



**Mbui & another (Suing on Behalf of the Estate of the Deceased Richard Mbui Ndavi) v New Akamba Unity & 3 others (Environment and Land Case 128A of 2018) [2025] KEELC 7318 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7318 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE 128A OF 2018  
A NYUKURI, J  
OCTOBER 16, 2025**

**BETWEEN**

**JOHNBOSCO NGILA MBUI ..... 1<sup>ST</sup> PLAINTIFF  
JOHN MUTEI MBUI ..... 2<sup>ND</sup> PLAINTIFF  
SUING ON BEHALF OF THE ESTATE OF THE DECEASED RICHARD MBUI  
NDAVI**

**AND**

**NEW AKAMBA UNITY ..... 1<sup>ST</sup> DEFENDANT  
LAND REGISTRAR MACHAKOS ..... 2<sup>ND</sup> DEFENDANT  
THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. Vide a Plaint dated 28<sup>th</sup> October 2013, the plaintiffs sought the following orders against the defendants;
  - a. A declaration that the agreement for sale entered into between the plaintiffs and the 1<sup>st</sup> defendant in respect of property Athi River/Athi River Block 5/164 is illegal, null and void and of no effect.
  - b. A declaration that the purported transfer of the title for the suit land Athi River/Athi River Block 5/164 and issuance of a title document in the name of the 1<sup>st</sup> defendant is illegal, null and void and of no effect and therefore revoked.



- c. An order compelling the 2<sup>nd</sup> defendant to rectify the land register to reflect that the deceased is the registered proprietor of the parcel of land known as at Athi River/Athi River 5 /164.
  - d. An order vesting the suit property Athi River/Athi River Block 5/164 in the plaintiffs to administer in the manner provided for under the law.
  - e. A permanent injunction restraining the 1<sup>st</sup> defendant either by itself or its agents, servants from alienating, disposing, transferring, using, dealing and or in any other way whatsoever interfering with the plaintiff's possession of the parcel of land Athi River/ Athi River/Block 5 /164
  - f. Costs of this suit and any other relief that this honorable court may deem fit.
2. The plaintiffs averred that they were joint administrators of the estate of Richard Mbui Ndavi (deceased) having been granted letters of administration in the High Court of Kenya at Machakos in Succession Cause No. 499 of 2007 on 22<sup>nd</sup> March 2012. They described the 1<sup>st</sup> defendant as a community-based organization involved in community work in Ukambani and other parts of the country and stated that at all material times Richard Mbui Ndavi the deceased was the legal owner of the property known as Athi River/Athi River/ Block 5/164 (suit property) and that the plaintiffs and other beneficiaries to the estate had been in possession of that parcel.
  3. Further that on 1<sup>st</sup> March 2012 and before the plaintiffs had obtained grant of letters of administration of the estate of the deceased, the 1<sup>st</sup> defendant entered into an agreement with the plaintiff for sale of the suit property but that the said agreement was later revoked at the plaintiffs' instance and other beneficiaries of the deceased estate. They stated that the 1<sup>st</sup> defendant fraudulently transferred the suit property to its name and obtained certificate of title on 1<sup>st</sup> October 2013.
  4. According to the plaintiffs, the particulars of fraud on the part of the 1<sup>st</sup> defendant included inducing the plaintiffs to enter into an illegal agreement knowing that the plaintiffs had no capacity to transact; forging transfer and other documents to cause a fraudulent transfer of the suit property; fraudulently effecting transfer knowing that the sale agreement had been rescinded; presenting for registration land registration and transfer documents knowing that they were false; admitting transfer documents knowing that they were fraudulent and illegal, and transferring the suit property that is in the name of the 1<sup>st</sup> defendant before the purchase price was paid in full. They accused the 2<sup>nd</sup> and 3<sup>rd</sup> defendants of fraudulently registering the deceased's land in the name of the 1<sup>st</sup> defendant; changing the Registry Index Map reflecting the 1<sup>st</sup> defendant as the registered proprietor of the suit property; fraudulently issuing the 1<sup>st</sup> defendant with the title deed of the suit property and colluding with the 1<sup>st</sup> defendant to register the suit property in his name. They added that they had suffered loss and damage due to the defendants' illegal and fraudulent activities and misrepresentation. They stated that they had all along been willing to refund the defendants deposit of Kshs. 470,000/=.
  5. In response, the 1<sup>st</sup> defendant entered appearance and filed defense dated 11<sup>th</sup> November 2013 while the 2<sup>nd</sup> to 4<sup>th</sup> defendants filed their joint defence dated 20<sup>th</sup> January 2014. In their defence the 1<sup>st</sup> defendant denied the plaintiffs' claim and more specifically denied fraud and stated that the plaintiff's family members were present during the confirmation of grant in May 2013 and agreed to the distribution of the deceased's estate without any dispute. Further that even before confirmation, the court had gazetted the temporary grant for six months and a copy of the same given to all family members and none of them complained.
  6. Regarding the agreement dated 1<sup>st</sup> March 2012, the 1<sup>st</sup> defendant averred that all the family members pleaded with the purchaser to purchase the suit property. That the two representatives of the estate



