



Saidimu v Statutory Manager- United Insurance Company Limited (Under Statutory Management) & 5 others (Environment and Land Case 332 & 943 of 2017 (Consolidated)) [2025] KEELC 6963 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6963 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 332 & 943 OF 2017 (CONSOLIDATED)
LC KOMINGOI, J
OCTOBER 9, 2025**

BETWEEN

ONESMUS SINTOLE SAIDIMU PLAINTIFF

AND

**THE STATUTORY MANAGER- UNITED INSURANCE COMPANY LIMITED
(UNDER STATUTORY MANAGEMENT) 1ST DEFENDANT
INSURANCE REGULATORY AUTHORITY 2ND DEFENDANT
KAJIADO LANDS REGISTRAR 3RD DEFENDANT
THE HON ATTORNEY GENERAL 4TH DEFENDANT
SEMENKURR SANE SAIDIMU (SUING AS THE REPRESENTATIVE OF THE
ESTATE OF SANE SAIDIMU NKIKOORA (DECEASED) 5TH DEFENDANT
GEORGE NGURE KARIUKI 6TH DEFENDANT**

JUDGMENT

1. Before Court are two suits being ELC Kajiado 332 of 2017 and ELC Kajiado 943 of 2017.
2. ELC Kajiado 332 of 2017 was first filed through the Plaintiff dated 13th October 2014 at Machakos ELC as Case No. 128 of 2014 before it was transferred to this Court.
3. ELC 943 of 2017 was first filed at Nairobi ELC as Case No. 1209 of 2015 through the Plaintiff dated 23rd June 2015 filed on 25th November 2015 before it was transferred to this Court. At the time of filing ELC 1209 of 2015 (now ELC 943 of 2017) the Plaintiff therein, Sane Ole Saidimu had since passed away. This Court including the Court of Appeal found that, that suit was incompetent having been filed in the name of a deceased person and the 5th Defendant herein could not be substituted in



place of Nkikoora, as there was no valid suit. The court of Appeal therefore directed that the late Sane Saidimu's representative be joined in this suit as Interested Party together with the George Kariuki who is cited as the 6th Defendant.

4. On the 9th November 2021, the court gave directions that the interested party be joined as a defendant. Semenkurr Ole Saidimu therefore became the 5th Defendant. All parties were directed to comply with pre-trial directions and the hearing was scheduled for 31st March 2022. On the 24th October 2022 the 5th Defendant sought to confirm the George Nguni Kariuki, who became the 6th Defendant.
5. In the Amended Plaintiff dated 2nd September 2016, the Plaintiff claims that pursuant to advertisements dated 28th May 2012 placed in the local dailies by the 1st Defendant for the sale of land; Kajiado/Purko/334 measuring approximately 100 acres, he placed a bid and won. He was issued with a letter of offer for the land for a consideration of Kshs. 10,000,000. The Plaintiff accepted the offer and paid the consideration. Upon payment the Plaintiff started undertaking due diligence on the suit property, only for him to find out that records in relation to the suit property had been interfered with. The Plaintiff wrote several correspondences to the 1st and 2nd Defendants asking for records and documents for the suit property with no success. He therefore sought that:
 - i. An order of specific performance directing the 1st and 3rd Defendants to transfer the parcel of land known as Kajiado/Purko/334 to the Plaintiff and in default, the Deputy Registrar of this Court to execute the transfer documents.
 - ii. Costs of the suit and interest at Court rate.
6. On the 31st July 2017 a Consent judgement was recorded between the Plaintiff and the 1st defendant ordering for the reconstruction of the Green Card of the suit property and that the same be transferred to the Plaintiff. After this was done a title deed dated 22nd May 2018 was issued in his favour.
7. The 5th Defendant contested against this Consent on grounds that it was entered illegally through withholding of material information. This Court therefore set aside the Consent Judgement through the Ruling dated 27th September 2019 and the same was upheld by the Court of Appeal in their Judgement dated 29th January 2021 and ordered that the 5th and 6th Defendants be enjoined in this suit.
8. The 5th Defendant in his Statement of Defence and Counter Claim dated 19th October 2022 stated that the late Sane Saidimu Nkikoora was the registered and absolute owner of parcel Kajiado/Purko/334 having been registered on 8th September 1992. That sometime in the year 2011, the 6th Defendant approached the deceased for the purchase of 15 acres and the he agreed to sell parcel Kajiado/Purko/340 for Kshs. 450,000. Upon payment of Kshs. 135,000, the 6th Defendant asked for the original title deed to effect the transfer. The deceased due to old age and illiteracy gave the 6th Defendant, four original title deeds so that the 6th Defendant would get the title for parcel 340. Unfortunately, the 6th Defendant took advantage of him and retained two original titles being Kajiado/Purko/340 and Kajiado/Purko/334 ("the suit property"). The 6th Defendant then transferred the suit property to the 1st Defendant. The 5th Defendant's case is that deceased never entered into an agreement for the sale this suit property, nor did he seek consent to transfer it or sign any transfer documents.
9. He outlined the particulars of fraud against the 6th Defendant as follows;Irregularly, illegally, fraudulently and wrongfully obtaining the original title of parcel 334;Irregularly, illegally and fraudulently transferring the suit property to the 1st Defendant's name.
10. It was the 5th Defendant's case that the 1st Defendant did not have good title to pass to the Plaintiff and it was inconceivable how the Plaintiff purchased it without undertaking due diligence.



