



**Mureithi & Mureithi (Suing as Administrators of the Estate of Evanson Mureithi Kiboi) & another v Maina & 4 others (Environment & Land Case 105 of 2022) [2025] KEELC 4495 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4495 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 105 OF 2022  
LC KOMINGOI, J  
JUNE 12, 2025**

**BETWEEN**

**AMOS NJAU MUREITHI AND RACHEL WANJIKU MUREITHI (SUING AS ADMINISTRATORS OF THE ESTATE OF EVANSON MUREITHI KIBOI) ..... 1<sup>ST</sup> PLAINTIFF**

**GEORGE GITONGA KANYI AND CYRUS PETER KANYI (SUING AS ADMINISTRATORS OF THE ESTATE OF STEPHEN KANYI MUCHIRI) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**STEPHEN MWANGI MAINA ..... 1<sup>ST</sup> DEFENDANT**

**WILSON IRUNGU NDIRANGU ..... 2<sup>ND</sup> DEFENDANT**

**THE AIR TRAVEL AND RELATED STUDIES LTD ..... 3<sup>RD</sup> DEFENDANT**

**HOUSE AND HOMES LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NGONG ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By the Complaint dated 14<sup>th</sup> December 2022, the Plaintiffs state that parcel Ngong/Ngong/23839 registered on 19<sup>th</sup> October 1999 has always been registered in the name of Evanson Mureithi Kiboi, who passed away on 4<sup>th</sup> January 2001. This parcel came about after 10 acres of land were excised from Land parcel No. Ngong/Ngong/1409. Sometime in November 2021 the Plaintiffs instructed their advocates to carry out a routine search pending the transfer from the 1<sup>st</sup> Plaintiffs to the 2<sup>nd</sup> Plaintiffs. A search was conducted and it was then discovered that the property was no longer in Deceased's name as per the following entries on the green Card: On 19.10.1999 the property was registered in favour of



Evanson Mureithi Kiboi and title issued on the same day; On 20.11.2002 the property was registered in favour of Stephen Mwangi Maina and title issued on the same day; On 16.10.2012 the property was registered in favour of Wilson Irungu Ndirangu and title issued on the same day On 23.07.2019 this title was closed on Sub-Division on application of Wilson Irungu Ndirangu (the 2<sup>nd</sup> Defendant) and the following titles issued: Ngong/Ngong/94875; Ngong / Ngong /94876; Ngong / Ngong/ 94877; Ngong/Ngong/94878, and Ngong/Ngong/94879. On 13.3.2020 Title Ngong/Ngong/94875 was registered in favour of Air Travel and Related Studies Ltd (the 3<sup>rd</sup> Defendant) and charged together with other properties to Gulf African Bank Ltd to secure a loan of Kshs. 32,500,000. On 13.3.2020 Title Ngong/Ngong/94876 was registered in favour of Air Travel and Related Studies Ltd (the 3<sup>rd</sup> Defendant) and charged together with other properties to Gulf African Bank Ltd to secure a loan of Kshs. 32,500,000. Title Ngong/Ngong/94877 was closed on subdivision resulting to Ngong/Ngong/95258 and 95259. On 13.3.2020 Title Ngong/Ngong/95258 was registered in favour of Air Travel and Related Studies Ltd (the 3<sup>rd</sup> Defendant) and charged together with other properties to Gulf African Bank Ltd to secure a loan of Kshs. 32,500,000. Title Ngong/Ngong/94878 was closed on combination with title Ngong/Ngong/94879 and Ngong/Ngong/95259 to form title Ngong/Ngong/97127. Title Ngong/Ngong/97127 was closed on the request of House and Homes Limited (the 4<sup>th</sup> Defendant) and subdivided into 46 parcels number Ngong/Ngong/99163 to Ngong/Ngong/99208 registered in favour of House and Homes Limited (the 4<sup>th</sup> Defendant).

2. The Plaintiffs stated that the Administrators of the Estate of the late Evanson Mureithi Kiboi did not execute any transfers of the suit property in favour of the 1<sup>st</sup> Defendant or any other party and they were still in possession of the original Title deed. They also pointed that in 2007, the 2<sup>nd</sup> Plaintiffs conducted a search which showed that the suit property was still in the name of Evanson Mureithi Kiboi. It was impossible for any transfer to have been undertaken in 2002 because the late Evanson passed away in 2001. It is their case that, all the transfers and subdivisions were null and void having been fraudulently undertaken.
3. The allegations of fraud and illegality was particularised as follows: Transferring the suit property from one Evanson Mureithi Kiboi on 20<sup>th</sup> November 2002 while he passed away on 4<sup>th</sup> January 2001. Transferring the suit property to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants without the Plaintiffs authority. Presenting forged transfer documents, application for consent to the Land Control Board and any other documents required to effect the transfer. Impersonating Evanson Mureithi before the persons in whose presence he was required to appear to execute necessary transfer and subdivision documents. Presenting a forged title deed in respect of the suit property. Transferring the suit property to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants without paying consideration to the 1<sup>st</sup> Plaintiffs.
4. They therefore sought for the following reliefs against the Defendants jointly and severally:
  - a. A declaration that Evanson Mureithi Kiboi (Deceased) is the lawful and rightful owner of all that property known as Title Number Ngong/Ngong/23839.
  - b. A declaration that transfer to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and subsequent subdivision of Title Number Ngong/Ngong/23839 is unlawful, fraudulent, null and void and of no legal consequence.
  - c. An order directing the 5<sup>th</sup> Defendant to cancel the titles issued to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant in respect of Title Number Ngong/Ngong/23839 and the register thereof rectified to read Evanson Mureithi Kiboi (Deceased)



