



**Nyabera (Suing as the Administrator of the Estate of the Late Alice Atieno Nyabera - Deceased) v Kadir & 5 others (Environment and Land Case E063 of 2021) [2025] KEELC 6709 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6709 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E063 OF 2021  
A OMBWAYO, J  
OCTOBER 3, 2025**

**BETWEEN**

**WINSTON MOSES NYABERA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE ALICE ATIENO NYABERA - DECEASED) ... PLAINTIFF**

**AND**

**ABDUL KADIR ..... 1<sup>ST</sup> DEFENDANT**

**FIRST COMMUNITY BANK & 4 OTHERS ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. The Plaintiff commenced this suit vide an Amended Plaint dated 25th September, 2023 against the Defendants seeking the following orders:
  - a. A declaration that the acquisition of the suit property, Nakuru/Municipality Block No.15/635 by the 1st, 3rd and 4th Defendant was fraudulent, ab initio.
  - b. A declaration that the Charge registered by the 2nd Defendant against Nakuru/Municipality Block No.15/635 was based on a bad title and the same should be discharged unconditionally.
  - c. A declaration that the Estate of Alice Atieno Nyabera (Deceased) is the rightful owner of the suit property herein, Nakuru/Municipality Block No.15/635.
  - d. An order directing the Registrar of Lands Nakuru to cancel the title of the suit property herein Nakuru/Municipality Block No.15/635, in the name of the 1st Defendant.



- e. An order directing the Land Registrar Nakuru to cancel the entries in the Green Card of the 1st, 3rd and 4th Defendant as previous registered proprietors of the suit property, Nakuru/ Municipality Block No. 15/635.
  - e(1) In the alternative, the 7th Defendant be compelled by an order of this Honourable Court to monetarily compensate the deceased's estate with an amount equivalent to the current market value of parcel of land number Nakuru/ Municipality Block No. 15/635 forthwith.
  - e(2) Failure to (e(1)) above, the 7th Defendant do forthwith transfer back parcel of land number Nakuru/ Municipality Block No. 15/671 to the deceased's estate.
  - f. A permanent Injunction restraining the 1st and 2nd Defendants whether by themselves, their servants, employees, agents and/or any persons claiming through them, be restrained from trespassing, making any developments ,doing construction works and/or erecting any structures thereof ,selling, alienating, transferring, mortgaging, disposing of or interfering with the Plaintiff's peaceful enjoyment, rights of ownership and possession or otherwise dealing with any portion or interest thereof by whatever manner in respect of Nakuru/Municipality Block No.15/635.
  - g. That the Defendants herein to be condemned to pay mesne profit and general damages to the Estate of the Deceased.
  - h. Costs of the suit
  - i. Any other relief the court may deem fit and/or just to grant.
2. The 1st Defendant filed his Amended Statement of Defence dated 25th October, 2023. He averred that he was a bona fide purchaser for value without notice having purchased the suit parcel from the 3rd Defendant. The 2nd Defendant filed its Statement of Defence dated 29th September, 2022 where it averred that it facilitated the purchase of the suit land. The 3rd Defendant filed his Statement of Defence dated 14th February, 2022 where he averred that he purchased the suit property from the 4th Defendant.
  3. The 4th Defendant did not enter appearance or file his Defence despite service. The 5th and 6th Defendant filed their Statement of Defence where they averred that Nakuru/Municipality Block No. 15/671 land was originally owned by the deceased and later transferred to the 7th Defendant. The 7th Defendant also filed his Statement of Defence dated 30th November, 2023 where it denied any fraud.

#### **Plaintiff's case**

4. Winston Benson Nyabera testified as PW1 where his statement dated 29th July, 2021 was adopted as his evidence in chief. He produced the documents in his list of documents filed on 29th July, 2021 as PEX 1- PEX 16. He also produced the valuation report as PEX 17.
5. He testified that he was the son of Alice Atieno Nyabera (deceased) and that property number Nakuru/ Municipality /Block15/671 was originally owned by his late mother but was to be obtained by Dr. Otara in exchange of Nakuru/Municipality /Block15/635. The property was to come from the original owner Benson Mwangi Wangai to his mother. He testified that there was a letter of consent addressed to Amos Otara. He further testified that his mother's name was not in the green card in the property that was supposed to be transferred to her.
6. Upon cross examination by Mr Athuok learned counsel for the 1st Defendant, he stated that he was the only child of Alice Atieno Nyabera (deceased). He added that he was born on 20th



November, 1986. That he had properties in Njoro and other places. He went on to state that Nakuru/Municipality /15/671 belonged to his mother and that Mr. Otara was to give his late mum Nakuru/Municipality /Block15/635. He confirmed that his late mother did not receive any money for Nakuru/Municipality /Block15/671. PW1 stated that the property Nakuru/Municipality /Block15/635 was owned by Benson Mwangi. He admitted that there was no sale agreement between his mother and Benson Mwangi. He confirmed that the only agreement was for Nakuru/Municipality/Block15/671 at a consideration of Kshs. 210,000/= . He stated that the green card for Nakuru/Municipality / Block15/635 showed the transactions of Benson Mwangi, Amos Otara, Mwangi Mathenge, Kayeka Ochari, Abdul Kadir and Bank. He testified that Dr. Otara worked with the 5th Defendant to defraud his mother. He urged the court to order that Nakuru/Municipality/Block15/671 be transferred back to his mother's estate.