11. He therefore sought the following reliefs;
 - i. A declaration that Sane Saidimu Nkikoora (deceased) is the bona fide, lawful and absolute proprietor of property Kajiado/Purko/334;
 - ii. A declaration that the transfer of property Kajiado/Purko/334 from Saidimu Nkikoora to the 1st Defendant who in turn sold it to the Plaintiff is irregular, illegal and void ab initio.
 - iii. An order cancelling title deed Kajiado/Purko/334 registered in the 1st defendant's name back to Saidimu Nkikoora.
 - iv. A permanent injunction restraining the Plaintiff, 1st, 2nd and 6th Defendants by themselves, their agents, or servants from interfering, encroaching, alienating, wasting and or trespassing into property Kajiado/Purko/334.
 - v. An eviction order against the Plaintiff and the 1st Defendant, their agents, servants, and/or any other person claiming through them from property Kajiado/Purko/334.
 - vi. An order directing the Officer Commanding Station Kajiado Police Station to provide necessary security to facilitate eviction of the Plaintiff, the 1st Defendant, their agents, servants and/or any person claiming through them from property Kajiado/Purko/334.
 - vii. General damages.
 - viii. Costs of this suit together with interest thereon.
12. The Plaintiff in his Reply and Defence to the Counterclaim dated 6th December 2022 claimed that the Defence and Counterclaim was fatally defective for having been filed several months after the Court of Appeal allowed his request for joinder. The Plaintiff also claimed that he was a stranger to the claim between the 5th Defendant and the 6th Defendant. He went on to state that he purchased the suit property through a public auction through the Liquidator and was a stranger to the allegation of fraud and illegality. As such, the defence and counterclaim ought to be dismissed with costs.
13. The 1st and 6th Defendants in their Joint Statement of Defence dated 19th April 2023 admitted paragraphs 1 to 8 of the Plaintiff's Amended Plaintiff adding that the 1st Defendant facilitated the transfer of the suit property to the Plaintiff. They therefore had no claim against the Plaintiff.
14. The 1st and 6th Defendants in their Reply to the 5th Defendant's Statement of Defence and Counter Claim contested that the late Sane Saidimu Nkikoora was the registered owner of Kajiado/Purko/334. The 6th Defendant also denied that he entered into an agreement with the deceased for parcel; Kajiado/Purko/340 in the year 2011. They pointed out the following as the history of the suit properties:
15. That the late Sane Saidimu Nkikoora was the registered owner of property Kajiado/Purko/21 measuring approximately 526 acres. In the year 1992, he caused this land to be subdivided into portions: Kajiado/Purko/333-336 measuring approximately 100 acres each; Kajiado/Purko/337 measuring approximately 50 acres; Kajiado/Purko/338-339 measuring approximately 30 acres each and Kajiado/Purko/340 measuring approximately 15 acres.
16. In the year 1997, the Deceased offered to sell parcel Kajiado/Purko/334 to the 6th Defendant and upon receipt of the full consideration, it was registered in the name of the 1st Defendant on 6th May 1997. In the same year, 1997, the Deceased also entered into an agreement for sale of parcel Kajiado/Purko/340 and upon payment of full consideration, the property was transferred to him on 10th June 1998.



17. The 6th Defendant denied that he received four titles from the late Sane Saidimu. He also denied the allegation of fraud. It is his case that the 1st Defendant passed a good title to the Plaintiff.