- d. An order directing the 5<sup>th</sup> Defendant to cancel the following titles issued to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and the register rectified to Title Number Ngong/ Ngong/ 23839 in the name of Evanson Mureithi Kiboi (Deceased): Ngong/Ngong/94875 to Ngong/Ngong/99208.
  - e. A permanent Injunction restraining the 1<sup>st</sup> to 4<sup>th</sup> Defendants by themselves or their agents, servants, employees, any other person claiming under them from selling, transferring, disposing, entering or constructing thereon or in any manner interfering and/or dealing with all that property known as Title Number Ngong/Ngong/ 23839 and the sub-plots ensuing from its subdivision.
  - f. General damages against the Defendants for the illegal and fraudulent transfer and subdivision of Title Number Ngong/Ngong/ 23839.
  - g. Any other relief that the Hon. Court may deem fit and just to grant.
  - h. Costs and interests of the suit.
5. The 1<sup>st</sup> Defendant who was duly served neither entered appearance nor filed a statement of defence.
  6. The 2<sup>nd</sup> Defendant's in his statement of Defence dated 22<sup>nd</sup> April 2024 contested the Plaintiffs' allegations stating that he did due diligence with the 5<sup>th</sup> Defendant and there were no adverse claims against the title and was issued with the title deed to the property by the 5<sup>th</sup> Defendant. In July 2019 he applied for sub-division of the parcel and the 5<sup>th</sup> Defendant approved the same vide mutation no. 04455131 thus the notion that transfers and sub division of the suit property are fraudulent, illegal, null and void were untruthful. Further, from the Plaintiffs' record, the Plaintiffs approached the High court in Nairobi under Succession No.2664 of 2001 with summons to rectify the grant and misled court to issue the grant in Respect to Title number Ngong/Ngong/23839 which they were aware that the same property was no longer in existence having been closed upon subdivision. The rectification of grant by the Plaintiff was thus an afterthought as the same was done 21 years later after the Succession had been filed in the High court at Nairobi in 2001. As such, the suit should be dismissed with costs.
  7. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants in their Statement of Defence dated 13<sup>th</sup> February 2023 admitted that it was the registered proprietor of parcels Ngong/Ngong/94875, 94876 and 95258 having acquired them for due consideration from the registered owner Wilson Irungu Ndirangu (the 2<sup>nd</sup> Defendant) in January 2020 and had been in occupation since then. They contested any allegation of fraud or illegality stating that they were innocent purchasers for value without knowledge of fraud or any adverse claim from any party. They added that they had developed and heavily invested on the properties to a tune of Kshs. 174,681,146. As such, this suit should be dismissed with costs.

### **Evidence of the Plaintiffs.**

8. PW1, Amos Njau Mureithi, 1<sup>st</sup> Plaintiff and one of the Administrators of the Estate of the Late Evanson Mureithi Kiboi adopted his witness statement as his evidence and produced the bundles of documents exhibits in this case. He stated that his father passed on, on 4<sup>th</sup> January 2001. He further stated that at the time, Evanson Mureithi Kiboi, was still the proprietor of the suit property Ngong/ Ngong/23839, the same having registered in his favour on 19<sup>th</sup> October 1999 as per the titled deed produced. As per the Green Card, he stated that the suit property was allegedly transferred to the 1<sup>st</sup> defendant Stephen Mwangi Maina on 20<sup>th</sup> November 2002. He indicated that as of the time of this purported transfer, his father had already passed away and it was not possible for him to have transferred the suit property. It was also his case that as the Administrator of his Estate did not transfer the suit



- property to the 1<sup>st</sup> Defendant. He testified that once they discovered the illegal transfer, the matter was reported to the Directorate of Criminal Investigations and investigations commenced.
9. On cross examination he stated that they became Administrators of the Estate on 5<sup>th</sup> November 2002 and the third entry dated 20<sup>th</sup> November 2002 was after they had been issued with the Grant of Letters of Administration. He could not explain how this happened because they did not transfer the suit property. He indicated that at this time, the 2<sup>nd</sup> Plaintiffs had a pending suit in Court though he did not tender evidence in support of this allegation. He stated that he reported the illegal transfer to the Director of Criminal Investigation but he did not tender any evidence to confirm and that examination of specimen handwriting was also not undertaken by the said office.
  10. On further cross examination he stated that the suit property Ngong/Ngong/23839 was a subdivision of Ngong/Ngong/1409 but did not have documents to prove this. He could not tell how many parcels were subdivided from it. On being referred to the Judgement delivered on 20<sup>th</sup> July 1993 he stated that it showed that parcel 1409 was subdivided into three (3) portions but could not tell what happened to the other portions. That by the time his father passed away, only the suit property was in his name. He further stated that his father died intestate although he had directed that the Estate of Stephen Kanyi Muchiri was the beneficiary of the suit property. He stated that when they filed a succession cause, they included the suit property as part of the schedule of properties but on being referred to the said pleadings he admitted that it was not part of the schedule of properties in 2002. He however stated that they did a rectification of grant in the year 2022 and it was included in the schedule. He confirmed that he did not register his father's death against the title as had been done against LR. NO. Kabete/Kabete/570 where entry number 3 dated 3<sup>rd</sup> March 2003 of was registered. He also stated that a verification of his father's death certificate was carried out but the same was not done for the title deed in their possession.
  11. On being questioned about the alleged fraud, he stated that this was discovered sometime in November 2021 although the suit was filed in December 2022. He stated that during this period, the matter was reported to the Director of Criminal Investigation although no criminal charges were preferred against the Defendants. He maintained that all entries after his father's death were fraudulently done. He also stated that his sister, Racheal Wanjiku Mureithi had also passed away, and was not aware if the 2<sup>nd</sup> Plaintiffs had recorded their statements as they were not in court.
  12. On re-examination he stated that there was an amended Grant dated 3<sup>rd</sup> June 2022 which included the suit property whose beneficiary was the Estate of Stephen Kanyi Muchiri. He therefore, could not have transferred the suit property.
  13. PW2 Daniel Masika Kyule was a retired Assistant Land Registrar, between 1996 and 2016. He stated that he was based at the Kajiado Land Registry from November 2005 to 15<sup>th</sup> September 2015 and in 2007 he was one of the Land Registrars as per the Gazette Notice dated 13<sup>th</sup> July 2007. He confirmed that the Certificate of Official Search on page 31 of the Plaintiffs bundle of documents marked as P. Exhibit 3 bore his signature. He confirmed that according to the copy of the Green Card, entry number 3 was in favour of the 1<sup>st</sup> Defendant, Stephen Mwangi Maina dated 20<sup>th</sup> November 2002. He stated that the property of a deceased person could be transferred using prescribed forms and such entries must be entered in the Green Card and the Personal Representatives of the deceased ought to appear at the Registry.
  14. On cross examination he stated that he had not produced the presentation book for the year 2007 and if that there was forgery in the documentation he would have been charged in Court.