7. Upon cross-examination by Kipkoech learned counsel for the 2nd Defendant, PW1 stated that he sued the First Community Bank because there was a charge in Nakuru/Municipality /Block15/635. He admitted that he could not confirm that the bank was involved in fraud. He also confirmed that the green card did not show his mother was the owner at any time. He stated that the current owner was Abdul Kadir.
8. Upon cross examination by Ombati learned counsel for the 3rd Defendant, PW1 admitted that they did not do a search. He paid the rates and added that he also reported to CID. He went on to state that he visited the suit property in 2023 but there were no trees. He stated he was aware that the 3rd Defendant was in possession in the year 2000.
9. Upon cross examination by Mr Rotich, learned State Counsel for the 5th and 6th Defendants, he stated that he had not produced any transfer form. He further stated that Mr Sunguti was the CID Commander and that he had a copy of the green card. He admitted that his mother's name was not there. He stated that the certificate of lease was signed by Sarah Munge. He admitted that he had no receipt for transfer.
10. Upon cross examination by M/s Magatta learned counsel for the 7th Defendant, PW1 stated that Dr. Otara was his late mother's friend and neighbor. He stated that his mother had bought Nakuru/Municipality /Block15/671 in 2001. He stated that he amended the plaint to incorporate the 7th Defendant. He stated that Dr Otara transferred the land to someone else. He admitted that he had not seen a certificate in the 7th Defendant's name. He stated that the rate clearance No. 00189 showed Alice (deceased) as the transferee and Benson Mwangi as the owner. He stated that the title was issued on 19th June, 2007 and that it was with the CID. He further stated that his mother was not keen on selling the property and that the deal came through initially because they had received the title but ultimately, they found that the land belonged to another person. He stated that the title had not been cancelled and added that he had fenced the land when it was registered in the deceased name.
11. Upon re-examination, he stated that he saw the green card at DCI which was investigating the sale of the land. He stated that Nakuru/Municipality /Block15/671 was bought in 1999 at Kshs. 210,000. He stated that his mother participated in the transfer but he did not have the documents. He stated that his mother did not sign any documents with Dr. Otara. He added that the consent to transfer was given to Dr. Otara. He stated that the transaction was done at the buyer's office. That marked the close of the Plaintiff's case.

#### **1st Defendant's case.**

12. Abdikadir Ahmed testified as DW1 where he relied on his witness statement dated 20th September, 2021. He also produced his list of documents dated 20th September, 2021 which documents he



- produced as 1st DEX 1-9. He produced a copy of title as 1st DEX 10 and due diligence report as 1st DEX 11. Upon cross examination by Mr Agwenyi learned counsel, he stated that he bought the land Nakuru/Municipality /Block15/635 for Kshs. 5.7 million on 17th February, 2022. He stated that he borrowed Kshs. 2.4 million to pay which loan has since been cleared and the property discharged. He had the original title and that he had reported the person claiming the land. He had no record of complaint in court. He stated that he pulled down the fence and that he had done due diligence.
13. Upon cross examination by Kipkoech, he stated that the property was purchased legally and that he had a sale agreement and a certificate of title and denied being involved in any fraud. He further stated that the 7th Defendant was the 2nd owner of Nakuru/Municipality /Block15/635. He stated that the discharge was done the previous year and that the registrar has the documents. He stated that when he went to the police station, he had already started building. He admitted that there was a dispute. He further stated that he finished construction in June 2023 and 6th December, 2021 an order of status quo was issued. He stated that he had no claim against the bank.
  14. Upon cross examination by Ombati learned counsel, he stated that he had done a search and that Mr Oduori was the owner. He also stated that he had been given all the necessary documents for transfer. He admitted that when he took possession, there was a fence. He added that there were trees and sukumawiki. He stated that the property had been discharged and that the file was available at the registry. He stated that he had no complaint against the 3rd Defendant.
  15. Upon cross examination by Rotich, he stated that he got the property in 2020 and that he had done a search. The parcel file was available and the property was discharged.
  16. Upon cross examination by Magatta, he stated that he was introduced to Mr Oduor by one Harrison Chege, a broker from Nakuru who showed him the plot. He had not asked Oduor how he acquired the land. He bought the property for development and that his advocate told him that they had checked the parcel file and that due diligence was done by Ibrahim Isaack. He was not told about any prosecution file. His advocate did a search. He further stated that Mr Akango represented him and Oduor in the sale transaction. He confirmed that he paid all the money via RTGS in tranches. He admitted that he did not have evidence. He stated that he never understood some parts of the agreement. He went on to state that he understood status quo meant that he was the owner. He admitted that he never sought advice. He also stated that he reported to the police and added that he never saw the need to call the police as witnesses.
  17. Upon re-examination, he stated that Mr Oduor took him to the suit parcel where he showed him the documents as the owner of land. When he started construction there was no court order. He added that he was almost finishing with the construction when the status quo order was issued. That marked the close of 1st Defendant' case.

## **2nd Defendant's case**

18. Mohammed Ali Mohammed the manager of First Community Bank testified as DW2. He produced his witness statement dated 29th September, 2022 which was adopted as his evidence in chief. He also produced his list of documents dated 29th September, 2022 which documents were produced as 2nd DEX 1-2nd DEX 6. It was his testimony that the 1st Defendant applied for a facility of Kshs. 2.4 million to finance purchase of Nakuru/Municipality Block 15/635 and that their lawyer did due diligence. The official search showed the owner as Kayaka Hamtala Oduori. He went on to testify that the property was charged to the 1st Defendant on 17th June, 2020. He added that the charge was registered on 16th June, 2020. He testified that the loan was settled and the title released. He further testified that they had no interest in the suit property.



19. Upon cross examination by Athuok, he stated that the bank statement showed that the loan was cleared.
20. Upon cross examination by Ombati, he stated that they did a search and that the land records were available.
21. Upon cross examination by Magatta, he stated that he worked for 10 years. He stated that due diligence was limited to official search. He stated that they did not do a discharge and the bank had to wait until the conclusion of the case. He stated that he wrote a letter to the land Registrar. He added that he informed the bank that the loan had been repaid. He admitted that they did not do a historical search. He further admitted that their lawyer did not access the parcel file. He confirmed that the loan was not insured. He stated that he was not aware of any competing titles. He also stated that they were there as chargees of the property.
22. Upon cross examination by Angwenyi, he stated that they removed the customers' statement cashflow, title, charge documents, sale agreement. He further stated that at this stage there was no charge document. He added that valuation was done. He admitted that valuation was mandatory but they did not have a valuation report. He stated that he did not have a report of a site visit. He admitted that they had not done a historical search. He stated the he was not aware that the file was missing. He further stated that the search dated 17th August, 2020 confirmed that the charge was registered.
23. Upon cross examination by Kipkoech, he stated that the discharge of charge was done by the customer. He further stated that the original title was with the 1st Defendant and that he was not aware of any discharge. He also stated that the bank had no business holding the title.