Evidence of the Plaintiff

18. PW1, Onesmus Sintole Saidimu, the Plaintiff, adopted his witness statement dated 4th March 2022 as his evidence in chief and produced his bundle of documents which was marked P. Exhibit 1 to 52.
19. He stated that he purchased the suit property; Kajiado/Purko/334 from the 1st Defendant for Kshs. 10,000,000 as per the evidence adduced. He also produced the letter of offer dated 11th August 2012. The suit property was then transferred to him after this suit was filed following the Consent recorded which consent was later set aside. He contested the allegation that one George Kariuki fraudulently acquired the suit property from the late Sane Saidimu Nkikoora.
20. On cross examination he stated that following the consent order dated 31st July 2017, the 1st Defendant initiated the process of having the Green Card reconstructed, and he was thereafter issued with a title deed. However, on 27th February 2019, that consent was set aside by this Court, which ruling was affirmed by the Court of Appeal. He stated that the suit property was vacant and the 6th Defendant-George Kariuki resided on the adjacent property. He stated that he was a distant cousin to the late Sane Saidimu though he denied that he was raised by him. He however confirmed that Sane was present during his initiation ceremony. He stated that it was public knowledge that Sane Saidimu had sold some of his land. He confirmed that after purchasing the suit property, he did not do due diligence although there was a Green Card that that Sane Saidimu sold the land to the 1st Defendant and title issued in its favour on 6th May 1997. He also contested the claim that Sane Saidimu was illiterate pointing out that at one time he contested for the Kajiado Central Parliamentary seat. He stated that they got consent from the Land Control Board although he did not have minutes of the meeting.
21. On re-examination he stated that the late Sane Saidimu neither filed a suit against him nor against the 6th Defendant during his lifetime.

Evidence of the Defendants

22. DW1 George Ngure Kariuki, the 6th Defendant adopted his witness statement dated 31st July 2022 as his evidence in chief and produced his bundle of documents.
23. He stated that the late Sane Saidimu became unknown to him when he and his lawyer approached him because his parcel of land was at the risk of being auctioned by Agricultural Finance Corporation. He denied that he obtained the title for parcel Kajiado/Purko/334 fraudulently maintaining that it was Sane Saidimu and his family who were in charge of the transaction. He stated that he had no dealings with the Deceased or his family, although in 2011, he and his family visited him to express their gratitude. He pointed out that by 2011, the 1st Defendant had been under statutory management from the year 2005. As such, he could not have caused the transfer of the property to the 1st Defendant in 2011.
24. On cross examination he stated that the Deceased approached him to purchase his property which had been used as security for a loan advanced to him by African Finance Corporation. Documents to support this claim were not produced in Court. He confirmed that between 1983 and 2005 he was the Managing Director of the 1st Defendant and when the transaction for the suit property was brought to him, he approved it and the documents were in custody of the 1st Defendant. He however contested having any dealings with the 1st Defendant in 2011.



25. He stated that he was not aware that there was no sale agreement between the 1st Defendant and the late Sane Saidimu or payment of purchase price, and acknowledged that he had not produced any documents to that effect. He also stated that he was not aware that there was no consent to transfer or any documents executed for the transfer indicating that probably the documents were in custody of the 1st Defendant. However, on reference to his witness statement, he acknowledged that he indicated that he had executed the documents. He also indicated that he was the one who approved the sale of the suit property to the Plaintiff and denounced having fraudulently acquired Kajiado/Purko/ 334. He stated that after its purchase, the 1st Defendant took possession which was now occupied by the Plaintiff.
26. It was his testimony that he was also not aware that Green Card to the suit property was lost although the 1st Defendant had put a caution against it. On being shown the Green Card, he confirmed that there was no entry of a caution recorded on it.
27. On re-examination he stated that the 1st Defendant was put under Statutory Management in 2005 and there is no way the transaction would have proceeded in 2011.
28. DW2 Christopher Onyango, the 1st Defendant's Operations Manager, when it was under Statutory Management and adopted his witness statement dated 31st July 2023 as his evidence in chief and relied on documents 12 to 35 of the 1st Defendant's bundle of documents. He stated that the late Sane Saidimu was not in possession of the suit property in 2011 because the title was handed over to the 1st Defendant in 2005.
29. On cross examination he stated that he was familiar with George Kariuki the 6th Defendant, who was a shareholder and former Managing Director of United Insurance Company Limited which was under liquidation. He had worked with him. He stated that he was appointed as the operations Manager in 2015 and the title for Kajiado/Purko/334 was among the titles handed over to the Statutory Manager. He stated that the suit property was purchased in 1997. He stated that he was not aware if there was a sale agreement for the purchase or other transaction documents and neither could he explain the process leading to its acquisition. He stated that he was not aware that the original owner did not sell the land adding that the 6th Defendant did not inform him of the transaction leading to its acquisition. He went on to confirm that from the green Card, the company did not transact with the suit property between the year 2005 and 2018.
30. On re-examination he stated that the Gazette notice in the Plaintiff's bundle of documents was not in respect of a lost title because they were in possession of the title. It was for a lost Green Card and the Statutory Manager was not the custodian of the Green Card but it was the Land Registrar. He indicated that the Company had been put under Statutory Management of two Statutory Managers and that a company under statutory management could not transact. He also stated that there was a Court order which led to the disposal of the suit property.
31. DW3 Sirimoi Ole Nkiminis Saitabao, adopted his witness statement dated 16th October 2022 as his evidence in chief. He stated he knew Sane Saidimu and he was aware that he did not sell parcel Kajiado/Purko/334 to anyone.
32. On cross examination he acknowledged that he knew the Plaintiff whom he described as a medical doctor and that they were relatives. He stated that he was familiar with the Plaintiff's home at Nkoile, pointing out that Nkoile was a subdivision of Kumpa and his home was at Kumpa. He stated that Saidimu's home and his home were close to each other. He stated that he witnessed Sane Saidimu sell about six (6) portions of his land to different people and parcel 334 was not part of the portions sold. It was his testimony that Sane Saidimu sold about fifteen (15) acres of land to the 6th Defendant but could not recall the year. He also stated that as much as he could not recall the parcel number sold to