15. On further cross examination he stated that he was summoned to attend Court to produce the Certificate of Official search dated 16<sup>th</sup> July 2007 which shows at that time, suit property was in the name of Evanson Mureithi Kiboi. He added that from the records showed to him, he could not tell that the said Evanson was deceased.
16. PW3 Ann Mararia, the Land Registrar Ngong stated that she was summoned to produce the original title deed for the suit property but the original title deed was not in their possession. They also did not have a transfer from one Evanston Mureithi Kiboi the 1<sup>st</sup> Defendant. They also did not have a consent from Land Control Board, copies of IDs and KRA PINs, valuation for stamp duty or payment of stamp duty in their parcel file records. She stated that these were necessary documents for the transfer to be effected. She indicated that the presentation book contained all the documents presented at the Land Registry and entry number 5 in favour of Wilson Irungu Ndirangu was not in the presentation book marked as P. Exhibit 5.
17. She further stated that when a transfer is effected, it is recorded in the presentation book. She added that parcel No. Ngong/Ngong/1409 appeared in the presentation book as the mother title which was subdivided to parcels; Ngong/Ngong 23838, 23839 and 23840. And that parcel 23839 in the presentation book corresponded with the green card entries in favour of Evanson M. Kiboi. She added that a deceased's person property could only devolve through filling of forms LRA39 and LRA42 which would appear in the green card. She added that death certificate of Evanson Mureithi Kiboi was not recorded on the Green Card because the title deed had been closed on subdivision. She also indicated that the green card was collected by Director of Criminal Investigation on 7<sup>th</sup> November 2023 for investigations.
18. She stated that she was in court on behalf of the 5<sup>th</sup> Defendant as the custodian of land records having been summoned by Court. She stated that as per the green card, parcel 23839 and parcel 94877 were closed on subdivision and parcel 94878 closed on combination. She stated that she was not aware of how the character of these parcels changed because she had no records containing the death of Evanson M. Kiboi as there were no transmission documents. She confirmed that parcel, No. Ngong/Ngong 23839 was registered on 19<sup>th</sup> October 1999. On being asked about the date indicated as 24<sup>th</sup> October 2001 in the mutation form, she stated that it was not a registration date. She did not know what it was. She pointed out that records in the presentation book (which hardly ever have any errors or omissions) are entered manually and it was an internal record in the Land Registry. She further stated that the presentation book confirms the records entered in the Green card and all documents presented for registration are entered in the presentation book. She noted that if a parcel file is misplaced, it does not invalidate the transaction. Similarly, a missing green card does not invalidate a transaction and it can be reconstructed. She pointed out that she only had records for the year 2012 in Court. She indicated that the documents were handed over to her by the outgoing Land registrar and she could not confirm whether the documents held by the Defendants were fraudulently acquired. She also highlighted that any documents from the Land Registry ought to be certified.
19. On re-examination she stated that the original green card was picked from the Land registry by one Corporal Joshua Oburu for investigations. She stated that if the root title was fraudulently acquired, then the resultant titles were also fraudulent.

#### **Evidence of the Defendants.**

20. DW1 Wilson Irungu Ndirangu adopted his witness statement dated 22<sup>nd</sup> April 2024 as his evidence in chief and produced his bundle of documents as exhibits. He stated that he committed no fraud in his acquisition of the suit property from Stephen Mwangi Maina.



21. On cross examination he stated that he saw a copy of the title deed in the name of 1<sup>st</sup> Defendant although he did not present it in court. He stated that he conducted a search which he did not present in Court. He also did not present the consent from Land Control Board in Court. He also stated that he paid stamp duty although he did not present the receipt in court. Similarly, the transfer forms and the title deed in his name were not produced in Court. He confirmed that according to the death certificate, Evanson M. Kiboi passed away on 4<sup>th</sup> January 2001 and could not have transferred the property on 20<sup>th</sup> November 2002. On being referred to the certificate of official search dated 16<sup>th</sup> July 2007 showing that the property was still in the deceased's name, he stated that he was not aware of that. He also confirmed that as per the extract of the presentation book dated 16<sup>th</sup> October 2012 there was no entry effecting transfer from Stephen Mwangi Maina to himself. He also stated that he was not aware that there were no records supporting the transfer of the suit property from the 1<sup>st</sup> defendant to himself.
22. On re-examination he stated that his green card was a certified copy from the Ngong Lands Registry and his title was issued on 16<sup>th</sup> October 2012. At the time, he was not aware there were succession proceedings ongoing and there was no restriction on the land. He stated before he subdivided the land, he had been in possession for almost ten (10) years and had even constructed a house on it. He also stated that during this time, he did not receive any claim or complaint of his possession from the Plaintiffs. He added that he has never been investigated for any fraud, and all the documents relating to the transaction and transfer had been duly handed over and registered with the Lands Registry and he procedurally transferred the land to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
23. DW2 Charles Gitonga Gakuu the director of the 3<sup>rd</sup> Defendant adopted his witness statement dated 12<sup>th</sup> September 2023 and produced the documents in his bundle as exhibits. He testified that prior to the purchase of the suit properties, he undertook due diligence and confirmed that they were registered in the name of the 2<sup>nd</sup> Defendant. The transfer was effected, stamp duty paid, they took possession in 2020 and started developing it. It is his case that at all material times, he never received any complaints regarding his ownership or that he had acquired the properties fraudulently.
24. On cross examination he confirmed that a dead man cannot transfer property adding that he could not explain how come that in 2007 the title was still in the name of the deceased. He confirmed that the evidence of the Land Registrar regarding the entries in the presentation book was concerning to him because the 2<sup>nd</sup> Defendant gave him a title in his name showing that he was the owner of property parcel No. 23839 and the 3<sup>rd</sup> Defendant's parcels were 94875, 94876 and 95258. He indicated that he was aware of the active investigations regarding the suit property and had recorded a statement with the Director of Criminal Investigations. He stated that his titles documents were issued by one S.M. Vasha – Land Registrar, who he was not aware had been interdicted and arrested for altering land records.
25. He stated that his property had been charged to Gulf Bank which had equally carried out due diligence before advancing the loan to him. He stated that prior to the purchase, he visited the land and the area chief confirmed that it belonged to the 2<sup>nd</sup> Defendant. He was shown the green card and there was nothing to show that the plaintiffs were the Administrators of the Estate of late Evanson M. Kiboi because the 1<sup>st</sup> Defendant was the registered owner as of 20<sup>th</sup> November 2002.
26. On re-examination he stated that the first grant given to the 1<sup>st</sup> Plaintiff did not show the suit property as part of the properties but was only included in the Amended Grant. He stated that the Land Registrar did not indicate that they did not have documents between the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants. He noted that the investigations by the Director of Criminal Investigation was before the suit was filed. He also indicated that he was not aware about S.M. Vasha's interdiction because that was not on record adding



that there was no way one could tell that Evanson M. Kiboi had passed away. It is his case that, his titles were not acquired fraudulently or illegally.