### **3rd Defendant's case**

24. Kayaka Hamtala Oduori testified as DW3 where he adopted his witness statement dated 14th February, 2022 as his evidence in chief. He testified that he bought the suit land Nakuru/municipality/block 15/635 from Mwangi Mathenge. He saw the advertisement plot for sale and when he called, an old man who identified himself as Mwangi Mathenge came. He testified that they agreed on the purchase price as Kshs. 800,000. He paid Kshs. 700,000. He did a search which showed Mwangi Mathenge as the owner. They went to advocate Olali Cheche where he paid Kshs. 800,000. He produced the transfer documents as 3rd DEX 1-3rd DEX 11. It was his testimony that he was summoned by the DCI but was not charged.
25. Upon cross examination by Mr Athuok, he confirmed that he bought the property from Mwangi Mathenge on 9th May, 2012. He stated that he sold to Abdi Kadir in February 2020 at Kshs.5,700,000. He further stated that he surrendered all documents to Abdul Kadir. He went on to state that he did not know the whereabouts of Mwangi Mathenge. He stated that he paid cash money of Kshs. 800,000. He stated that he got his title in 2012 and that the property was transferred by the land office. He admitted that he did not have the transfer forms and that they were with lands department. He stated that he paid Kshs. 1,000 for the consent at lands office. He also stated that he paid stamp duty. He added that the documents were with the police. He confirmed that the certificate of lease for 15/635 dated 19th June, 2007 was in the name of Alice Atieno Nyabera. He stated that his title was original. He confirmed that the rates demand notice was in the name of Alice A. Nyabera. He stated that he was also paying rates.
26. Upon cross examination by Mr Angwenyi, he stated that he was shown the green card at the police station. He added that the name of Alice Nyabura was not on the green card. He admitted that he had no company name and that his business was to buy and sell land. He stated that he faced challenges in



his land deals but not touching on people's names. He went on to state that the challenges were not based on receiving money and not giving land. He admitted that he received the money. He stated that he only saw the green card and that his advocate was called by the police. He further stated that he never knew Mathenge and that he only came to know the 7th Defendant in court.

27. Upon cross examination by Magata, he stated that he used to be a property Agent but that he did not have an office. He stated that he had a business name and that he had other cases in court including Nakuru CMC Criminal case No 2258 of 2016 having been charged with obtaining by false pretence which case was still ongoing. He stated that he knew Jack Justus who filed Nakuru CMC ELC/E018/2024 against him. He admitted that he had 2 cases in criminal and civil. He stated that Jack sold him the property and later claimed that he had not sold. He stated that he did a search and bought the land. He admitted that he had no agreement with Mathenge. The agreement dated 9th May, 2012 was produced as 3rd DEX 12. He stated that he sold the land and that Kshs. 800,000 was paid to Mathenge. He admitted that Mathenge was not a witness and that Olaly Cheche the advocate was not a witness. He stated that he used to do farming on the land where he planted sukuma wiki. He added that he put up a gate while Mathenge put up a fence. Upon re-examination, he stated that he signed the transfer documents and that the land was registered in his name. That marked the close of the 3rd Defendants case.

### **7th Defendant's case**

28. Amos Magembe Otara testified as DW4 where his statement dated 29th November, 2023 and further statement dated 9th May, 2025 were adopted as his evidence in chief. He also produced his documents as 7th DEX 1(a) – 7(1) and 7 DEX 8 – 7TH DEX 9. He testified that he had a claim against the co-defendants. He testified that Mwangi Mathenge, the 4th Defendant was unknown to him. He testified that he paid for the property No 15/635 Nakuru Municipality, a transaction they did with Orina advocates. He testified that he knew Alice A Nyaga in 2001. He further testified that he had wanted to expand his residence on Nakuru/Municipality /Block15//670 while the deceased's property No Nakuru/Municipality /Block15/ 671 was next to his. He went on to testify that he approached her but she was not keen to sell but after having pleaded with her, she agreed and that he gives her an alternative.
29. It was his testimony that in January 2007, he got a seller, Benson Wangui Mwangi for the upper side that was Nakuru Municipality/15/637 and the transfer was for exchange. He approached the Plaintiff and in April 2007 they went to Orina and Co. Advocates where they agreed to exchange parcels No. 15/671, 15/635. He testified that Benson Wangui's land was to be transferred to the Plaintiff. It was his testimony that he paid Benson Kshs. 800,000 for the land and that he got occupation of Nakuru/Municipality /Block15//671. He further testified that the firm of Orina presented 2 titles 15/671 and 15/635 and when he went back with the two titles, he was informed that there was an anomaly.
30. He testified that Mr Benson presented a title of Nakuru/Municipality /Block15671/. *He added that Nakuru/Municipality /Block15635 was in the Plaintiff's name.* He testified that Nakuru/Municipality/Block15//671 was near his compound and that it was for expansion. He further testified that the same was to act as a security. He testified that he never sold the property to the 4th Defendant.
31. It was his testimony that the title was issued to the Plaintiff on 19th June, 2007 and that he paid for the property. The evidence of payment was cheque No 900125 for Kshs. 800,000 paid to Benson Wageri for 15/635. He had a claim against the 1st 2nd and 3rd and 4th Defendants. He never did any transaction on 15/635.
32. Upon cross examination by Angwenyi, he stated that his initial property was Nakuru/Municipality/Block15670 *while the Plaintiff's property was Nakuru/Municipality /Block15671* which was not



