



**Murungu (Suing as Administrator of the Estate of the Late Joesph Murungu Kiarie) v Esther Wanjiru Njoroge & another (As Administrators of the Estate of the Late Jeremiah Gitau Rotoi) & 4 others (Environment and Land Case Civil Suit 445 of 2011) [2025] KEELC 6852 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6852 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 445 OF 2011**

**AA OMOLLO, J**

**OCTOBER 9, 2025**

**BETWEEN**

**JOHN KIARIE MURUNGU ..... PLAINTIFF  
SUING AS ADMINISTRATOR OF THE ESTATE OF THE LATE JOESPH  
MURUNGU KIARIE**

**AND**

**ESTHER WANJIRU NJOROGE & FRANCIS NGANG'A J GITAU (AS  
ADMINISTRATORS OF THE ESTATE OF THE LATE JEREMIAH GITAU  
ROTOI) ..... 1<sup>ST</sup> DEFENDANT  
MARY WANJIKU KIARIE ..... 2<sup>ND</sup> DEFENDANT  
SUSAN MUTHONI MBURU ..... 3<sup>RD</sup> DEFENDANT  
MARY MUTHONI NJUGUNA (2ND TO 4TH DEFS SUED AS  
TRUSTEES & OFFICIALS OF EBENEZER RESTORATION CHRISTIAN  
CENTRE) ..... 4<sup>TH</sup> DEFENDANT  
THIKA DISTRICT LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the 1<sup>st</sup> - 5<sup>th</sup> Defendants vide a Plaint dated 23<sup>rd</sup> August 2011, amended on 9<sup>th</sup> March 2020 and further amended on 22<sup>nd</sup> July 2022 seeking for the following orders;
  - i. A Declaration that the purported registration of, and/or issuance of title to, the late 1<sup>st</sup> Defendant on 26/09/2002, and the 2<sup>nd</sup>, 3<sup>rd</sup> and/or 4<sup>th</sup> Defendant(s) jointly and severally on 11/11/2008, in respect of the Suit property being Title Number Ruiru East/Juja East



Block 2/1094, and any subsequent/further alienation or transfer thereof by the Defendants or any one or several of them or through their servants/agents/principals/ successors/assigns/ representatives was/is knowingly fraudulent; fatally tainted with misrepresentations by the Defendants; unlawful; null and void ab initio.

- ii. A Declaration that, all other factors remaining constant, the Plaintiff's Title Deed issued by the District Lands Registry KIAMBU on 07/06/1989 and relating to the Suit property in Title Number Ruiru East/Juja East Block 2/1094 is the only genuine, lawfully acquired, original and subsisting title to the suit property aforesaid.
  - iii. An Order that the 5<sup>th</sup> Defendant do forthwith rectify the Thika District Lands Registry records and Register relating to the Suit property in Title Number Ruiru East/Juja East Block 2/1094 to cancel the purported registrations, Titles and entries of the 1<sup>st</sup>, and/or the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant (s) by themselves jointly and severally and/or through their servants/ agents/ principals/successors/assigns/representatives whatsoever, and to restore and reinstate the Plaintiff as the sole bonafide and absolute registered proprietor of the Suit property aforesaid.
  - iv. A permanent injunction do issue to restrain the Defendants by themselves jointly and severally or through their servants/agents/principals/successors/assigns/ representatives as the case may be, from transferring, selling, leasing out, charging/mortgaging, alienating or otherwise howsoever dealing with the Suit property being Title Number Ruiru East/Juja East Block 2/1094 in a manner as to interfere with the Plaintiff's exclusive possession, occupation, quiet use, enjoyment, rights and interest therein.
  - v. Punitive damages for conversion of immovable property.
  - vi. Any other/further relief as this Honourable Court may deem just in the peculiar circumstances of this matter.
  - vii. Costs.
2. The Plaintiff stated that at all times, he was the lawful and bona fide owner of a portion of land measuring 1.405 Ha (3.472 Acre) comprised in freehold land title number Ruiru East/Juja East Block 2/1094, hereafter referred to as "the suit property". That he is the absolute proprietor vide a title deed issued under the Registered Land Act on 07/06/1989 at the KIAMBU District Land Registry under whose jurisdiction the property then fell.
  3. He pleads that in the year 1984, he bought one share from Ruiru Muigai in the land-buying Company known as M/s JUJA FARMS (1976) LIMITED, hereinafter referred to as "the company" and was registered as a member vide Share Certificate No. 5254 issued by the Company on 08/09/1984. That the given shareholding entitled him, like all other single-shareholders in the Company, to two parcels of land from subdivisions of the Company-owned vast tracts of land.
  4. The Plaintiff further stated that he was issued with Balloting Card Numbers 1094 and 0171, which he subsequently used to acquire both the suit property (Title Number Ruiru East/Juja East Block 2/1094) and Title Number RUIRU/Ruiru East BLOCK 4/T.1408, respectively, upon payment of the requisite survey fees and other charges.
  5. He stated that he holds the original title deed to the suit property, which was issued long before the THIKA District Land Registry was established. He has since 1985 been in actual possession, occupation, use, and enjoyment of the same, where he grows food crops and grass for commercial sale. The Plaintiff avers that the company was wound up and dissolved on or about 27<sup>th</sup> February 1991.