27. DW3 John Maingi Wambugu the Director of the 4<sup>th</sup> Defendant adopted his witness statement dated 14<sup>th</sup> September 2023 and produced his bundle of documents as exhibits. He testified that he was familiar with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and only learnt about Evanson M. Kiboi and his demise after this suit was filed. He stated that he purchased his parcel from the 2<sup>nd</sup> Defendant and took possession. He obtained approvals to develop them. He amalgamated the parcels into Ngong/Ngong/97127 and caused further subdivisions into 46 units.
28. On cross examination he stated that he purchased three parcels from the 2<sup>nd</sup> Defendant and his advocate carried out due diligence and confirmed their authenticity. He stated that he was not familiar with the 1<sup>st</sup> Defendant and had never seen him. He said that he relied on the records from the Lands Registry during the transaction and therefore PW3's testimony was a concern to him.
29. On re-examination he prayed for dismissal of the suit on the grounds that he purchased the suit properties on the strength of the documents presented to him from the Land Registry.
30. At the close of the oral testimonies, parties tendered final written submissions.

### **Submissions of the Plaintiffs.**

They are dated 19<sup>th</sup> December 2024. They raise four (4) issues for determination;

31. Was Evanson Mureithi Kiboi the rightful owner of the suit property?
32. Counsel submitted that the Plaintiffs produced a title deed confirming that Evanson Mureithi Kiboi was the registered proprietor as of 19<sup>th</sup> October 1999 for Ngong/Ngong/23839. They produced a Certificate of Official Search dated 16<sup>th</sup> July 2007 which confirmed that he remained the registered proprietor as of that date. Additionally, the mutation Form No. MUT/28/729, registered on 19<sup>th</sup> October 1999, showed that Evanson Mureithi Kiboi applied for the subdivision of Title No. Ngong/Ngong/1409 (measuring 8.09 hectares), resulting in three new titles: Ngong/Ngong/23838, Ngong/Ngong/23839 (the suit property), and Ngong/Ngong/23840. Furthermore, the Green Card to the suit property, produced by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants corroborated this position. The first entry on the Green Card produced by them showed that the property was registered to Evanson Mureithi Kiboi. Finally, the original title deed to the suit property is and has always been in the custody of the 1<sup>st</sup> Plaintiffs all the way from 4<sup>th</sup> January 2001 when Evanson passed away. As such, the Plaintiffs had established that Evanson Mureithi Kiboi was the lawful and original registered proprietor of the suit property.
33. Counsel also submitted that the Plaintiffs had locus standi to institute the suit because the 1<sup>st</sup> Plaintiffs were the Administrators of the Estate of Evanson Mureithi Kiboi (Deceased) having been issued with a confirmed Grant of representation and the 2<sup>nd</sup> Plaintiffs are the Administrators of the Estate of Stephen Kanyi Muchiri and pursuant to the Certificate of Confirmation of Grant issued in the Estate of Evanson Mureithi Kiboi on 5<sup>th</sup> November 2002 (and amended on 3<sup>rd</sup> June 2022) they are the beneficiaries of the suit property.
34. Was the transfer and subdivision of the suit property conducted in accordance with legal requirements, and did the defendants jointly or severally participate in or facilitate any illegality?
35. Counsel submitted that the Plaintiffs adduced evidence demonstrating that the transfer and subdivision of the suit property was neither conducted in accordance with legal requirements nor



supported by lawful documentation. The suit property was registered in the name of Evanson Mureithi Kiboi, who died on 4<sup>th</sup> January 2001, as evidenced by the Certificate of Death verified by the Civil Registration Services. However, the Green Card produced by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants showed that the property was allegedly transferred to the 1<sup>st</sup> Defendant on 20<sup>th</sup> November 2002, nearly two years after the Deceased's death. PW1 contested ever transferring the suit property to anyone adding that he was still in custody of the original title deed. Therefore, no transfer could have been effected without surrendering the original title. It was also submitted that the former Land Registrar, PW2 confirmed that as at 16<sup>th</sup> July 2007, he issued a Certificate of Official Search showing the Deceased was still the registered proprietor. Equally, PW3 confirmed that there were no records at the Ngong Lands Registry showing a lawful transfer from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant. As such, the transfer of the suit property from the deceased to the 1<sup>st</sup> Defendant was illegal and fraudulent. Subsequently the 2<sup>nd</sup> Defendant could only have procured title to the suit property by means of fraud, illegality or through a corrupt scheme (individually or jointly with Defendants).

36. On What is the validity of subsequent titles issued to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on sub division of the suit property, Counsel submitted that the Supreme Court, in *Dina Management Limited v County Government of Mombasa & 5 others (2023) eKLR*, held that the protection offered to a bona fide purchaser for value without notice does not apply where the Title to the property was obtained irregularly or illegally. The 1<sup>st</sup> Defendant, having acquired the title to the suit property through fraud, illegality, and a corrupt scheme, lacked the legal capacity to transfer the property to the 2<sup>nd</sup> Defendant. Consequently, the 2<sup>nd</sup> Defendant was legally incapable of subdividing the illegally acquired property and transferring it to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. As such, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants could not be protected by Section 26 of the *Land Registration Act*.
37. On whether the Plaintiffs were entitled to general damages, it was submitted that Courts had the discretion to award damages for loss of use, nominal damages where loss is established but not quantified, and consequential damages flowing from the fraudulent conduct. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants should thus be ordered to surrender vacant possession of the suit properties and remove the developments erected and being thereon at their own costs, and in default, that the Plaintiffs be at liberty to either maintain or remove the developments at the their costs. And the reliefs sought should be granted as prayed.

### **Submissions of the 2<sup>nd</sup> Defendant.**

38. They are dated 8<sup>th</sup> January 2025. They raise four issues for determination;
- a. Whether the Plaintiffs has proved elements of fraud to the required threshold.
  - b. Whether the Defendants colluded and fraudulently obtained titles of the suit property.
  - c. Whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are bona fide purchaser.
  - d. Costs.