the 6th Defendant, he was sure it was not parcel 334. He stated that the six (6) parcels sold were not in writing but through oral agreements. He went on to acknowledge that Sane Saidimu was his father's age mate and that there were things about his parcels of land that he was not aware of. He however stated that he was aware that he had four (4) wives and upon subdividing his land, he gave each of them a portion of land and sold the remaining. He stated that every time he wanted to sell his land, he would call him together with his children to inform them of the sale. This was about twenty (20) years ago. It was his testimony that Kajiado/Purko 334 was never sold to anyone.

33. On re-examination he re-affirmed that Sane Saidimu was illiterate and he would consult him on all his land transactions and he did not sell the suit parcel.
34. DW4 Moses Meeli Nkuruna adopted his witness statement dated 16th October 2022 as his evidence in chief. He stated that he knew Sane Saidimu and he was sure that he did not sell the suit property.
35. During cross examination he stated that he was the former chief of Nkoile location and that the Plaintiff was his brother in law. It was his testimony that Sane Saidimu sold six portions of his land. He stated that he knew the 6th Defendant with whom he had a pending dispute over parcel; Kajiado/Purko/ 339 which he purchased from the late Sane Saidimu in 1993. However, he could not produce title to the said parcel because the 6th Defendant obtained it fraudulently. He stated that he neither reported nor filed a suit against him. He also admitted that he was once arrested and remanded at the Kajiado Police Station due to a land dispute with one of the Plaintiff's brothers.
36. DW5 Semenkur Sane Saidimu, the 5th Defendant, adopted his witness statement dated 19th October 2022 as his evidence in chief and produced his bundle of documents which was marked as D. Exhibit 1-15. He stated that Sane Saidimu who passed away in 2015 was his father, the owner of parcel; Kajiado/Purko/334 where they reside. He stated that in 2012 his father learnt that the land was being sold through a newspaper advertisement. All this time he did not know that he did not have the original title deed for parcel 334. This is because sometime in 1996, he sold parcel Kajiado/Purko/340 to the 6th Defendant, George Ngure Kariuki. Due to his illiteracy, he gave the 6th Defendant four titles to procure title for parcel 340. It appears that the 6th Defendant also took away title for parcel 334 and gave him a copy. His father was shocked to learn that the Plaintiff, who was like his son, had purchased the land. He claimed to have purchased it from the 1st Defendant but his father had never sold his land to anyone. He did not see any sale agreement, consent from the Land Control Board, payment of purchase price or any sort of transaction for Kajiado/Purko/334.
37. On cross examination, he admitted that his father sold parcel 340 to the 6th Defendant and since it was not the subject of the dispute, he had not availed its sale agreement. He stated that his father learnt about the alleged sale of parcel 334 in 2011 although it was until 2015 when the suit against the 6th Defendant was filed. He confirmed that his father had several parcels of land which he sold off including parcel 340, 339, 337, 83. When asked about the thumbprint on page 23 of the 1st Defendant's bundle, he stated that he could not confirm whether it was his father's thumbprint. He stated that when his father learnt about the sale of the land, he made reports to the police as per the Occurrence Book Number (OB No.) of 2015 although these documents were not availed in Court. It was his testimony that sometime in 2015, his father also informed M/s Naikuni and Co. Advocates of this dispute and instructed them to file the suit. As a result, Ms. Naikuni Advocates wrote to the 6th Defendant through the letter dated 11th May 2015. He confirmed that the title to the 1st Defendant was issued in 1997 but it was in 2011 that his father realised he did not have the title. He stated that the original title being Kajiado/Purko/21 was subdivided by his father in 1992 when he was about 17 years old and he did not know much about land matters at that time. It was in 1997 when his father sold parcel 340 to the 6th Defendant but maintained that the suit property was never sold.



38. On re-examination he stated that Kajiado/Purko/ 21 was subdivided to parcels 333 to 340 and he sold some parcels such as 339, 337 and 338. It was until 2011 that he discovered he did not have title for parcel 334. He stated that the late Sane Saidimu became ill in 2007 before his passing in 2015. That prior to his passing he had instructed M/S Naikuni & Co. Advocates to file a suit against the 6th Defendant
39. At the close of the oral testimonies, parties tendered their final written submissions.