6. The Plaintiff stated that he visited the suit property and found the 2<sup>nd</sup> Defendant, who, together with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, purported to have "bought" it from the 1<sup>st</sup> Defendant on behalf of a Charity called m/s Ebenezer Restoration Christian Centre, of which they (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants) were the Trustees/Officials.
7. The Plaintiff stated that he proceeded to the Lands Registry at Thika and established that the 1<sup>st</sup> Defendant Jeremiah Gitau Rotoi (now deceased) had in the first instance conspired with the 5<sup>th</sup> Defendant to irregularly, fraudulently and unlawfully procure registration of the suit property in his name which the Plaintiff reported to the Police at Ruiru and Juja Police Stations.
8. He pleads that the 1<sup>st</sup> Defendant simultaneously conspired with the 2<sup>nd</sup> to 5<sup>th</sup> Defendants to fraudulently transfer the suit property to M/s Ebenezer Restoration (Christian) Centre on 11/11/08. The Plaintiff itemised the particulars of the 1<sup>st</sup> Defendant's fraud as follows:
  - a. fraudulently and unlawfully acquiring registration as the proprietor of the suit property, despite knowing it belonged to the Plaintiff.
  - b. That he did so without any legal transfer, purchase, or consideration and manipulated government records such as the Green Card entries to falsely present himself as the owner.
  - c. Further, tampering with the land registry to create a fake parallel title, despite the existence of a valid and original title in the Plaintiff's name, and later irregularly "transferring" the land to third parties at a grossly undervalued price.
9. The Plaintiff further pleaded the particulars of fraud by the 5<sup>th</sup> Defendant inter alia,
  - i. facilitating the fraud by wilfully allowing tampering with official records, unlawfully issuing a second title, and
  - ii. aiding the 1st Defendant in misrepresenting ownership.
  - iii. altering ownership details without a legal transfer, ignoring the existing title, and failing to protect the Plaintiff's legal rights as the true owner.
  - iv. that the 5<sup>th</sup> Defendant breached their duty of care, enabling the conspiracy through corruption or gross negligence.
10. The particulars of breach on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants are that they conspired with the 1<sup>st</sup> and 5<sup>th</sup> Defendants by knowingly acquiring the suit property at a significantly undervalued price despite being warned that the 1<sup>st</sup> Defendant was not the rightful owner.
11. The Plaintiff asserts that the 1<sup>st</sup> Defendant was arrested, arraigned, charged and prosecuted in Thika CM CRI. CASE NO. 237 OF 2009 (Rep. vs. Jeremiah Gitau Rotoi) of the offences of fraudulently procuring execution of documents by false pretences, and obtaining money by false pretences. On 24/03/2011 the 1<sup>st</sup> Defendant was discharged by the trial Court for ostensibly insufficient evidence and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants have since threatened to evict and bar him from the suit property.
12. The Plaintiff stated that on 14/04/11, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants torched his grasson site and on 18/08/11 started erecting a perimeter stone wall round the suit property in an ill-conceived provocation to hostile confrontation with him. That unless otherwise restrained, the Plaintiff will be forcefully evicted from the suit property and cause further malicious damage to his property.
13. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed a defence dated 26<sup>th</sup> November 2012 denying the Plaintiff's averments. They stated that the Plaintiff is not the registered owner of the suit property and neither has he been