On Whether the Plaintiffs has proved elements of fraud to the required threshold, Counsel submitted that the Plaintiffs failed to prove fraud against the Defendants on the required threshold because at the time of the transfer the Estate of the late Evanson Kiboi had administrators having been given grant letters on 5<sup>th</sup> November 2002 and the transfer was effected on 20<sup>th</sup> November 2002, which could possibly have been carried out by the Administrators. It was also curious as to how PW1 being an Administrator never bothered to visit the suit property from 2002 and did not register LR 39 and 42 (then LR 17 & 19) on the Green card. Therefore the allegation that they conducted a search in



2021 to effect transfer of the land to the 2<sup>nd</sup> Plaintiffs following the judgement delivered in 1993 could only be concluded as malicious. It was also submitted that the Plaintiff did not produce evidence or reports from Document examiner to prove elements of fraud and or forgery of public records as alleged. Reference was made to the case of Kinyanjui Kamau vs George Kamau [2015] eKLR where the court dismissed the appeal as it was not demonstrated that the appellants had proved fraud to the required degree. Counsel argued that Mere production of the Green-card and presentation books without presenting another falsified Green-card and calling makers of Green-card entries and investigation report is baseless and therefore, the allegation of forgery and fraud did not hold water. He added that the lands registry did not denounce the documents held by the Defendants as forgeries pointing out that the green card held was a certified copy of the original. Therefore, how could it be a certified copy of the original if it was fraudulent? As such, the Plaintiff did not prove on a balance of probability that the Defendants colluded to procure their titles fraudulently.

39. On whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are bona fide purchasers, counsel submitted they acquired legitimate titles for valuable consideration having carried out due diligence without notice of fraud or forgery. Therefore, the allegation of fraud not having been proven meant that the Defendants were bonafide purchasers and the suit should be dismissed with costs.

#### **Submissions of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

40. They are dated 20<sup>th</sup> February 2025 Counsel submitted that the allegation of fraud against them was not proved to the required threshold. It was pointed out that no explanation was given as to how the suit property was not in the grant issued in 2009 only for it to appear in the rectified grant on November 2021. Counsel submitted that the only plausible explanation was the Plaintiff transferred the property to the 1<sup>st</sup> Defendant on 20<sup>th</sup> November 2002 after the grant letters and could thus not claim fraud. Counsel also argued that from 2002 when the property was transferred to the 1<sup>st</sup> Defendant to 2022 when this suit was filed, the Plaintiff had been indolent for not being aware of any transactions regarding the suit property and that equity aids the vigilant and this suit was a good example of abuse of the court process and the doctrine of laches should be invoked. It would therefore be unfair to subject the defendants to litigation in respect to a transfer that occurred decades ago.
41. Counsel also argued that this suit was not only barred under the statute of limitation but also the Defendants were bonafide purchasers for value without notice and were protected by Section 26 *Land registration Act* because they were in possession of a document signed by the Registrar which was presumed to be so, unless otherwise proved as per Section 35(1) and (2) *Land Registration Act* and Section 120 *Evidence Act*. Counsel also argued that this suit was the Plaintiffs' attempt at unjust enrichment.
42. It was also submitted that a bonafide purchaser of a legal estate without notice had absolute unqualified and answerable defence against claim of any prior equitable owner as was held in David Peterson Kiengo & 2 others vs Kariuki Thuo (2012) eKLR. Since there was no evidence that Evanson had passed away and all due diligence showed that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants legally and procedurally acquired the suit property, they had demonstrated their innocence in the purchase and acquisition of the properties.

#### **Submissions of the 5<sup>th</sup> Defendant.**

43. They are dated 6<sup>th</sup> February 2025.

On whether the deceased Evanson Njau Mureithi transferred land to Stephen Mwangi Maina, counsel submitted that from the evidence produced by the plaintiff, Evanson Mureithi Kiboi was registered as the owner of the suit land Ngong/Ngong 23839 since 19<sup>th</sup> October 1999 and that there was no



evidence that he sold or transferred it to the 1<sup>st</sup> Defendant. From PW2's evidence the former land registrar, he produced a certified search showing that on July 2007, the land was registered in the name of Evans Mureithi Kiboi and hence it could not be true that Stephen Mwangi Maina was the registered owner of the suit land from 2001. The 1<sup>st</sup> defendant did not appear to produce any evidence to show how he purchased the suit land from Evansons Mureithi Kiboi. It was also on record that Evanson Mureithi Kiboi died on 4<sup>th</sup> January 2001 but the transfer was effected on 20<sup>th</sup> November 2002. At this time, the only transfer that could have been effected could only have been through the administrators.

44. On whether there was a good title passed from the 1<sup>st</sup> defendant, counsel submitted that a dead person could not transfer land. Therefore, the 1<sup>st</sup> defendant having acquired his title illegally could not pass good title to the 2<sup>nd</sup> Defendant and this transfer was null ab initio pointing out that the original title was still in possession of the Plaintiff. Reference was made to *Evanson Wambugu Gachugi v Simon Wainaina Gatwiki & 2 Others* [2014] eKLR and *Alberta Mae Gacci vs Attorney General & 4 Others* (2006) eKLR.
45. On whether the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were innocent purchasers for value, it was submitted that there was no title that was capable of passing by the 1<sup>st</sup> defendant and hence the 2<sup>nd</sup> defendant could not indeed have a good title to pass to the 3<sup>rd</sup> and 4<sup>th</sup> defendants as held in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No. 28 of 2005* [2015] eKLR and *Munyu Maina v Hiram Gathiha Maina Civil Appeal No. 239 of 2009* [2013] eKLR. Therefore, the only remedy was to invoke being indemnified by the seller as per clause 8.14 of the sale agreement dated 18<sup>th</sup> October 2019.
46. As such, the Plaintiff was entitled to the prayers sought together with costs from the 1<sup>st</sup> to the 4<sup>th</sup> Defendants.

#### **Analysis and Determination.**

47. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
  - i. Whether the Plaintiffs have proved the allegation of fraud against the Defendants on the required standard;
  - ii. Whether the Plaintiffs are entitled to the reliefs sought;
  - iii. Who is the bonafide proprietor of the suit property?;
  - iv. Who should bear costs of the suit?
48. It is the Plaintiffs' case that the suit property was registered in the name of Evanson Mureithi Kiboi (the deceased) on 19<sup>th</sup> October 1999. The said Evanson passed on, on 4<sup>th</sup> January 2001. The 1<sup>st</sup> Defendant Stephen Mwangi Maina appears to have acquired the suit property on 20<sup>th</sup> November 2002 and a title deed issued on his name on the same date.