Submissions of the Plaintiff

40. The following were outlined as the issues for determination by the Plaintiff: Whether the 1st defendant fraudulently acquired the suit property; Whether the plaintiff lawfully acquired a beneficial and or a purchaser's interest in the suit property and if so whether the same ought to be transferred in his favour; What orders ought to issue.
41. On Whether the 1st defendant fraudulently acquired the suit property, it was submitted that the 5th Defendant's claim was against the 6th Defendant and not the 1st Defendant. Further, counsel submitted that in the letters dated 11th May 2015 to Kajiado District Land Registrar, 15th May 2015 to the Attorney General, 20th August 2015 to the plaintiff, 20th August 2015 to the Statutory Manager, 20th August 2015 to the Attorney General and 20th August 2015 to the 6th defendant all indicated that the alleged fraud occurred sometimes in the year 2011 or thereabout. This allegation was questioned, with counsel arguing that the suit property was sold and transferred in favour of the 1st Defendant in 1997 which was several years before the alleged fraud was purportedly committed. And as 2011, the title deed was already in the 1st Defendant's name and the allegation that the 6th Defendant took it from the late Sane Saidimu in 2011 was not possible. As parties are bound by their pleadings, evidence which tends to be at variance with the pleadings should be rejected as held in Daniel Otieno Migore V. South Nyanza Sugar Co. Ltd [2018] eKLR and by the Supreme Court of Kenya in Raila Amolo Odinga & Another v IEBC & 2 Others [2017] eKLR. Counsel went on to submit that the allegation that the late Sane gave the 6th Defendant four titles in order to pick one for parcel Kajaido/Purko/340 to use to process subdivision and hive off 15 acres was also false because a copy of the title deed for parcel 340 showed that the said parcel was 15 acres and there was no land that to be hived off. As such, the alleged fraud was not proved to the required standard citing Koinange & 13 Others v Charles Karuga Koinange 1986 KLR, Kinyanjui Kamau v George Kamau [2015] eKLR and Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR.
42. Counsel went on to submit that evidence of DW3 and DW4 were mere allegations and had no probative value adding that DW4 admitted to have a long standing dispute with the 6th Defendant which led to his arrest and incarceration. As such, his evidence could not be said to be independent.
43. On whether the Plaintiffs is a lawful and or beneficial owner and purchaser of the suit property, while making reference to the case of Peter Njoroge Nganga v Kenya Reinsurance Corporation Limited & Another [2012] eKLR, counsel submitted that pursuant to leave of the court to sell the suit property, the plaintiff purchased the suit property through a public auction following an advertisement for its sale by public auction. Upon bidding, he was declared the highest bidder and a letter of offer dated 11th August 2012 confirmed as such as well as evidence of DW2. The suit property having been purchased by way of public auction, Section 3(3) of the *Law of Contract Act* was inapplicable. And there being no proof of the alleged fraud, meant that the title deed held by the 1st Defendant was protected by Section 26(1) of the *Land Registration Act* citing Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR.



44. On what orders should issue, counsel submitted that the Plaintiff was entitled to an order of specific performance for registration and issuance of title for the suit property and costs of the suit be borne by the 5th Defendant.

Submissions of the 1st and 6th Defendants

45. While associating with the submissions of the Plaintiff, counsel submitted that the 5th Defendant's counterclaim was defective contrary to Order 7 Rule 3 and Order 1 Rule 24(1) of the Civil Procedure Rules because the 5th Defendant's counterclaim was against the co-defendants and he should have filed a Notice of Claim against the co-defendants. As such, the counter claim should be struck out. Counsel went on to submit that this notwithstanding, the 5th Defendant failed to prove his case against the 1st and 6th Defendants. This is because Kajiado/Purko/334 was registered in the 1st Defendant's favour in 1997 and parcel Kajiado/Purko/340 registered in the 6th Defendant's favour in 1998. As such, there was no interaction or transaction between them and the late Saidimu in 2011 as claimed by the 5th Defendant. As such, the burden of proof as stipulated by Section 107 and 108 of the *Evidence Act* had not been established. It was also submitted that the 1st and 6th Defendants produced evidence of the transactions in 1997 and 1998 of how the said properties were acquired. As such, fraud had not been proved to warrant cancellation of title as prayed. Reference was made to the case of Arthi Highway Developers Limited v Westend Butchery Limited & 6 Others [2015] KECA 816 KLR which held that fraud must be proved to a standard above balance of probabilities.