and all family members indicated to the purchaser, in the presence of the advocate who attested the sale agreement, that they had applied for letters of administration vide Succession Cause No. 499 of 2007 which led to a change of agreement and availing of completion conditions which included the original certificate of title; duly executor transfer in respect to forms RL1, RL7 and RL 19; consent to transfer; duly completed valuation form; copies of vendors' pin certificates; copies of vendors' national identity cards; and three colored passport size photographs of their vendors.

7. It stated that as the original title was missing, the vendor availed a police abstract for purposes of processing another title which was done with full knowledge of all family members. The 1<sup>st</sup> defendant denied particulars of fraud attributed to it and stated that the plaintiffs and all their family members agreed to sell the suit property having indicated that they had obtained temporary grant in Succession Cause No. 499 of 2007 and received an initial deposit of Kshs. 20,000/= which was acknowledged on 22<sup>nd</sup> February 2012, before the disputed agreement was entered into. It further stated that the plaintiffs instructed the firm of Sang & Langat Advocates to act for them in the conveyance and the Succession Cause and that they had not paid legal services fees up to date. It maintained that all forms were duly executed by the plaintiffs without undue influence being form Nos. RL1, RL7 and RL19 together with application for consent and transfer instrument and documents. It denied engaging in an illegality, fraud and misrepresentation and insisted that the plaintiffs had not suffered any loss or damage.
8. On their part, the 2<sup>nd</sup> to 4<sup>th</sup> defendants filed statement of defence dated 20<sup>th</sup> January 2014 wherein they denied the plaintiffs' claim. They averred that they were strangers to the contents of the plaint and particulars of fraud stated therein.
9. The suit was heard by way of viva voce evidence. The plaintiffs presented two witnesses while the 1<sup>st</sup> defendant presented one witness. The 2<sup>nd</sup> to 4<sup>th</sup> defendants did not present any witness.

#### **Plaintiffs' evidence**

10. PW1 was John Bosco Ngila Mbui the 1<sup>st</sup> plaintiff. He adopted the contents of his witness statement dated 28<sup>th</sup> October 2013 as his evidence in chief and produced the list of documents filed. According to the witness, the suit property belonged to his late father and that he had filed this suit as one of the administrators of the estate of his late father on the basis of grant of letters of administration issued to him in Succession Cause N0. 499 of 2007. He stated that he had been aware that the title document of the suit property had been missing and an application for its replacement had been made. Further that on 1<sup>st</sup> March 2012 while their petition for grant of letters of administration was pending before the High Court at Machakos, they entered into a land sale agreement for the suit property with the 1<sup>st</sup> defendant who acted through Sang & Langat advocates and that when the beneficiaries of the estate of the deceased learnt of the transaction, they objected to the same on the basis that it was irregular and wrote to the 1<sup>st</sup> defendant's lawyers stopping the transaction.
11. He stated that the transaction was illegal on the basis that the vendors had not obtained grant of letters of administration. According to him, they were issued with a grant of letters of administration on 22<sup>nd</sup> March 2013, which was confirmed on 21<sup>st</sup> May 2013. He stated that he was surprised to learn that the grant showed that the suit property will be transferred to the name of the 1<sup>st</sup> defendant, yet no such instructions had been given or consent granted. That they subsequently instructed the firm of Omari Muumbi and Kiragu Advocates to write to the 1<sup>st</sup> defendant's lawyer revoking the transaction and indicating their willingness to refund the money paid. That they were also supposed to rectify the grant to strike out the name of the 1<sup>st</sup> defendant. That on 22<sup>nd</sup> October 2013 when they obtained search of