- in occupation of the same. That they are the lawful registered owners, holding in trust for Ebenezer Restoration Christian Centre.
14. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants plead to having purchased the same from the 1<sup>st</sup> Defendant for valuable consideration without notice sometime in 2008 and have been in occupation ever since. They contend that the suit property was sold to them in vacant possession, undeveloped and free from any encumbrance and that they were in quiet enjoyment until the Plaintiff obtained a court order dated 26/08/2011. They also deny the existence of any caretaker in the suit property.
  15. They confirm that the 1<sup>st</sup> Defendant was arrested and charged with the offences as averred by the Plaintiff, but argue that he was acquitted under section 215 of the Criminal Procedure Code. Further, in the trial court in Criminal case No.237 of 2009, there was no evidence of fraud in the registration of the 1<sup>st</sup> Defendant's property and subsequent sale and transfer of the property to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants also plead that they did not threaten evict the Plaintiff from the suit property and neither did they torch his grass as alleged.
  16. After the close of pleadings, the hearing commenced with John Kiarie Murungu, the administrator of Joseph Kiarie Muringu, testifying as PW1. He adopted his witness statement dated 15<sup>th</sup> June 2023 as his evidence in chief. He produced a documents contained in the list dated 23/8/2011 as PEx1; supplementary list of bundles dated 7/10/2013 as PExh2; and further supplementary list of documents dated 22/7/2022 as Pexh. 3.
  17. The list of documents dated 23/8/2011 consisted of share certificates No.5254 of 18/9/84, share expense receipt No.2025 of 21/05/84, survey fee receipt No. 024 dated 30/3/85, balloting card No.1094 and 0171 from Juja Farms (1976) Ltd, Title deed for the suit property 4/T.1408 dated 1/7/1991.
  18. Further documents are the Kenya Gazette Notice No.1536 of 18/3/91, on winding up of Juja Farms Ltd, Letter of 27/11/08 to Thika District Land Registry for Restriction, Certified typed proceedings and Judgement in Thika CM CRI. Case No.237/2009, Certified typed proceedings and judgement in Thika Cm CRI Case No.291/2009, Application for registration of caveat dated 25/03/11 and its Receipt no.2215755 of 25/3/11 for Ksh.500, Certificate of Registration of M/s Ebenezer Restoration Christian Center.
  19. Among the documents produced the Plaintiff is a search of the suit property dated 11/3/2023 showing he was given a title on 19/5/1989 with the land registry being Kiambu. That this was before Thika was created and later devolved to create Ruiru Land registry. The witness testified that they as a family had been farming on the suit property since the year 1989 and that their father had not sold the same to anyone.
  20. He stated that in the year 1984, his father bought one share in the company from one Mr.Riuru Muigai and was issued with the share certificate. That the company bought a huge tract of land in Juja which they subdivided amongst its members and each share entitled its holder to one 1 parcel and a bonus plot of land.
  21. That upon balloting of the said land holdings, he was issued with the balloting cards No.1094 and 0171 which translated and entitled him to the ownership of Title.No. Ruiru East/Juja East Block 2/1094 measuring 1.405 ha and Ruiru/Ruiru East Block 4/T.1408 measuring 0,08 ha respectively. He added that he holds the original title documents that were issued by the Kiambu District Land Registry at a time when Thika District Land Registry was yet to be established.