Submissions of the 5th Defendant

46. Counsel submitted that the suit was first filed in the Nairobi ELC as case No. 1209 of 2015 before it was transferred to this Court and assigned Kajiado ELC Case No. 943 of 2017. During the pendency of these suits, the Plaintiff entered into a consent with the 1st Defendant on 31st July 2017 and the suit property was transferred to him. That this consent was entered by the parties with full knowledge of suit 943 of 2017 and due to that, the Consent Judgement was set aside on 27th February 2019 and the same upheld by the Court of Appeal in the judgement delivered on 29th January 2021.
47. Counsel submitted on the following as the issues for determination:
48. On whether the 1st Defendant legally and regularly acquired the suit property from the 5th Defendant, it was submitted that a certificate of title was only valid if it was procedurally and legally acquired as per section 26 of the *Land Registration Act* supported by David Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR, Munyu Maina versus Hiram Gathiha Maina [2013] eKLR, Hussein Abdalla Said v Yawa Chome Shume & 2 others [2024] KECA 866 (KLR).
49. To support the claim that the property was not legally transferred to the 1st Defendant, counsel submitted that the 1st Defendant being a company, Section 37 of the *Companies Act* provided that a document is validly executed by a Company if it is signed on behalf of the company by two authorised signatories or a Director of the company in presence of a witness. However, the 6th Defendant who was the 1st Defendant's Director at the time of the alleged transfer in his testimony stated that he never signed any documents relating to the suit property and that this was handled by the advocates. Counsel added that there were no documents whatsoever as proof of the transaction such as sale agreement, LCB consent, payment of the purchase price, forms of transfer, nothing at all. The only documents produced were in regard to the sale of property Kajiado/Purko/340. Therefore, the root of how the title was acquired was tainted with illegality and could not be protected. Reference was made to the cases of Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR) and Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR.



50. On whether the Plaintiff was entitled to the reliefs sought, it was submitted that the Plaintiff had not proved his claim on a balance of probabilities as discussed in *William Kabogo Gitau v George Thuo & 2 Others* [2010] 1 KLR 526, *Palace Investment Ltd versus Geoffrey Kariuki Mwenda & Another* (2015) eKLR and *James Muniu Mucheru v National Bank of Kenya Ltd* [2019] eKLR. Having submitted that the 1st Defendant never acquired the suit property legally, meant it could not sell what it did not own which was the principle of *nemo dat non quod habet*. Therefore, the purported sale to the Plaintiff could not be validated by the Court. Reference was made to *Funzi Development Ltd & Others v County Council of Kwale* [2014] eKLR and *Daniel Kiprugut Maiywa v Rebecca Chepkurgat Maim* [2019] eKLR where the Courts held that a Court could not sanction an illegality or an irregularly acquired title.
51. On whether the 5th Defendant's counter claim was merited, it was submitted that the 5th Defendant having shown that the 1st Defendant acquired title to parcel 334 fraudulently meant that the 5th Defendant was entitled to the reliefs sought and that the Plaintiff's suit should be dismissed with costs to the 5th Defendant.

Analysis and Determination

52. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
- i. Whether the Plaintiff has proved that he is the legal owner of property Kajiado/Purko/334;
 - ii. Whether the Plaintiff is entitled to the reliefs sought;
 - iii. Whether the 5th Defendant has proved his case as per his Counterclaim;
 - iv. Is the 5th Defendant entitled to the reliefs sought?.
 - v. Who should bear costs of the suit?
53. It is not in contention that parcel Kajiado/Purko/334 was registered in favour of the 1st Defendant and was sold to the Plaintiff. There is transfer from the Representatives of the Statutory Manager, Policy Holders Compensation Fund, John Sifa Keah and Charles Maina Machira to Onesmus Sintole Saidimu (the Plaintiff) for a consideration Kshs. 10,000,000.
54. The 1st Defendant acknowledged this and agreed to transfer the suit property which was done before the consent judgement was set aside.
55. The issue is whether the 1st Defendant validly acquired the suit property Kajiado/Purko/334 from the late Sane Saidimu Nkikoor. The same is contested by the 5th Defendant. The 5th Defendant claimed that the 6th defendant fraudulently acquired title to the suit property and caused its transfer to the 1st Defendant in the year 2011. However, from the title deed produced as evidence, the said parcel was registered in favour of the 1st Defendant in the year 1997.
56. To support his case that the title was not acquired fraudulently, the 6th defendant produced a sale agreement for Kajiado/Purko/340 and its title deed dated 10th February 1998. He also produced a title deed for Kajiado/Purko/ 339 in his name registered on 18th July 2006. However, these documents were of no probative value since the dispute was in relation to Kajiado/Purko /334.
57. To support the claim that the 1st Defendant was duly registered owner of Kajiado/Purko/ 334 before selling it to the Plaintiff, a title deed in favour of United Insurance Company Ltd issued on 6th May 1997 was produced. It is now settled in precedent that the process of acquiring a title is as good as



the title. The certificate of title was not enough evidence to prove ownership if the said ownership is contested. See *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR) where it was held;

“... 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...”

58. To ascertain the legality and validity of the title held by the 1st defendant, it is this Court’s duty to go to the root of the transaction and acquisition.