The Plaintiffs' case rests heavily on the fact that the deceased could not have transferred the suit property to the 1<sup>st</sup> Defendant as he was already deceased. The Death Certificate for Evanson Mureithi Kiboi was produced as an exhibit in this case.
49. The certified copy of the extract of the green card was also produced as an exhibit in this case. The entries confirm that the suit property is a sub-division of Ngong/Ngong/1409. The same was registered in the name of the Deceased on 19<sup>th</sup> October 1999 and on 20<sup>th</sup> November 2002 a title was issued in favour of Stephen Mwangi Maina, the 1<sup>st</sup> Defendant. On the 16<sup>th</sup> October 2012, the same registered in



the name of Wilson Irungu Ndirangu, the 2<sup>nd</sup> Defendant. The title was closed on sub-division to give rise to title Nos. 94875 to 94879 respectively.

50. PW2 Daniel Masika Kyule a retired Land Registrar confirmed that he got the details to fill out the certificate of official search dated 16<sup>th</sup> June 2007 from the Green Card. I will come to this issue shortly.

51. PW3, Ann Mararia, the Land Registrar Ngong, told the court that the original Title deed, is not in the Registry. She also told the court that there is no transfer from Evanson Mureithi Kiboi to the 1<sup>st</sup> Defendant. She also stated that there is no copy of transfer, consent from the Land Control Board, Details of the deceased and the 1<sup>st</sup> Defendant in the parcel file.

The said parcel file was not produced to confirm this.

52. The Plaintiffs' case also rests on the certificate of official search dated 16<sup>th</sup> June 2007 which shows that the deceased was the registered owner of the suit property hence the 1<sup>st</sup> Defendant could not have acquired it on 20<sup>th</sup> November 2002. PW2 Daniel Masika Kyule, stated that he was based at Kajiado Land Registry from 2005 to the 15<sup>th</sup> September 2015. He told the Court that he signed the Certificate of Official Search dated 16<sup>th</sup> June 2007 (Exhibit P1), using the details in the green card. He also stated that all entries are made in the presentation book. He said there was no entry of transfer to Stephen Mwangi Maina, the 1<sup>st</sup> Defendant. It was his testimony that the property a Deceased person is transferred using a prescribed form and entries made in the green card. He stated that the name of the personal presentative must appear. When cross examined by the counsel for the Defendants, he confirmed that he had not produced the presentation book for the year 2007. He confirmed that the presentation book and the Green cards are kept by the Land Registrar. He also admitted that one could not tell from the Green Card, that Evanson Mureithi Kiboi is deceased.

53. PW3 Ann Mararia, told the court that the original green card was collected by Director of Criminal Investigation on 7<sup>th</sup> November 2023 for investigation purposes. It is her testimony that entry No.5 in the green card shows Wilson Irungu Ndirangu, the 2<sup>nd</sup> Defendant, was registered as the owner on 16<sup>th</sup> October 2012. She stated that the transfer in favour of the 2<sup>nd</sup> Defendant is not captured in the presentation book. She also confirmed that the only way the property of a deceased person would be transferred was by the Administrators and/or personal representatives. She confirmed that the entries green card are correct.

54. When further cross-examined, she stated that the registration of the Death of Evanson Mureithi Kiboi this is not in their records as there are no transmission documents.

She also admitted that a misplacement of a parcel file does not invalidate the transaction as the green card can be reconstructed.

55. It is my humble view that the certificate of official search dated 16<sup>th</sup> June 2007, showing that the suit property was registered in the name of Evanson Mureithi Kiboi (Deceased) is not conclusive. No parcel file or presentation book were provided to support this position. PW2 and PW3 confirmed that the Land Registry is largely manually run and the documents could have been misplaced. The land Registrar is the custodian of all these documents.

56. PW1, Amos Njau Mureithi, stated that the original Title was in his safe custody. This is what was stated in the supporting affidavit to the Notice of Motion dated 14<sup>th</sup> December 2022. It should be noted that the same was not produced as an exhibit in this case.

57. When cross examined, he confirmed that they discovered the fraud in November 2021. He confirmed that despite being issued with the Certificate of Confirmation of Grant on 5<sup>th</sup> November 2002, he



did not register the same on the title as they had done with LR. NO. Kabete/Kabete/570. He further confirmed that they have never been in possession of the suit property though they had the Title. He said they were waiting to transfer the suit property to the Estate of Stephen Kanyi Muchiri as there was a suit pending. He gave no details about that suit. He also stated that he was not seen any forged document and no criminal charges have been preferred against the Defendants.

58. It is the plaintiffs' case that the green card was tampered with by the Defendants. That the entries were back dated with the intention of defeating the Deceased's interest on the suit property. It is my view that this evidence did not come out during the trial. The issue is whether the particulars of fraud against the Defendants have been proved.
59. I agree with the 2<sup>nd</sup> Defendant's submission, that the Land Registrar the 5<sup>th</sup> Defendant, as the custodian of the public records, his office is barred from feigning ignorance on how the Green Card, they alleged was forged, was certified as a true copy of the original. No other Green Card was produced by the 5<sup>th</sup> Defendant to substantiate the elements of fraud.

In the case of *Kinyanjui Kamau Vs. George Kamau (2015) Eklr*, the Court of Appeal held thus;

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo Vs. Ndolo (2008) 1KLR (G & F) 742* wherein the court stated that “we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.” In case where fraud is alleged it is not enough to simply infer fraud from the facts.”

60. It was stated by PW1 and PW3 that the Director of Criminal Investigations was conducting investigations into the issue. No report has been tabled in criminating the Defendants and one S. M. Vasha the Land Registrar said to have colluded with the Defendants in this fraudulent transaction.

He who alleges must prove.

61. The 2<sup>nd</sup> Plaintiffs in this suit are the Administrators of the Estate of Stephen Kanyi Muchiri. It is alleged that the suit property belongs to the Estate of Stephen Kanyi Muchiri.

This arises from the Judgement in *HCC. 495 of 1981* delivered on 28<sup>th</sup> July 1993; *Stephen Kanyi Muchiri Vs. Evanson Mureithi Kiboi* where J.F. Shields held thus;

“I am satisfied that the Plaintiff contributed substantially to the purchase of 1409, but that the 1<sup>st</sup> Defendant has delivered Livery of session to the Plaintiff of 10 acres of this parcel of land which is approximately equivalent to his contribution towards the purchase. The plaintiff has fenced the part of the land so given to him by the first defendant and uses it in all respect tenement from the remainder of 1409”.