- developed. He approached the Plaintiff since it was vacant and that he was willing to exchange. It was the Plaintiff's proposal to exchange and that he got the property 15/635 for her and she gave him her property 671. Benson did not take Alice to see Nakuru/Municipality /Block15635. *He added that the initial agreement for Nakuru/Municipality /Block15/635 was between himself and Benson Mwangi. They agreed that property No Nakuru/Municipality /Block15635 was to move directly from Benson to Alice.* He confirmed that he signed the transfer instrument with Benson and left the instruction with Orina advocate. He stated that he was to ensure that Benson transferred the property to the Plaintiff.
33. He admitted that he did not have the agreement. He stated that Nakuru/Municipality /Block15//635 was registered in his name. They were to swap Nakuru/Municipality /Block15/635 with Nakuru/Municipality /Block15/671. He confirmed that he paid after the transfer and that the Plaintiff was to deposit the title. He further stated that he paid Mwangi immediately after transfer and that he cleared with Benson in January 2007. He added that he had not agreed with Alice. He went on to state that the property was transferred to him in 2007. Benson admitted that transferring the parcel was a mistake. He also admitted that there was a transfer instrument between Alice and Benson and that there was a mistake when the property was registered in the 7th defendants name. He added that the mistake was rectified and he was issued with a title in the Plaintiff's name.
34. He was referred to the green card for Nakuru/Municipality /Block15//635 where he stated that he was at the center of the transaction. He further stated that he did a background check on the property. He confirmed that he was in possession of Nakuru/Municipality /Block15/671 and that the same was registered in his name. He also confirmed that the Plaintiff's estate Nakuru/Municipality /Block15/635 had someone in occupation. He stated that the green card at the DCI was the one currently in court. He admitted that the property was not fenced
35. Upon cross examination by Athuok, he stated that his instructions were largely verbal and that there was no letter to Orina. He stated that his agreement was with Alice on Nakuru/Municipality/Block15/671. He further stated that in January he had deposited all documents for Nakuru/Municipality /Block15/ 15/635 and paid Kshs. 800,000 to Benson.
36. He stated that there was another agreement for Nakuru/Municipality /Block15/635 but that it was not before court. He admitted that he had no agreement signed by the 3 of them. He confirmed that there was an agreement between Alice and Benson but the same was not before court. He admitted that there was no transfer instrument between Alice and Benson. He also admitted that the Plaintiff did not pay Benson. He admitted that he had not produced the bank statement. He stated that he was to be the Plaintiffs witness. He stated that he never knew the 1st Defendant. He stated that his instruction to have the property transferred to Alice were not followed. He stated that he did not want possession of Nakuru/Municipality /Block15//635. He added that he relied on the advocate's advice. He stated that he never paid Alice. He denied being a defaulter.
37. Upon cross examination by Kipkoech, he stated that he paid Alice Kshs. 650,000 according to the agreement. He further stated that he had not paid the Kshs. 650,000 but that it was a swap of the land. He stated that he gave an equivalent in terms of land which documents he had produced. He admitted that he did not have the transfer between Benson Mwangi and Alice. He confirmed that there was consent to transfer and the title was issued on 19th June, 2007.
38. He stated that he left the documents with the Advocate. He confirmed that he had not received the title on the same date. He also confirmed that he had never signed any document for correction and had not received any letter from the land's office. He stated that it was not possible to register land transferred to one person to another person name. He admitted that he had not stated an error in the statement filed on 29th July, 2021. He stated that he had not transferred the land to the 4th Defendant.



- He added that he had no role in the transaction and that the bank could have not realized an error. He went on to state that his claim against the bank was because it was listed as the Defendant. He stated that he had not transferred to the people who claimed the property. He stated that the bank was not an owner of the property and it was not to be blamed as it was not involved in the exchange.
39. Upon cross examination by Ombati, he admitted that he had no document that showed the error was conceded. He stated that the 4th Defendant was the registered owner on 3rd December, 2009. He admitted that he had not conducted a search nor had any document that showed Benson Mwangi signed a transfer document to Alice. He stated that he was not a party to the transaction between himself and Mathenge. He admitted that he had instructed Orina to effect transfer in Nakuru/Municipality /Block15/635 and Nakuru/Municipality /Block15/671. He added that he could not recall the person that did the transfer on Nakuru/Municipality /Block15//670 and Nakuru/Municipality /Block15/671. He stated that regarding, Nakuru/Municipality /Block15/635 the transfer was to be done in the name of Alice. He further stated that the transfer was initially done in his name. He blamed Orina advocate for having not followed his instructions. He admitted that he had not done a search.
  40. Upon re-examination, he stated that he resided in his property No. Nakuru/Municipality/Block15//670. He further stated that he occupied both properties including Nakuru/Municipality/Block15/671 and held the two titles. He stated that he had wanted to extend his residence to 15/671 and Alice refused to exchange the property for money but for land. He added that he purchased the property in January 2007. He stated that Wangui was not present when he took Alice to Nakuru/Municipality /Block15/635. He further stated that he transferred the property straight to Alice. He stated that Alice executed a transfer form with Mr Wangai before Orina advocate.
  41. Stephen Orina testified as 7th DW1 where he testified that he was an advocate of the High Court of Kenya practicing under the firm of Orina & Co. advocates. He was referred to 7th DEX 4b where he testified that the same was a fee note dated 19th June, 2007. He stated that the 1st item showed a breakdown of activities and referred to block Nakuru/Municipality /Block15//635. It was his testimony that he did the transfer between Benson and Otara. He stated that item 2 referred to the same property which was a transfer between Benson Mwangi and Alice.
  42. Upon cross examination by Angwenyi, he confirmed that he was given instruction to draw an agreement in respect of two properties. He stated that he did the agreement and transfer for Nakuru/Municipality /Block15//671 between Dr Otara and Alice. He further stated that property No. Nakuru/Municipality /Block15/ 635 was between Dr. Otara and Alice. He stated that it was registered under Mr. Mwangi's name and that they were to transfer it directly to Alice. He stated that it was transferred to Dr. Otara, the transfer form registered and title issued to him. He added that they lodged a complaint to the Land office for rectification. He stated that the right procedure was followed. He denied knowing a Mr Mathenge. He stated that Alice took possession of the property. He further stated that his instructions were limited to the agreement and added that Nakuru/Municipality /Block15/671 belonged to Dr Otara while Nakuru/Municipality /Block15/ 635 was owned by Alice Nyabera.
  43. Upon cross examination by Athuok, he stated that a sale agreement has 3 counter parts. He stated that he did 3 counter parts for Nakuru/Municipality /Block15/671. He admitted that he did not have the sale agreement for Nakuru/Municipality /Block15/671 or Nakuru/Municipality /Block15/635 since he lost the documents when he moved offices. He admitted that he did not do a search. He stated that he recalled a deed of exchange between Nakuru/Municipality /Block15/635 and Nakuru/Municipality /Block15/671. He further stated that he did two sale agreements between Otara and Mungai and the second between Mwangi and Alice.