22. Pw1 testified that the Thika Land Registrar certified the ownership of the small plot in Block 4/T.1408 comprising 0.08 ha but was unable to issue an official search certificate on the suit property in line with the court order of 28/05/2012.
23. During cross examination, he confirmed that they have provided a green card showing that his father, the Plaintiff owned the land T.1408 but has not provided a green card for L.R 1094. That additionally they have not provided the beacon certificates.
24. The witness stated that they planted hay and napier grass which they harvested every season and sold. He stated that they had constructed a farm house but probably in 2008, it may have been eaten by termites and only traces of it remained.
25. He further stated that the 2<sup>nd</sup> -4<sup>th</sup> Defendants followed process like any other ordinary person when buying land and that the Land Registrar Thika PW4 in Criminal case 237 of 2009 R vs Jeremia Rotoi referred to LR 1094 stating that it belonged to the accused.
26. The witness noted that on the alleged transfer from the 1<sup>st</sup> Defendant, the consideration is given as Ksh.250,000 while in the sale agreement, the purchase price is given as Ksh.500,000 and the valuation of the suit property conducted in 2008 indicates the value to be Ksh.1.2 M.
27. Pw2, Robert Kioko Ndinda, adopted his witness statement dated 12/8/2011 as evidence in chief. He stated that he was hired by the Plaintiff as a caretaker in 2008 and that when he saw some people fencing the suit property he alerted him.
28. PW3, Felix Naftally Mtebia, an employee of business registration service whose duties are receiving correspondences from government agencies. That they received summons to witness on 17/1/2024 with instruction to produce documents of Juja Farm 1976 Ltd.
29. He testified that the company was a public company Reg. No.C.50/1976 and according to a report dated October 2011, the Registrar responded to a letter dated 10/10/2011 from Adera & Co.Advocates.
30. That according to the list of members submitted to the registry at Ruiru Mugai held at least 2 shares in the company under certificate no.224 (SN1804) and 5254(SN 4425). The witness testified that in a list of transfer dated 12/7/1984-22/12/1984, Ruiru Mugai transferred cert no. 5254 to Joseph Mulungu Kiarie under transfer no.322.
31. That they are not able to trace the name of Jeremia Gitau Rotoi in the list of members of the company. That the winding up order of the company was made on 27/2/1991 and the company was dissolved by the Hcc order dated 17/5/1991. He produced the documents at pages 24 and 26 of the Plaintiffs amended list of 2013 as bundle B.
32. During cross examination, he confirmed that the company file does not contained correspondences before October 2011 and that the company was wound vide a gazette notice of March 1991.
33. DW1, Susan Muthoni Mburu, a trustee of Ebenezer Restoration Christian Center testified and adopted her witness statement dated 26/11/2012 as evidence in chief and adduced documents in the list dated 26/11/2012.
34. The documents included, certificate of registration of a charitable children's institution, Trustees of Ebenezer Christian Centre CDEN No.000193, Daily Nation Newspaper Advertisement dated 9<sup>th</sup> October 2008, Title dee dated 11<sup>th</sup> November 2008 and search of the suit property dated 17<sup>th</sup> August 2008, Sale agreement executed between Jeremiah Gitau Rotoi and Ebenezer Restoration Christian



Centre dated 18<sup>th</sup> October 2008, bankers cheque Requisite form from Co-operative Bank of Kenya Limited dated 18<sup>th</sup> October 2008, Photographs of the property, court proceedings of Criminal Case No.291 of 2009, copy green card issued by Thika Lands Registry, Criminal Case No.237 of 2009 and Court Order dated 23<sup>rd</sup> May 2011 in CMCC No. 146 of 2011.