He further held;

“I accordingly make (1) a declaration that the 1<sup>st</sup> Defendant hold the 10 acres of the land, the 1<sup>st</sup> defendant now occupies of 1409 Ngong/Ngong in trust for the Plaintiff.”

62. It is on record that the 2<sup>nd</sup> Plaintiff did not participate in these proceedings. No witness was called to testify on behalf of the 2<sup>nd</sup> Plaintiff.



63. When cross-examined PW1 stated that he did not know if the Administrators of the 2<sup>nd</sup> Plaintiff had recorded witness statements or whether they have sought to be declared beneficial owners of the suit property.

64. The Judgement in favour of Stephen Kanyi Muchiri was delivered on 28<sup>th</sup> July 1993. He was in occupation of the suit property by then. The title in favour of Evanson M. Kiboi was issued on 19<sup>th</sup> October 1999. Between 1999 and 2001 the Deceased had the opportunity of transferring the suit property to Stephen Kanyi Muchiri then. We are not told when the said Stephen Kanyi Muchiri passed on. What steps did he take to acquire title to the suit property in his possession?

These are questions that would have been answered by the Administrators of his estate but they did not participate in these proceedings.

PW1 told the court that he was issued with a certificate of Confirmation of Grant on 5<sup>th</sup> November 2002. The same has been amended several times; on 7<sup>th</sup> April 2004, 26<sup>th</sup> May 2009, 3<sup>rd</sup> November 2021 and 3<sup>rd</sup> June 2022. This last rectification of 3<sup>rd</sup> June 2022 included the suit property as part of the estate of the deceased, three months after the discovery of the fraud in November 2021.

65. I agree with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Submissions that no explanation has been offered as to why the suit property was not part of the schedule of properties in Confirmation of Grant in 2009. This is a question that remains unanswered.

It is also curious to note that the suit property was transferred to the 1<sup>st</sup> Defendant on 20<sup>th</sup> November 2002, fifteen days after the Administrators had been issued with a certificate of Confirmation of Grant on 5<sup>th</sup> November 2002. There was no explanation offered.

66. The fact that the 1<sup>st</sup> Defendant chose not to participate in these proceedings is also puzzling. He ought to have appeared to clear the air on this issue. Could it be that the Administrators transferred the suit property to the 1<sup>st</sup> Defendant based on an earlier transaction between him and Evanson M. Kiboi (Deceased) in order to defraud Stephen Kanyi Murchiri? This is a question that remains unanswered.

67. A cursory look at the Green card shows that the 1<sup>st</sup> Defendant acquired the suit property from the Deceased long after he was dead. This could not be possible. It could also mean that he could not have acquired the title lawfully. As stated earlier the Administrators had a Certificate of Confirmation of Grant by 16<sup>th</sup> October 2002. One of the Administrators Racheal W. Mureithi is also deceased and the court will never hear her story. I will leave it at that.

68. The 2<sup>nd</sup> Defendant's case is that he bought the suit property from Stephen Mwangi Maina who acquired it on 20<sup>th</sup> November 2002. He did due diligence by visiting the site obtained a copy of Green Card from the Land Registry. He confirmed that Stephen Mwangi Maina owned the land. Upon purchase he was in possession for a period of ten (10) ten years before he sub-divided in 2019 and sold to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. He told the court that upon purchase he constructed a house on the suit property. That all this time there were no adverse claims against him.

69. It is trite law that allegations of fraud must be specifically pleaded and particularized. No fraud has been proved by the Plaintiffs against any of the Defendants herein.

In the case of *Teleposta Pension Scheme Registered Trustees Vs. Inter counties Importers And Exporters Ltd & 4 Others* (2016) eKLR the Court held as follows;

“It is trite law that whoever alleges fraud must prove. It was therefore incumbent upon the plaintiff to prove the fraud allegations against the Defendant to the required standard.



The standard of proof in fraud cases is higher than in ordinary civil cases, it is higher than on a balance of probability. As was observed in *Njuwangu Holdings Ltd Vs. Langata Kpa Nairobi & 5 Others*, “The standard of proving fraud in civil cases, the courts have consistently held, is higher than on a balance of probabilities. An allegation of fraud is a serious indictment against a party to whom it is made and though the standard of proof is not beyond a reasonable doubt as in criminal cases; it is no doubt near there but it is certainly higher than on a balance of probability and thus is when a party in a civil matter makes an allegation of fraud against a party he should be prepared to tender and adduce evidence to prove the allegation to the required standard. In the present case, I am afraid the fraud allegations against the 1<sup>st</sup> defendant have been generalised and lack specificity and are generally unproved.....

Thus mere suspicion of fraud cannot suffice. It is court’s finding that besides generalisations the plaintiff has not proved that the 1<sup>st</sup> Defendant acquired the title illegally or through a corrupt scheme. More particularly there is no proof of the fraud allegations against the transferee the 1<sup>st</sup> Defendant as to warrant the cancellation of the title.”

It is my view that the Plaintiffs have not proved the allegations of fraud against the Defendants to the required standard.

70. I also find that the Plaintiffs are guilty of Laches. The Plaintiffs had the Grant for over twenty (20) years after the suit property had changed its character or form. The Judgement they seek to enforce is more than twenty eight (28) years old.

No explanation has been given as to why the Plaintiffs did not ventilate their claim though not in possession or occupation. It also took them fourteen (14) months after the alleged discovery of fraud in November 2021 to bring this suit while there ongoing developments on the suit property.

71. I find that the Plaintiffs are guilty of Laches. As stated earlier, the 1<sup>st</sup> Plaintiff was issued with a Certificate of Confirmation of Grant on 5<sup>th</sup> November 2002. No steps were taken to follow upon the suit property. In the case of *Joshua Gatuu Vs. Jane Mpinda & 3 Others* (2019) eKLR; the court cited with approval the case of *Abigael Barma Vs. Mwangi Theuri ELC No.393 of 2013* where the court made reference to *Snell’s Equity, 30<sup>th</sup> Edition at P.33 Paragraph 3-16* (quoting *Lord Camden L.C. Smith Vs. Clay (1767) 3 Bro. C.C.639n. at 640n*) where it was asserted that a court of equity “has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence; where these are wanting, the court is passive, and does nothing”.