44. He was referred to DEX 37 which was in the name of Alice where he stated that there was a mistake in the titles. He stated that there was a title in the name of Dr. Otara in Nakuru/Municipality/Block15/635 but there was no transfer in the court record. He further stated that they lodged a transfer from Dr. Otara to Alice. He added that there were two titles in the name of Dr Otara, Nakuru/Municipality /Block15/671 and Nakuru/Municipality /Block15/635 and that title for Nakuru/Municipality /Block15/ 635 was surrendered to the lands office. He stated that he lodged the transfer from Dr Otara to Alice and that the first transfer was from Benard Mwangi to his client. He stated that Dr. Otara signed a transfer and left it in their office. He denied having colluded with Dr. Otara to have the property transferred to Mwangi Mathenge. He further stated that the documents were with the registrar.
45. Upon cross examination by Kipkoech, He stated that the 2nd Defendant was not in the register and only came into the picture in 2020. He stated that any act before 2020 could not be blamed on 2nd Defendant. He stated that Mr. Munyao was not an advocate hence he was not in a position to prepare documents. He further stated that he signed the transfer form from Mwangi to Otara. He added that there was a procedure for rectification of names. He also stated that they did another transfer form from DR. Otara to Alice where they paid the costs. He admitted that the documents were not produced. He added that he gave Dr Otara all documents. He stated that the title by Alice was not impeached. He also stated that he had no control of the land's office process.
46. Upon cross examination by Ombati, he stated that the title deed issued to Dr. Otara was valid and had no error. He further stated that Dr Otara should have transferred to Alice. He added that Dr. Otara got the consent and that he was the facilitator.
47. Upon cross examination by Ademoyon learned State Counsel, he stated that the title was issued to Dr. Otara and that it was an error by his office. The green card was to be corrected hence he approached the lands office and the mistake was rectified. He stated that Amos Otara's name was in green card.
48. Upon re-examination, he stated that there was an error in execution of his client's instructions when the title came out in the name of Mr Otara. He further stated that he was surprised that the name of Alice was not in the green card. He stated that he has not been charged. He also stated that they had lodged the documents at the land office but there was no action. He added that they had a certificate of lease in the name of Alice yet the same was not registered in the green card.
49. Boniface Munyao testified as 7th DW2 where his statement dated 29th November, 2023 was adopted as his evidence in chief. He testified that he was a clerk at Orina & co advocates having been employed in 2005.
50. Upon cross examination by Angwenyi, he stated that Dr Otara was their client. He stated that Nakuru/Municipality /Block15/671 was in the name of Dr. Otara. He went on to state that he bought the land from Alice. He stated that he was to give Alice Nakuru/Municipality /Block15/ 635 which belonged to Benson Mwangi Wangari. He added that Dr Otara was to buy from Benson. He went on to state that he did the transfer from Benson to Alice. He stated that he prepared a transfer form for Mr Otara. He stated that he took the transfer forms between Benson and Alice. He added that he had prepared two transfer forms where he left the copies for Otara together with the transfer forms. He stated that Dr. Otara's title was cancelled. He stated that he left the documents at the land's office and after two weeks, he got the title for Alice. He stated that he was surprised that Alice name was not on the green card. He added that Nakuru/Municipality /Block15/635 belonged to Alice. He confirmed that he never did a transfer from Dr Otara to Mwangi Mathenge.



51. Upon cross examination by Athuok, he stated that he worked as a conveyance clerk and that Dr. Otara asked them to transfer Nakuru/Municipality /Block15/ 671 to Alice then to himself. He confirmed that there were two titles for Nakuru/Municipality /Block15/635 where the current owner of 635 was Abdikadir Ali. He stated that he became the registered owner on 16th June, 2020 while Dr. Otara became the owner on 19th June, 2007. He stated that Benson Mwangi left the transfer document in favour of Dr Otara in January 2007. He stated that he lodged the documents at land's on 19th June, 2007 in the name of Dr Otara and a certificate of lease was issued. He stated that the only mistake was that he lodged the wrong transfer forms. He stated that he presented the wrong documents of Benson to Otara instead of Benson to Alice and discovered the mistake when title was already issued in the name of Dr Otara. He admitted that he had not prepared a deed of rectification or deed of exchange. He further admitted that he had not seen the sale agreement against their documents. He confirmed that he did not do a search after rectification. He further confirmed that he did not have a copy of title issued to Dr Otara in Nakuru/Municipality /Block15/635.
52. Upon cross examination by Kipkoech, he stated that he had worked with Orina since 2005 that was about 20 years. He stated that they followed the procedure having paid the stamp duty. He stated that Dr. Otara paid all the costs. He admitted that he picked the wrong transfer documents between Benson to Dr. Otara. He stated that the mistake was by lands office. He added that consent could be issued on the same day as one was only required to write a letter. He stated that the file got lost. He confirmed that there was no transfer form from Dr Otara to Alice. He admitted that he did not pay for consent.
53. Upon cross examination by Ombati, he stated that on 19th June, 2007, Amos was the registered owner of Nakuru/Municipality /Block15/635 and Nakuru/Municipality /Block15/671. He admitted that Amos never went to the land registrar. He added that there was no document in support of Alice. He denied that Alice's title was issued unprocedurally.
54. Upon cross examination by Adomeyon, he confirmed that the titles were issued on the same date. He also confirmed that Dr Otara had not signed the transfer form.
55. Upon re-examination, he stated that they started the transactions in April 2007 and that Nakuru/Municipality /Block15/671 was registered on 19th June, 2007. He stated that it was registered in the name of Otara instead of Alice. He stated that the mistake was corrected. He stated that the green card did not have Alice's name. That marked the close of the 7th Defendant's case.

#### **5th and 6th Defendant's case**

56. Emma Sitienei testified as 5th DW1. She testified that she was the registrar Nakuru Land Department. She produced her statement dated 20th December, 2021 which was adopted as her evidence in chief. She produced her list of documents filed on 17th December, 2021 which documents for 671 was produced as 5th DEX 1, lease -5th DEX2 and green card for 635. 5th DEX 2. She testified that Alice Nyabera was the owner of property No 671. She further testified that there was no fraud. It was her testimony that the transfer forms had to be submitted to the registrar. She added that an entry could not be made without process. She testified that they usually peruse through the documents for registration and only act on genuine documents. On Nakuru/Municipality/Block15/635, she testified that the documents presented indicated transfer from Benson to Mr Otara. She went on to testify that she was not given a copy of the transfer to Alice. She testified that they only corrected errors in names but not on registering a new name. She also testified that there were no documents for Alice.
57. She was referred to the title under Alice's name where she testified that the same was issued on 19th June, 2007 but that the entry was not on the green card. She further testified that the person who issued the green card signed the title. She testified that no registrar had been charged with fraud.