35. She testified that together with the other trustees, they saw an advert of the suit property on sale and after they met the seller, they bargained to the purchase price of Ksh.500,000.
36. That after visiting the physical land confirming that there was no activity on it and conducting a search at Thika Lands Registry, they paid Ksh.475,000 in cheque and Ksh.25000 in cash.
37. That after they bought the suit property in 2008, they put up a perimeter wall and in 2009, when the workers were clearing the land to put up the wall, Joseph came and told them he was the owner of the suit property.
38. She stated that after sometime they heard that the 1<sup>st</sup> Defendant, the seller, was arrested with an offence of obtaining money by false pretense.
39. During cross examination, she confirmed that they did not visit Kiambu Lands Registry to verify the Plaintiff's title and believed that Thika Lands Registry was giving correct titles. That also, they were not given the history of the land by the 1<sup>st</sup> Defendant but relied on the advert.
40. The Plaintiff did not file their submissions within the timelines provided upto and included on 2<sup>nd</sup> October, 2025, when this judgement was scheduled for delivery. Upon request to the court, leave was granted to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants to file their submissions and they did file on 3<sup>rd</sup> October 2025. They raised three issues which they discussed in the submissions to wit;
  - a. Whether the Plaintiff is the registered owner of Ruiru East/Juja East Block 2/1094
  - b. Whether the 2<sup>nd</sup> to 4<sup>th</sup> Defendants are the lawful owners of the suit property cited in (a).
  - c. Whether the Plaintiff is entitled to the reliefs sought.
41. In arguing that the Plaintiff is not the owner, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants stated that he did not produce a title deed or certified copy thereof to the suit property as required under section 26 of the Land Registration Act. Further that the Plaintiff failed to call a witness from Kiambu Lands Registry to corroborate his evidence. These Defendants contend that the title deed for block 4/T.1048 presented by the plaintiff was not certified and the same was not in contention.
42. To support this argument, the Defendants cited the case of Trust Bank Ltd vs- Paramount Universal Bank Ltd and 2 Others Nairobi HCCS No. 1243 of 2001 for the proposition that where a party fails to call evidence in support of their case, the party's pleadings remain mere statements of facts.
43. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants submit that the Plaintiff did not establish his membership in the land buying company, Juja Farms Ltd. They assert that the Plaintiff did not avail the full register of the said company as PW3 merely produced an extract of the said register. It also their submission that the Plaintiff did not produce a certificate of search, green card and or letter of consent from the Land Control Board to confirm that due process was followed in acquiring his title.
44. In support of this submission, they cited the case of Samuel Kamere vs Land registrar Kajiado (2015) eKLR which held thus;

“Without any documents to support the registration of the appellant as the proprietor of the suit property, the appellant failed to discharge the evidentiary burden of proof as required,



and the only conclusion that we can reach on a balance of probabilities is that, since the appellant has not proved or shown the root of his purported title, he could not acquire title to the suit property, which in any event, was incapable of passing to him upon the registration of the purported transfer.”

45. On the second question that they (2<sup>nd</sup> to 4<sup>th</sup> Defendants) are the rightful owners of the suit land, it is submitted that they purchased the land from the 1<sup>st</sup> Defendant for valuable consideration. That they conducted a search at the Thika Lands Registry which showed the 1<sup>st</sup> Defendant as the owner thereof.
46. The 2<sup>nd</sup> to 4<sup>th</sup> relies on the case of National Land Commission vs Afrison Export Import Ltd & 10 Others (2019)eklr where a 3-judge bench of the ELC held that;

“Based on the inherent danger of the search system which is based on the Torrens System of registration, it is necessary for one to take further steps to ascertain the authenticity of the search and ownership of the land. If the Applicant had bothered to delve into the history of the title, it would have discovered that the title had two mortgages besides other entries in the register and the other transactions in respect of L.R. No. 7879/4 which were not noted on the register.”

47. It is their submission that having obtained a search and green card for the suit property, they proceed to sign a sale agreement with the 1<sup>st</sup> Defendant on 18<sup>th</sup> October, 2008. Consequently, they urge that they are innocent purchaser for value and proceeded to quote the case of Munyu Maina vs Hiram Gathiha Maina (2013)eklr which held that in proving ownership, one must prove that their acquisition conformed to procedure.
48. They concluded the submissions by stating the Plaintiff is not entitled to the reliefs sought because he did not establish his membership in the land buying company, and he did not provide a valid title deed or certificate of official search/green card to link him to the suit property. That the 1<sup>st</sup> Defendant was acquitted of the fraud in the criminal trial, hence no illegality was established against the Vendor.

