. It is clear from the foregoing that the deceased's 40-year lease expired on 1st March 1994 and that the suit property, which was the subject thereof, reverted to the Government of Kenya, which was the freehold owner thereof. This means that as at 29th February 2000, when the deceased's purported leasehold interest in the suit property was transferred to the 2nd Defendant, the deceased had no interest in the property. The suit property was owned by the Government of Kenya and not the deceased. There was no existing leasehold interest in the property that could have been transferred to the 2nd Defendant. The purported transfer of the deceased's purported leasehold interest in the suit property was therefore a nullity and inconsequential. The same did not confer upon the 2nd Defendant any interest in the suit property. The nullity in the purported transfer of the suit property to the 2nd Defendant on 29th February 2000 was overtaken by events when the purported lease was surrendered by the 2nd Defendant. It is no wonder, therefore, that the Plaintiff did not base his claim on the said transfer of 29th February 2000.
34. The Plaintiff's case is based on a purported transfer of the suit property to the 2nd Defendant on 20th February 2007. The question is whether there was such a transfer, and if there was, whether it was illegal. From the evidence before the court, the registration of the 2nd Defendant as the owner of the suit property on 20th February 2007 was not pursuant to a transfer. As mentioned earlier, the deceased's leasehold interest in the suit property came to an end on 1st March 1994, and the 2nd Defendant was granted a new lease by the Government of Kenya for a term of 50 years from 1st March 1994. It was this new lease in favour of the 2nd Defendant, which was registered on 20th February 2007. As at 10th September 2002, when the deceased died, he had no interest in the suit property. This means that when a new lease was granted to the 2nd Defendant by the Government of Kenya on 20th February 2007, the estate of the deceased had no interest in the property. As correctly submitted by the 4th Defendant, the suit property did not form part of the deceased's estate as it was not owned by the deceased as at the date of his death. Section 79 of the *Law of Succession*, Chapter 160 Laws of Kenya provides as follows:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

35. It is clear from that section that only the property of a deceased person vests in his or her personal representative. The leasehold interest that the deceased held in the suit property, having come to an end through the expiry of the lease, the suit property could not be said to be a property of the deceased in



terms of Section 79 of the Law of Succession Act. The property belonged to the Government of Kenya, which was at liberty to lease the same to whoever it wished. Since the suit property did not vest in the Plaintiff as the personal representative of the deceased, the Plaintiff, as submitted by the 4th Defendant, had no locus standi to challenge the legality or otherwise of the 50-year lease that was granted to the 2nd Defendant by the Government of Kenya.

36. It is my finding that there was no transfer of the deceased's leasehold interest in the suit property to the 2nd Defendant. The 2nd Defendant acquired her own leasehold interest in the suit property after the interest of the deceased, who was her father, came to an end. The Plaintiff has not persuaded me that there was any illegality or fraud in the acquisition by the 2nd Defendant of the leasehold interest in the suit property from the Government of Kenya. The Plaintiff has therefore not proved the illegality and fraud pleaded against the 2nd and 3rd Defendants.
37. There is no dispute that the 2nd Defendant charged not the deceased but her own leasehold interest in the suit property to the 1st Defendant to secure loans that were advanced to her by the 1st Defendant. There is also no dispute that the 2nd Defendant defaulted in her loan repayment and that the suit property was put up for sale by the 1st Defendant in exercise of its statutory power of sale. It is not disputed that the property was sold by public auction to the 4th Defendant, who was the highest bidder. The 2nd Defendant did not challenge the sale of the suit property by the 1st Defendant. I agree with the 4th Defendant that the 4th Defendant's position as a purchaser of the suit property for valuable consideration from a chargee exercising its statutory power of sale is protected by the law. Section 99 of the Land Act 2012 provides as follows:

- “(1) 1) This section applies to—
- (a) a) a person who purchases charged land from the chargee or receiver, except where the chargee is the purchaser; or
 - (b) b) a person claiming the charged land through the person who purchases charged land from the chargee or receiver, including a person claiming through the chargee if the chargee and the person so claiming obtained the charged land in good faith and for value.
- (2) A person to whom this section applies—
- (a) a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the charged land;
 - (b) b) is not obliged to see to the application of the purchase price;
 - (c) c) is not obliged to inquire whether there has been a default by the chargor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.
- (3) A person to whom this section applies is protected even if at any time before the completion of the sale, the person has actual notice that there has not been a default by the chargor, or that a notice has been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which that person has actual or constructive notice.



- (4) A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.”

38. In *Joyce Wairimu Karanja v. James Mburu Ngure & 3 others* [2018] eKLR, the court stated that:

“ 29. Third, both statutory and decisional law have clearly stated that the remedy for a mortgagor who has suffered damages as a result of improper auction, is not to reverse the auction against an innocent purchaser – but in damages. Indeed, the statute immunizes a purchaser at a sale conducted by a mortgagee in the exercise of the statutory power of sale in the following words in section 99 of the *Land Act*...

30. This section seems quite clear that a purchaser of property sold in the exercise of a chargee’s statutory power of sale is protected even in cases where the person had actual notice that the chargee had not properly realized that statutory power of sale in terms of procedure. In this case, there is no evidence to show that the Appellant had any notice of any irregularities in the planned sale and evidence suggests that there were none anyway. The point is that the Appellant is then inoculated by section 99 from any action to recover the Suit Property from her.”

39. It is my finding that the suit property was lawfully held by the 2nd Defendant as the leasehold owner thereof when she charged the same to the 1st Defendant. The charges that were created over the suit property by the 2nd Defendant were therefore lawful. The 2nd Defendant having defaulted in her loan repayment obligations, the 1st Defendant had the right under the terms of the aforementioned charges and the law to sell the suit property to recover the outstanding loan amount. The sale of the suit property to the 4th Defendant was therefore lawful, and as such, the 4th Defendant is the lawful owner of the suit property.

Conclusion

40. In the final analysis and for the foregoing reasons, I find the Plaintiff’s claim not proved. The suit is accordingly dismissed with costs to the 1st, 3rd and 4th Defendants.

DATED AND SIGNED AT KISUMU THIS 25TH DAY OF SEPTEMBER 2025

S. OKONG’O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing platform in the presence of;

Ms. Raburu h/b for Mr. Omondi for the Plaintiff

Mr. Odeny h/b for Ms. Mucheru for the 1st Defendant

N/A for the 2nd Defendant

N/A for the 3rd and 4th Defendants

Ms. J. Omondi-Court Assistant