58. Upon cross examination by Angwenyi, she confirmed that the statement by Khaluma did not belong to her. She denied having done a statement but only adopted Khaluma's statement. She stated that the file could not be traced. She further stated that Nakuru/Municipality /Block15/635 was never registered under Alice Nyabera's name. She added that her name did not feature in the register. She went on to state that a transfer could not be registered without the central documents. She confirmed that they kept the original documents but they were missing. She further confirmed that they did not have supporting documents. She stated that the registration was genuine. She stated that the deed notice was given to the owner. She stated that Alice paid as the owner. She admitted that she did not have documents of transfer from Dr. Otara to Mwangi Mathenge. She confirmed that the entries were made at the office and the title issued at the Land Registration office.
59. Upon cross examination by Athuok, she stated that the green card was a register of able instructions. She stated that they registered authentic documents. She confirmed that entry No 9 was in the name of Abdi Kadir Ahamed Ali.
60. Upon cross examination by Kipkoech, she stated that the 2nd Defendant was only a chargee. Upon cross examination by Ombati, she testified that under entry No.5 the registered name was Mwangi Mathenge. She confirmed that the titles and green card corresponded. She stated that Mwangi Mathenge was the registered owner while the 7th entry was Kayaka Hamtala Oduori.
61. Upon cross examination by Magata, she stated that the white card was a separate document from the green card. She stated that in 2007 she was in High school and in 2021 she was in Eldoret. She confirmed that H M Khaluma was a Land Registrar and added that she had no problem with her statement. She stated that the register existed but she had not brought it. She confirmed that the entry for Alice Atieno Nyabera never showed in the green card. She also confirmed that the entry for Dr. Otara was nullified in green card. She admitted that there were no signatures on the green card and that the transfer documents were missing. She stated that they had no supporting documents.
62. She stated that the title from Alice did not feature in the register.
63. Upon re-examination, she stated that they produced the letter in their custody and there was no entry for Alice. She added that no one had been charged for fraud. That marked the close of 5th Defendant's case.

## **Submissions**

64. Counsel for the Plaintiff filed his submissions dated 19th September, 2025 where he gave a summary of the case and identified four issues for determination. The first issue was whether the 1st, 3rd and 4th Defendants are bona fide purchasers for value without notice. He relied on the case of Arthi Highway Developers Limited V West End Butchery Limited & 6 others [2015] eKLR and submits that the 1st Defendant alleges to have bought the suit property from the 3rd Defendant. He further submits that the 3rd Defendant stated that he bought the suit parcel from the 4th Defendant, Mwangi Mathenge who never entered appearance thus the same cannot be ascertained how he acquired it. He further submits that the 7th Defendant denied any dealings with the 4th Defendant. He argues that he could not have acquired title to the suit property since it was incapable of passing to him since the 7th Defendant never transferred it. He submits that it was not in dispute that the suit property was once owned by the 7th Defendant. It was counsel's submission that the due diligence report dated 10th January, 2019 produced by DW1 was inconsistent hence the 1st Defendant could not have done proper due diligence. He submits that the Certificate of Official Search was conducted on 6th February, 2020 yet signed on 5th February, 2020. He argues that the 1st Defendant cannot escape the fraudulent dealings. Counsel submits that there was no documentary evidence in support of the registration of the



- 4th, 3rd and 1st Defendants as proprietors of the suit property. He thus submits that the Defendants have not proved the root of their purported titles on a balance of probabilities.
65. It was his submission that the 5th Defendant being the custodian of the land records, could not explain or provide documents in support the registration of the 4th, 3rd and 1st Defendants as proprietors of the suit property. He submits that the green card showed that the 7th Defendant sold the suit property to the 4th Defendant while the 7th Defendant denied knowledge of the 4th Defendant or ever selling the suit property to him. It was his submission that according to the 7th Defendant, the intended recipient of the suit property was to be the deceased which evidence was corroborated by PW-1, DW-5 and DW-6.
66. Counsel submits that the 1st, 3rd and 4th Defendants fraudulently acquired the suit parcel. He also submits that the 1st, 3rd, and 5th Defendants did not produce any documents or acknowledgements confirming a sale agreement or receipt of the purchase price hence failed to prove that the 4th Defendant acquired a good title. He relied on the cases of *Weston Gitonga & 10 Others V Peter Rugu Gikanga & Another* [2017] and *Lawrence P. Mukiri V Attorney General & 4 Others* [2013] eKLR
67. The second issue was whether the Plaintiff is or was a bona fide purchaser for value without notice. While submitting in the affirmative, counsel argues that the transaction(s) preceding the deceased's acquisition of the suit property were legitimate and not marred with any fraudulent activities. He submits that there was no dispute over the ownership of the suit property by Benson Mwangi Wangai and the transaction to the 7th Defendant, which the deceased entered into for the intended swap between the two properties. It was his submission that the deceased parted with her said original property, Nakuru/Municipality Block 15/671, as consideration for Nakuru/Municipality Block 15/635, the suit property herein, in a legitimate transaction between herself and the 7th Defendant. The third issue was who is/was the legitimate registered proprietor of land parcel number Nakuru/Municipality Block 15/635. He relied on Section 26 of the *Land Registration Act* and submits that despite some procedural mistakes, the suit property was registered in favour of the deceased as agreed between the parties which position was corroborated by the evidence of PW 1, DW-4, DW-5 and DW-6. He further submits that the Defendants put much reliance in questioning how the suit property moved from the 7th Defendant to the deceased in the absence of a signed transfer yet they failed to explain how they acquired the suit property without transfer forms. It was his submission that the absence of the 4th Defendant to shade light on how he acquired the suit property coupled with the lack of documentation to support the 4th, 3rd and 1st Defendants' titles exposed them for having fraudulently acquired the suit parcel.
68. He submits that during the deceased's ownership and possession of the suit property, she received regular rates demand notices, as any property owner would, and paid the rates as demanded. He submits that the Plaintiff and/or deceased was and still is the legit registered proprietor of the suit property Nakuru/Municipality Block 15/635. He further submits that the 5th Defendant ought to have followed due process to effect the rectification. He submits that they instead committed fraud and failed to make the requisite entry in the Green card. He submits that in so doing, the deceased's right to the suit property was infringed even though a certificate of title was issued in her favour. It was his submission that the 7th Defendant was the greatest beneficiary of the swap agreement and therefore he gets to enjoy quiet possession of Nakuru/Municipality Block 15/671 while the Plaintiff has lost possession of Nakuru/Municipality Block 15/635. He however submits that the same does not validate or make the 1st Defendant the legitimate registered proprietor of the suit property.
69. The final issue was whether the Plaintiff is entitled to the orders sought in the plaint. He relied on Section 80 of the *Land Registration Act*. It was his submission that the 1st Defendant did not get a good title to the suit property. He also submits that if the process preceding issuance of a title did not



comply with the law, then such a title could not be held indefeasible. He added that the transfer of the suit property to the 4th Defendant having been irregularly obtained, he had no valid legal interest to pass to the 3rd Defendant who could in turn pass to the 1st Defendant. He submits that the Plaintiff has proved his case and the root of the deceased's title over the suit property and as such, he is entitled to the orders sought in the Plaint. He also submits that the acquisition of the suit property, Nakuru/Municipality Block 15/635, by the 1st, 3rd and 4th Defendants was fraudulent and void ab initio. It was his submission that the Plaintiff is entitled to mesne profits from the day the 1st Defendant took over the suit property. He relied on the Court of Appeal case in *Mistry Valji V Janendra Raichand & 2 others* [2016] eKLR.