It is the plaintiff’s case that he bought the suit property from the 1st Defendant for Kshs.10,000,000/=. It is his case that the title was registered in the name of the 1st Defendant. Throughout these proceedings the 1st Defendant did not produce a sale agreement between it and the Deceased (Sane Saidimu Ole Nkikoora). No proof that consent was sought from Purko Land Control Board. No transfer in favour of the 1st Defendant from the deceased, proof that the Deceased received the purchase price for the suit property and proof that it was given vacant possession. It is the 5th Defendant’s case that they are on the land. The acquisition of the suit property by the 1st Defendant is not backed by any documents.

59. It therefore means that the plaintiff failed to do due diligence before purchasing the suit property. Had he done due diligence he would have known that the deceased did not sell the suit property. He was known to the Deceased who was alive by then. He ought to have made enquiries.

His claim that he was an innocent purchaser for value cannot come to his aid at this point. By the time he filed this suit against the 1st and 2nd defendants he was aware that the Deceased was contesting the sale.

60. It is the 5th Defendant’s case that in 2011, his late father, Sane Saidimu sold Kajiado/Purko/ 340 to the 6th Defendant and due to his advanced age and low literacy level, he gave the 6th Defendant four (4) title deeds and the 6th Defendant took advantage of that and kept the title deed for parcel 334 which his father had not intended to sell. The 6th Defendant contested this on grounds that by the year 2011 he was already in possession of Kajiado/Purko/ 340 having purchased it and the same registered in his favour in the year 1998 as per the documents presented. The court has already noted the discrepancy on the year that the suit property was sold vis a vis the documents produced.

61. The 1st and 6th Defendants also stated that by 2011, the 1st Defendant had been in possession of the suit property which was registered in its favour in the year 1997. However, while documents relating to Kajiado/Purko/ 340 such as the sale agreement was produced, the same was not produced for Kajiado/Purko/ 334. DW2 in his witness statement indicated that documents in relation to the transaction between the Deceased and the 1st Defendant were with the previous Statutory Managers- Kenya Reinsurance Corporation. If these documents were in existence, why then, were they not produced in evidence?

62. Section 107 and 108 of the *Evidence Act* is clear that he who alleges must prove.

Section 107(2): When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section 108: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.



63. The 5th Defendant produced several correspondences to different entities on the alleged fraud in the acquisition of the suit property. The said correspondences are as follows;
- i. Letter dated 4th May 2015 addressed to the Chairman of the Purko Land Control Board from Sane Ole Saidimu and his family indicating that parcel 334 was never sold to George Kariuki the 6th Defendant herein.
 - ii. Letter dated 11th May 2015 from Sane Saidimu's advocates to the Kajiado District Land Registrar for recovery of title for parcel 334 on grounds that it was falsely taken by the 6th Defendant.
 - iii. Letter dated 15th May 2015 addressed to the Hon. Attorney General indicating how the 6th Defendant falsely acquired title for parcel 334 in 2011.
64. The 5th Defendant's counsel also wrote to the Plaintiff, the 1st and the 6th Defendants asking that the title deed for parcel 334 be returned having been obtained illegally.
65. The reconstructed green card vide Committee Notice No. 2172 of 9th March 2018, shows that title deed for parcel 334 was opened on 8th September 1992 and registered in favour of the late Sane Ole Saidimu. On 6th May 1997 it was registered in the 1st Defendant's name.
66. It is not clear when the Deceased handed over the titles to the 6th Defendant. It may not be 2011 as claimed by the 5th Defendant because he was not privy to these transactions. Only the 6th Defendant would tell when, but he has declined for obvious reasons that he played a big role in this fraud. He was the Managing Director of the 1st Defendant between 1983 and 2005. His title for Kajiado/Purko/340 which is not contested was issued in 1998, about the same time the one for the suit property was registered in the 1st Defendants' name. He admitted that he approved the transaction between the 1st Defendant and the Deceased. There are no documents to support the transaction.
- He also stated that the Deceased took his family to appreciate him. For what reasons? I find that he let out less than he knew about all this dispute. I find for lack for a better description that he was at the centre of this irregularity and or fraud. Could it be that the Deceased dealt with him on trust basis? The burden is on him to one day tell the truth.
67. While there is a discrepancy in the time period of the alleged fraud and acquisition of the suit property, this Court has not found that convincing evidence of how the 1st Defendant acquired the said property in 1997 from the late Sane Saidimu. And if the certificate of title held by the 1st Defendant is questioned or impeached, it then follows that no transaction emanating from such a title would stand valid. This was reinforced by the Supreme Court in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) where it stated thus;
- “... In the case of *Funzi Development Ltd & Others v County Council of Kwale* [2014] eKLR the Court of Appeal, which decision this court affirmed, stated that:
- “... A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”
68. From the evidence tendered, while fraud was not proved by the 5th Defendant against the 1st and 6th Defendants as to the required threshold as held in *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] KECA 816 (KLR): “It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt...” This court is not convinced that there was enough



evidence tendered to prove that the registration of parcel Kajiado/Purko/334 in favour of the 1st defendant was procedurally undertaken to make the resultant title issued in 1997 un-impeachable.