72. It is on record that the 1<sup>st</sup> Defendant held Title for the suit property for seven (7) years before the 2<sup>nd</sup> Defendant acquired it. The 2<sup>nd</sup> Defendant held it for more than ten (10) years before he sub divided in 2019, and sold to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. It is his case that he had actual possession for all this time and nobody lay claim to it.

It is not in dispute that the character of the suit property has changed since then.

As stated earlier the plaintiffs have not demonstrated or pleaded in any way any in regularity or by any material disclosure or particulars that have distinctly alleged that the 3<sup>rd</sup> and 4<sup>th</sup> defendants were privy or party to the alleged fraud.

73. The 3<sup>rd</sup> Defendant has demonstrated that is acquired titles to *Ngong/Ngong/94875, 94876 and 95258* from the 2<sup>nd</sup> Defendant for valuable consideration in good faith, without notice or knowledge of the



alleged fraud, or being a party to any alleged fraud. It holds titles to the suit properties and are charged to Gulf African Bank Limited. The said Bank was not joined in these proceedings.

74. The 4<sup>th</sup> Defendant also acquired the suit properties Ngong/Ngong/94878, 94879 and 95259 that were later amalgamated to Ngong/Ngong 97127, which was later closed on sub-division into 46 units (99163-99208). It bought the same from the 2<sup>nd</sup> Defendant, for valuable consideration, in good faith without notice or knowledge of the alleged fraud, or being a party to any alleged fraud. It holds the Certificates of Title to date.

In the Ugandan case of *Katende Vs. Haridar & Co. Ltd* (2008) 2 EA 173 it was held thus;

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property ordered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- a. he holds a certificate of title;
- b. he purchased the property in good; faith;
- c. he had no knowledge of the fraud;
- d. he purchased for valuable consideration;
- e. the vendors had apparent valid title;
- f. he purchased without notice of any fraud;
- g. he was not party to any fraud.

A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

75. PW2 a former Land Registrar at Kajiado presented a Certificate of official search that was not backed by any other records from the Land Registry. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants were able to demonstrate the steps they took to investigate the history of the suit property, by undertaking searches at the Land Registry. They were able to demonstrate that the certified copy of the original Green card for parcel 1409 is the one which gave rise to the suit property and no alternative Green cards were furnished by PW3, the Land Registrar.

76. The said Green Cards to date has no registration of death, no notice of fraud or any encumbrance for the defendants to have had an actual or a constructive or an inquiry or an imported notice.

In the case of *Samuel Kamere Vs. Land Registrar Kajiado* (2013) eKLR the Court of Appeal held that “... in order to be considered a bona fide purchase for value they must prove; that they acquired a valid and legal title. Secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly they paid valuable consideration for the purchase of the suit property.....”

77. I am of the view that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants acquired the suit properties in good faith for valuable consideration and with notice of any fraud in the 1<sup>st</sup> Defendant’s acquisition of the suit property.

78. The SCOK in *Sehmi & another Vs. Tarabana Company Limited & 5 Others* (2025) KESC, 21 KLR had this to say on the doctrine of bona fide Purchaser for Value;

“



- “ 58. It is a fundamental principle of the law of property in land that a purchase of a legal estate for value without notice is on absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. The onus of proof however lies upon the person claiming to be a bona fide purchaser. Three main ingredients must be present for a claimant to mount to successful defence based on the doctrine. These are; innocence purchase for value and a legal estate.
59. . The element of innocence means that the purchaser must act in good faith. His conduct must not raise any doubt as to whether indeed he did not have any notice or knowledge as to the existence of a rival interest in the suit land. If for example it comes to light that during the process of purchase, the claimant engaged in conduct that was unconscionable in the eyes of equity, such conduct would weaken his claim of innocence as to the existence of a rival interest. The element of innocence also connotes the exercise of diligence expected of any reasonable purchaser. The claimant must demonstrate that he acted diligently and conducted a reasonable inquiry into the status of the estate or land that he sought of purchase.....
61. purchase for value means that consideration in money or money’s worth was paid by the claimant in return for the land. The purchaser must actually pay all the money before receiving notice of the existence of the equitable interest over the suit land.....
62. For our purposes, the purchase must be in reference to a legal estate vis a vis an equitable interest in the suit land. In other words the contending interests must be a legal estate and an equitable interest in the land. Fully stated therefore, the doctrine means that an innocent purchase of a legal estate in land without notice of an equitable interest in the said land, take free from the encumbrance of the later interest. Say for example X holds land in trust of behalf of Y, the legal estate rests in X, while the equitable interest rests in Y. Should Z purchase the land from X without notice of the trust in favour of Y, then he would acquire the land free from the encumbrance of Y’s interest. Of course the scenario would be different were the contestation between an equitable interest and a mere equity....
72. In view of this court’s pronouncement in Dina Management Limited (Supra) the answer as to whether the doctrine of innocent purchaser for value without notice protects a purchaser of an illegally or irregularly allocated title to public land lies squarely in the negative. We hasten to add that such a transaction cannot attract the protection of equity because the latter follows the Law. In this regard two critical elements of the doctrine would be missing because, first the purchaser must have purchased “ a legal estate”, and secondly such purchaser must have been without notice.” Since the holder of an illegally allocated title cannot confer a valid title upon a third party, there would be no “legal estate “ to be purchased in the first place. Similarly, the absence of notice “ is in reference to the existence of “an equitable interest “ in the land and not “ the incidence of illegality or an irregularity of title “ in question.
- Therefore, there can be no protectable purchaser of an illegal title without notice of such illegality.” In other words, a purchaser will only be regarded as bona fide if he buys property



in good faith without notice of any defect on claims against the title so that if the title in quest is illegal or obtained through unlawful means, the purchaser cannot claim protection, even if he was not aware of the illegality...”

79. From the foregoing I find the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have satisfied the conditions set out in the above case.
80. In conclusion, I find the Plaintiffs have failed to prove their case against the Defendants on a balance of probabilities and the suit is dismissed with costs to the 2<sup>nd</sup> – 4<sup>th</sup> Defendants. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants are entitled to enjoy occupation of the suit property they acquired lawfully.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**L.KOMINGOI**

**JUDGE.**

IN THE PRESENCE OF:

Ms. Njoki Gachihi for the Plaintiffs.

N/A for the 1<sup>st</sup> Defendant.

Mr. Kahiga Mungai for the 2<sup>nd</sup> Defendant.

Mr. Kamau for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants.

N/A for the 5<sup>th</sup> Defendant.

Mutisya – Court Assistant.