70. Counsel for the 7th Defendant filed his submissions dated 28th July, 2025 where he gave a summary of the case and identified four issues for determination. The first issue was whether Dr. Otara legitimately facilitated the exchange of properties between Alice Nyabera and Benson Wangai Mwangi, resulting in Alice becoming the rightful owner of Nakuru/Municipality/Block 15/635.
71. Counsel submits in the affirmative and argues that in 2007, he purchased Plot 15/635 from Benson Wangai Mwangi for Kshs. 800,000 as evidenced from Exhibits D7-1 (b), D7-3 (f), D7-4 (a)) and transferred it to Alice Nyabera in exchange for Plot 15/671. He submits that an error by Orina & Co. Advocates resulted in Plot 15/635 being registered in Dr. Otara's name, but the same was corrected, and the title was issued to Alice Nyabera on 19 June, 2007 as evidenced from exhibits D7-5, D7-6. He went on to submit that the Lands Registrar's claim that Alice's name was absent from the green card was likely due to subsequent tampering and not Dr. Otara's actions. He relied on the case of *Emfil Limited V Registrar of Titles Mombasa & 2 Others* [2014] eKLR. He submits that the Plaintiff confirmed that he was still in possession of the original title.
72. The second issue was whether the subsequent transfers of Nakuru/Municipality/Block 15/635 to the 4th, 3rd, and 1st Defendants were fraudulent or unauthorized. He submits that after 2018, the title for Plot 15/635 was transferred to the 4th Defendant, 3rd Defendant (Kayaka Hamtala Oduori), and the 1st Defendant. He submits that Dr. Otara denied any involvement and stated that he had no knowledge of or contact with the 4th Defendant and further did not authorize or sign any transfer documents in their favor. He added that the chain of title was defective due to missing transfer documentation, a flaw which was exacerbated by the 4th Defendant's absence from the proceedings. He submits that the transfers of Plot 15/635 were invalid due to missing documentation, such as transfer forms from Alice Nyabera or Dr. Otara to the 4th Defendant, rendering subsequent transfers to the 3rd and 1st Defendants unprocedural and illegal. He relied on the cases of *Nyangena & Another V Wanjohi & 7 Others* [2023] KEELC 99 (KLR) and *Ruto & Another V Yego* [2023] KEELC 17755 (KLR).
73. It was his submission that the deceased has been in occupation of the suit parcel from June, 2007 to April, 2021. He added that the 1st Defendant failed to conduct due diligence on the suit parcel.
74. Counsel further submits that the 3rd Defendant admitted to have conducted land transactions without a registered business or office which in turn violated Section 18 of the *Estate Agents Act*, Cap 533. He added that the said breach rendered his contract with the 4th Defendant void ab initio, thus it nullified the subsequent sale to the 1st Defendant. He relied on the case of *Mapis Investment (K) Limited V Kenya Railways Corporation* [2006] KECA 344 (KLR). He also relied on the case of *Dina Management Limited V County Government of Mombasa* [2023] KESC 30 (KLR) and Section 26(1) (b) of the *Land Registration Act*, 2012. He submits that the subsequent transfers of Plot 15/635 were fraudulent, unauthorized, and marred by illegalities, warranting cancellation
75. The third issue was whether the Lands Registrar (5th and 6th Defendants) acted negligently or in complicity with any fraudulent activities concerning the property titles. Counsel submits in the



affirmative and argues that the 5th Defendant failed to produce the presentation book for Plot 15/635 (June 2007–July 2012), despite a court order on 19th March 2025. He further submits that the absence of Alice Nyabera’s name on the green card, despite her possession and title issuance on 19th June 2007 together with rates payments and coupled with missing original transfer documents suggested deliberate manipulation or negligence. It was his submission that the Lands Registrar’s failure to produce critical evidence and maintain accurate records indicated negligence thus supporting the Plaintiff’s and 7th Defendant’s claims.

76. The final issue was what is the legal implication of the 5th Defendant’s failure to comply with the Notice to Produce issued by Dr. Otara? He submits that the requested presentation book was critical for verification of the 2007 transfer to Alice Nyabera. It was counsel’s submission that the Registrar’s non-compliance amounted to withholding of evidence which would confirm the Plaintiff’s title.

### **Analysis and Determination**

77. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Who is the registered proprietor of Nakuru/Municipality Block No.15/635?
  - b. Whether the Plaintiff is a bona fide purchaser for value without notice.
  - c. Whether the Plaintiff is entitled to the prayers sought.
  - d. Who should bear the costs of the suit.

#### **A. Who is the registered proprietor of Nakuru/Municipality Block No.15/635?**

78. It was the Plaintiff’s case that the 7th Defendant had approached her with the intention of buying the Alice Atieno Nyabera’s (deceased) property Nakuru/Municipality Block 15/671. She confirmed that she was reluctant but was later persuaded to do an exchange with another parcel being the suit property Nakuru/Municipality Block 15/635. It was the Plaintiff’s case that the said property was to be transferred directly from Benson Mwangi Wangai to the deceased while she was to transfer Nakuru/Municipality Block 15/671 to the 7th Defendant.
79. PW1 confirmed that Benson Mwangi was the owner of the suit property. He admitted that there was no sale agreement between his mother and Benson Mwangi. He also confirmed that the only agreement was for Nakuru/Municipality /Block15/671 at a consideration of Kshs. 210,000/=. He also admitted that his mother’s name was never listed in the green card. PW1 produced copies of the transfer documents and the Certificate of Lease for Nakuru/Municipality Block 15/635 the suit property as PEX 5 and PEX 6.
80. The 1st Defendant on the other hand contends that he bought the suit property from the 3rd Defendant at Kshs. 5.7 million on 17th February, 2020. He produced a copy of the sale agreement 1st DEX1 and a copy of the RTGS confirmation slip 1st DEX 8. He confirmed that he borrowed Kshs. 2.4 million from the 2nd Defendant to pay the first installment which loan was since cleared and the property discharged. He also produced a copy of the Certificate of Lease issued to him on 16th June, 2020 1st DEX10. The 2nd Defendant confirmed that they did due diligence and that the official search showed the 3rd Defendant was the owner. He further confirmed that the property was charged to the 1st Defendant and that the loan was settled and the title released. He confirmed that they had no interest in the suit property.