69. This therefore, means that the 1st defendant did not have a good title to pass to the Plaintiff in the sale undertaken in 2012. And the Plaintiff could not claim to be a bonafide purchaser for value if the root title was impeached. This was the holding of the Supreme Court in the Dina Management case (supra):

“... the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...”

70. From the foregoing, I find that the 1st Defendant had no good title to pass to the Plaintiff. As stated earlier on his claim of an innocent purchaser for value without notice cannot stand. His claim fails. He is there not entitled to reliefs sought in the Amended Plaint.

71. The 5th Defendant’s case is that the Deceased never sold the suit property to the 1st Defendant. The 6th Defendant who was the Managing Director of the 1st Defendant, stated that he approved the transaction but that he did not sign any documents as it was being handled by the external Advocates.

72. The 1st Defendant is a company purporting to have purchased the suit property from the 5th Defendant but no evidence of a sale agreement has been adduced to demonstrate a contract between the 1st Defendant and the 5th Defendant relating to the suit property as required by law. In this case, the 1st Defendant has failed to produce;

- a. Duly executed sale agreement between the 1st Defendant and the Deceased.
- b. Payment of deposit of the purchase price.
- c. Application for consent to the land control board as per section 17 (1) of the [Land Control Act](#) Cap 302.
- d. Minutes of the Land Control Board to signify that indeed a meeting of the Land Control Board was held.
- e. Consent to transfer by the Land Control Board
- f. Payment of balance of the purchase price.
- g. Duly executed transfer forms
- h. Evidence of valuation.
- i. Payment of stamp duty.
- j. Lodging of transfer forms.
- k. Registration of transfer.
- l. Permissions for vacant possession and occupation.
- m. Any developments, if any done on the suit property.

73. It should be noted that the 6th Defendant produced a sale agreement for the purchase of Kajiado/Purko/340 dated 21st May 1997,. He stated that his title was issued in 1998. This could explain how the Deceased may have mistakenly handed him four (4) title which he used to perpetrate this fraud.



74. It should also be noted that the Deceased had decided to file suit to reclaim the suit property before his demise.

It is therefore not true as claimed by the Plaintiff that he (Deceased) did not take any steps to reclaim his land.

75. Before concluding, the 1st and 6th Defendants raised an issue on whether the counterclaim by the 5th Defendant against his co-defendants was merited.

76. Order 7 Rule 8 of the Civil Procedure Rules provides;

“Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff, together with any other person or persons, he shall add to the title of his defence a further title similar to the title in a plaint, setting forth the names of all persons who, if such counterclaim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver to the court his defence for service on such of them as are parties to the action together with his defence for service on the plaintiff within the period within which he is required to file his defence.”

77. From the wording of this provision, the Court finds that the 5th Defendant was permitted by law to raise a counterclaim either between him, the Plaintiff, the Defendants or any other person or persons not in the plaint.

78. It is the 5th Defendant’s case they are utilizing the suit property. I therefore find that they are not entitled to an award of damages.

79. In conclusion, I find that the 5th Defendant has proved his case on a balance of probabilities.

The counter claim succeeds.

80. Accordingly Judgement is entered for the 5th Defendant as follows;

- a. That a declaration is hereby issued that the late Sane Saidimu Nkikoora (deceased) is the bona fide, lawful and absolute proprietor of property Kajiado/ Purko/ 334;
- b. That a declaration is hereby issued that the transfer of property Kajiado/Purko/334 from the late Sane Saidimu Nkikoora to the 1st Defendant who in turn sold it to the Plaintiff is irregular, illegal and void ab initio.
- c. That an order is hereby issued to the Kajiado Lands Registrar directing him/her to cancel the title deed Kajiado/Purko/334 registered in the 1st defendant’s name back to Sane Saidimu Nkikoora.
- d. That a permanent injunction is hereby issued restraining the Plaintiff, 1st, 2nd and 6th Defendants by themselves, their agents, or servants from interfering, encroaching, alienating, wasting and or trespassing into the land known as Kajiado/Purko/334.
- e. That an eviction order is hereby issued against the Plaintiff and the 1st Defendant, their agents, servants, and/or any other person claiming through them from property Kajiado/Purko/334.
- f. That an order is hereby issued directing the Officer Commanding Station Kajiado Police Station to provide necessary security to facilitate eviction of the Plaintiff, the 1st Defendant, their agents, servants and/or any person claiming through them from the land known as Kajiado/Purko/334.



g. That the 5th Defendant shall have costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

N/A for the Plaintiff.

Ms. Ithondeka for the 1st, 6th Defendants.

N/A for the 3rd, 4th Defendants.

Mr. Kipkirui for the 5th Defendant.

Court Assistant – Peter.