#### **Analysis:**

49. I have reviewed the pleadings filed by the parties and the evidence supporting their respective cases. I have also read and considered the submissions filed by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. It is evident that two competing titles have been issued over the suit property: one in favour of the plaintiff and the other in favour of the first defendant, who subsequently sold and transferred it to the second, third, and fourth defendants. The key question for determination, therefore, is which of the two titles is valid and confers ownership of the suit parcel.
50. Courts have established that it is not sufficient to dangle title as proof of ownership of land, when it is under challenge. In the case cited by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants, the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, held as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”



51. Therefore, the burden of proof lies with the Plaintiff to demonstrate that he is entitled to own, occupy, and use the suit land to the exclusion of the 2<sup>nd</sup> to 4<sup>th</sup> Defendants, who are also claiming it. In an effort to establish his case, the Plaintiff stated that his deceased father purchased a share in Juja Farms Ltd in 1984, after the company had acquired a larger parcel of land and subdivided it for sale to its members. He produced evidence supporting this assertion, which is contained in the documents found on pages 23-26 of his bundle.
52. One of these documents is a letter dated 28th October 2011 (page 23) from the Registrar of Companies addressed to Adera & Co Advocates (the plaintiff's advocates on record), which confirmed that Ruiru Muigai owned two shares in Juja Farms Ltd, numbered 2244 and 5254. He states that Ruiru Muigai is the person who sold or transferred share no. 5254 to the deceased Plaintiff. In addition to the letter, the Plaintiff also produced an extract list of shareholders and their share certificates, which included the name of Ruiru Muigai as the owner of share number 5254.
53. The plaintiff also produced a copy of the said share certificate number 5254 as Pex. 1, the share receipt, and survey fees receipt as Pex. 2 and 3. The balloting card from Juja Farms Ltd was produced as Pex. 4 and 5. The plaintiff said he participated in the balloting and was issued with two parcels, including the suit property.
54. With this piece of evidence, it contradicts the 2<sup>nd</sup> to 4<sup>th</sup> Defendants' submissions that the Plaintiff did not prove holding a share in Juja Farms Ltd. The plaintiff's evidence does show that he was not an original shareholder, but instead purchased a share from one of the shareholders. The transfer of the share was done between 12th July 1984 and 22<sup>nd</sup> December 1984 vide transfer no 322-325 (page 8 of the list) as the Registrar of Companies letter dated 28<sup>th</sup> October, 2011.
55. He produced an extract of records from the Registrar of Companies that bore the name Ruiru Muigai. If the 2<sup>nd</sup> to 4<sup>th</sup> Defendants doubted this piece of evidence, nothing prevented them from calling a witness to contradict. However, before the court, there is nothing to contrast the transaction between the deceased and Ruiru Muigai and that Ruiru owned a share in Juja Farms Ltd.
56. The witness stated that the deceased Plaintiff was issued a title from the Kiambu Lands Registry in 1989, before the creation of the Thika Land Registry, where the 1<sup>st</sup> Defendant received his title. Therefore, the narrative provided by the Plaintiff aligns with his documents, and the 1<sup>st</sup> Defendant, who obtained a similar title, has not submitted any documents to dispute the Plaintiff's evidence.
57. It is submitted by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants that the Plaintiff failed to prove his case inter alia for not providing a title deed for Ruiru East/ Juja East Block 2/1094 as required under section 26 of the [Land Registration Act](#). I have reviewed the documents submitted in evidence by the Plaintiff and found a copy of the title to the suit property produced as Pex. 14, issued on June 7, 1989. If the 2<sup>nd</sup> to 4<sup>th</sup> Defendants wanted to be shown the original (now that I did not take the Plaintiff's evidence), the same ought to have been raised during the hearing of the case.
58. Thus, the two issues raised by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants' submissions (proof of shareholding in Juja Farms Ltd and production of title deed) are answered by the exhibits produced by the Plaintiff. On whether or not the Plaintiff's title is questionable for want of letter of consent before transfer, it was not verifiable whether the plaintiff stating that he was a recipient from a subdivision from Juja Farms Ltd required the consent. Neither has the 2<sup>nd</sup> to 4<sup>th</sup> Defendants produced a letter of consent from the land officer or the relevant Land Control board.
59. In defending their title and ownership, the 2<sup>nd</sup>-4<sup>th</sup> Defendants adduced evidence and documents showing that they obtained their title to the suit property through a purchase in 2008 from the 1<sup>st</sup>