81. The 3rd Defendant confirmed that he bought the property from the 4th Defendant on 9th May, 2012 at a consideration of Kshs. 800,000. He produced a copy of the sale agreement 3rd DEX12. He also confirmed that he then sold it to the 1st Defendant at Kshs. 5,700,000. He admitted that he did not have the transfer forms as they were with the 5th Defendant.
82. The 5th DW1, the Land Registrar admitted that she did not have the transfer documents from the 7th Defendant to the 4th Defendant. She also admitted that there were no signatures on the green card and that the transfer documents were missing. She confirmed that they had no supporting documents and that the title from Alice did not feature in the register. She confirmed that the titles were not issued by lands.
83. The 7th Defendant contends that he facilitated the exchange of the two parcels having paid Kshs. 800,000 for 15/635 but due to an error by Orina advocates, it resulted in the suit property being transferred in his name instead of the deceased. The 7th Defendant's witness Stephen Orina 7th DW1 admitted that he did an agreement between the deceased and the 7th Defendants for the suit parcel and 15/671. He however failed to produce the same in court. He confirmed that they lodged a complaint with the lands office so as to rectify an error where the suit land 15/635 was issued to the 7th Defendant instead of the deceased. He confirmed that despite the error having been rectified, the green card failed to include the deceased's name.
84. In the preliminary, it is noteworthy that the suit property is Nakuru/Municipality Block No.15/635. The Plaintiff alleges that the 1st, 3rd and 4th colluded with the 5th Defendant to fraudulently acquire the suit parcel. It is this court's view that the onus lies on the Plaintiff to prove the same having pleaded the particulars of fraud under paragraph 27 of his amended plead.
85. The Court of Appeal in Mombasa, Civil Appeal No. 312 of 2012- Emfil Limited Vs Registrar of Titles Mombasa & 2 others [2014] eKLR held as follows:

"Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities".

Section 26(1) of the *Land Registration Act* provides:

...the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme."

86. The Plaintiff contends that there were forged transfer forms from Benson Mwangi to the 7th Defendant and subsequently to the 4th Defendant. He also contends that the 5th Defendant illegally issued a Certificate of Lease for the suit parcel when the original title was already with the deceased. I have keenly perused the court record and it is not in dispute that from the green card, the initial owner of the suit parcel was Benson Mwangi Wangai. It is also not in dispute that the Land Registrar admitted



that she did not have the transfer documents from the 7th Defendant to the 4th Defendant despite the green card which confirmed that the suit parcel moved from the said parties.

87. It is also not in dispute that the 4th Defendant did not enter appearance or give evidence despite service. It is my considered view that the 4th Defendant was a critical party in this suit so as to unearth the narrative as to whether he purchased the suit parcel from the 7th Defendant or even sold to the 3rd Defendant being that there were no transfer documents. It is this court's view that this narrative remained a mystery despite the green card confirming the same. In addition, the Land Registrar did not assist in providing clarity since she admitted that the file was missing and that there were no transfer documents.
88. It is however a fact that there were Certificates of Lease issued to the 7th, 4th, 3rd and 1st Defendants which the Land Registrar confirmed in her evidence. It is also a fact that the deceased was issued with a Certificate of Lease to the suit parcel on 19th June, 2007. Further, it not in dispute that the 1st Defendant has since constructed on the suit parcel. The 7th Defendant on the other hand does not dispute that there was a mistake but it was clear from the 5th Defendant's evidence and fortified by the register that the mistake was never rectified as alleged.
89. The Supreme Court in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) cited the case of *Munyu Maina V Hiram Gathiha Maina* [2013] KECA, where it held as follows:
90. 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." [Emphasis mine]
91. It is this court's view that entries numbers 1, 2, 7 to 9 on the green card conformed to the documents adduced and this court shall be bound by the register. In view of the same, it is my view that in as much as from the testimonies there was no evidence of transfer from the 7th Defendant to the 4th Defendant, the green card showed that the transfer was nonetheless effected. The 5th Defendant also did not disapprove or deny the said entries and the Certificate of Lease in the Defendants' names. It is therefore my finding that the Plaintiff failed to prove fraud and thus the Certificate of Lease in the 1st Defendant's name stands.
92. It is this court's view that the dispute solely revolves around entries numbers 3, 4, 5 and 6 which is between the 7th Defendant and the Plaintiff. It came out clear from the 7th Defendant's evidence that the deceased's name was to feature under entry 3 and not his. It was also clear that the error was never rectified as shown from the green card.
93. It is not in dispute that the charge by the 2nd Defendant was discharged and it had no claim against any party to the suit.

#### **B. Whether the Plaintiff is a bona fide purchaser for value without notice.**

94. In the case of *Samuel Kamere V Lands Registrar, Kajiado* [2015] KECA 644 (KLR) the court held as follows:

...in order to be considered a bona fide purchaser 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 that they paid valuable consideration for the purchase of the suit property...”

95. PW1 failed to produce any sale agreement or transfer forms which showed that his late mother purchased the suit property. He admitted that his mother’s name did not appear in the green card. It is this court’s view that the Plaintiff failed to fulfil the requirements of a bona fide purchaser. This court therefore finds that the Plaintiff is not bona fide purchaser for value without notice.

**C. Whether the Plaintiff is entitled to the prayers sought.**

96. It is my view that the Plaintiff has failed to prove his case on a balance of probabilities so far as the issue of purchase of the suit parcel. However, it is noteworthy that the 7th Defendant does not dispute having received Kshs. 800,000 from Benson Mwangi as purchase price for the suit land. He confirmed that he transferred the same to the deceased but from the evidence it was clear that the transfer was not effected. It was also clear from the evidence that despite the 7th Defendant having lodged a complaint with the 5th Defendant to rectify the mistake, the Land Registrar confirmed that they only corrected errors in names but not on registration of new names such as that of the deceased which was not present.
97. It is this court’s view that the Plaintiff is therefore not entitled to the prayers sought in his amended Plaint aside from only prayer e) 1) which is the alternative prayer for compensation by the 7th Defendant. I find that the 7th Defendant shall compensate the Plaintiff Kshs. 7,000,000 being the market value of the land as in the valuation report dated 28th November, 2023 (PEX 17).

**D. Who should bear the costs of the suit.**

98. On the final issue of costs, the general rule is that costs follow the event. This court having considered the circumstances of the case, it would be fair that each party bears its own costs to the suit. Orders accordingly.

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT ENVIRONMENT AND LAND COURT**

**DATE: 2025-10-03 09:21:04**