Defendant. They produced a copy of a newspaper cutting as the basis of how they learnt about the sale of the suit property. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants also presented a certificate of official search done on 17<sup>th</sup> October, 2008, which showed the 1<sup>st</sup> Defendant was the registered owner of the suit title.

60. Based on the documents on record, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants have demonstrated that they carried out reasonable due diligence. Besides the searches, they also produced sale agreement and copies of cheque requisition for the sum of Kshs 475,000. Their witness stated that the difference of Kshs 25,000 in the purchase price was paid in cash. The 1<sup>st</sup> Defendant again did not file any evidence to deny that he was paid the agreed purchase price.
61. Although the Plaintiff pleaded fraud against all the Defendants, I can find no evidence that the 2<sup>nd</sup> to 4<sup>th</sup> Defendants colluded with the 1<sup>st</sup> Defendants. In alleging collusion, the Plaintiff relied on the valuation report which placed the market value of the suit property at Kshs 1200000. However, this report was prepared after the impugned transaction and cannot stand alone as evidence to prove collusion between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. The standard of proof required in fraud cases is set on a higher balance.

#### **Determination:**

62. Can the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants dispossess the Plaintiff of the disputed land on account of the doctrine of bona fide purchasers for value without notice? The Black's Law Dictionary 9<sup>th</sup> Edition defines a bona fide purchaser as:

“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

63. In our legal system, the defects in the Vendors title now affects the protection of a bonafide purchase. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, held that for a purchaser to successfully rely on the bona fide doctrine he must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

64. Therefore, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants' defence of being a bona fide purchaser relies on whether the Vendor had apparent valid title. The question then is whether the 1<sup>st</sup> Defendant possessed a good title to pass or transfer to the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants. No history is provided on how the 1<sup>st</sup> Defendant acquired his title, such as whether it was through purchase or inheritance and from whom. This evidence was crucial to challenge the validity of the Plaintiff's title.
65. Furthermore, a copy of the 1<sup>st</sup> Defendant's title was presented on page 35 of the Plaintiff's further list dated 7<sup>th</sup> October 2013 shows it was issued on 26<sup>th</sup> September 2002, which is over 15 years after



the issuance of the Plaintiff's title. Premised on the documents presented by the Plaintiff, I am of the considered opinion that the doctrine of equity that "the first in time prevails" favours the Plaintiff's case.

66. Based on the absence of evidence to support the root of the 1<sup>st</sup> Defendant's title who was a party to this suit, The fact that he was acquitted in the criminal proceedings did not lift the burden of the 1<sup>st</sup> Defendant giving evidence on the root of his title I find that he did not have a valid title to pass to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. The lack of a valid title removes the protection/defence of a bona fide purchaser.
67. Consequently, I hold that the Plaintiff has proved his case and is entitled to the relief sought in the further amended Plaintiff. The import of this finding is that one of the titles should be revoked, and that is the title held by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. Therefore, I enter judgment in favour of the Plaintiff as prayed in the further amended Plaintiff, with the costs of the suit to be met by the 1<sup>st</sup> defendant

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025**

**A. OMOLLO**

**JUDGE**