- the suit property they learnt with shock that the same had been transferred to the 1<sup>st</sup> defendant and the title issued to the latter on 1<sup>st</sup> October 2013.
12. The witness added that having sold the land to the 1<sup>st</sup> defendant, they changed their minds about the agreement because at the time of sale, they did not have letters of administration and that they instead wanted to refund the purchase price. He stated that the consideration was Kshs. 1,100,000/= but that the defendants had only paid Kshs. 400,000/=. That when they wanted to refund the money, the defendant refused and that they therefore prayed that they be allowed to refund the sum of Kshs. 400,000/=.
  13. He produced copies of grant of letters of administration; letter of authorization signed by the 2<sup>nd</sup> plaintiff; sale agreement dated 1<sup>st</sup> March 2012; Certificate of confirmation dated 21<sup>st</sup> May 2013; resolution dated 30<sup>th</sup> March 2001 signed by all beneficiaries of the deceased's estate; letter dated 13<sup>th</sup> July 2013 from the clan of the deceased; letter dated 13<sup>th</sup> July 2013 from Patrick Mbui to the 1<sup>st</sup> defendant; letter dated 23<sup>rd</sup> July 2013 from Omar Muumbi & Kiragu Advocates to the 1<sup>st</sup> defendant; letter dated 26<sup>th</sup> July 2013 from the 1<sup>st</sup> defendant's advocates to Omari Muumbi And Kiragu Advocates; Memorandum of understanding dated 21<sup>st</sup> September 2013, Summons filed on 8<sup>th</sup> October 2013 and a copy of official search dated 22<sup>nd</sup> October 2013.
  14. On cross examination, he stated that they wanted to sell their land because they had problems and they needed money at that point. That their father and mother had already died. That he sold the land together with his co-administrator who is John Mbui. That they sold the land as administrators of the estate of the deceased. That they did not pay their advocate any money because the advocate represented the 1<sup>st</sup> defendant. That they sold the land at Kshs. 1, 100, 000/= as per the agreement of sale. That they only received Kshs. 400, 000/= and no other money was paid. He confirmed that condition No. 3 of the sale agreement stated that the vendors were paid Kshs. 470,000/= which amount was reflected in the letter from Omari Muumbi & Kiragu Advocates. On that basis, he conceded that they were paid 470,000/=.
  15. The witness confirmed that the title got lost after the agreement was written and that he they instructed their advocates to procure a new title. Further that they did not pay Sang & Langat Advocates because the 1<sup>st</sup> defendant was the one to take care of the costs. That together with his co-administrator, they applied to have the loss of their title gazetted. Further, that before they sold the land, they had already applied for grant of letters of administration and that they sold the land because the estate needed money. They confirmed that their lawyer assisted them to apply for confirmation of grant and that the entire family was present in court to obtain the confirmation.
  16. That the confirmation of grant was issued as shown by P-Exhibit No. 5 showing how the estate would be distributed. He confirmed that the court endorsed the distribution as proposed by the parties and that in the distribution, the 1<sup>st</sup> defendant was to get the suit property. The witness also confirmed that before they sold the land the 1<sup>st</sup>, defendant all the family members agreed to have the land sold to the 1<sup>st</sup> defendant as par their letter of 30<sup>th</sup> March 2001, where are the family members including the witness attended. That the clan wrote a letter dated 13<sup>th</sup> July 2013 after the title had been issued. That the letter was written by Patrick Mbui who is a son to the witness' brother. That the letter indicated that he had received Kshs. 470,000/= and referred to a family resolution of 30<sup>th</sup> March 2001. He named the family members who were present when they agreed to sell the land. The witness stated that when they went to court to attend the application for confirmation of grant, all those persons named in the confirmed grant were present and that the confirmed grant showed that the suit property be transferred to the 1<sup>st</sup> defendant.



17. It was also his testimony that they wanted to refund the money and that P-Exhibit No. 4 which is an agreement of 1<sup>st</sup> March 2012, shows that there was a balance of Kshs. 530,000/=, which was to be paid after the transfer. He confirmed signing the Memorandum of Understanding together with his brothers. He stated that the summons for revocation being P-Exhibit No. 11 showed that they instructed the advocate to rectify the grant in regard to reference to the 1<sup>st</sup> defendant. He told court that he was not aware of the status of the application to rectify the grant. He denied signing the transfer instrument in respect of the suit property and stated that they were supposed to sign the transfer document after payment of the entire amount.
18. He confirmed that the persons named in the transfer were himself and his brother John Mutei and stated that the signature was not his, but resembled his signature in the identity card. He insisted that he could not have signed the transfer without having been paid the entire amount.
19. The witness further stated that they refused to receive the balance. He stated that he had come to this court to seek that the court sets aside the order in the Succession Cause that gave land to the 1<sup>st</sup> defendant. In re-examination, the witness stated that he signed the transfer without knowing at the time of the agreement that they did not have an advocate. That they signed the transfer when it was dark. That the transfer was done in 2013, but that Exhibit No. 6 indicated 2012. He stated that the agreement was done on 1<sup>st</sup> March 2012.
20. He also confirmed that Sang and Langat Advocates are the lawyers who represented them in the agreement and the Succession cause. That they were the same advocates who sought title on their behalf. Further that the Gazette notice No. 9486 of July 2012 was done by Sang & Langat Advocates. He stated that the letter dated 13<sup>th</sup> July 2013 indicated that they were willing to refund the consideration.
21. PW 2 was John Mutei Mbui who adopted his statement dated 25<sup>th</sup> October 2013 as his evidence in chief. His testimony was similar to the testimony of the 1<sup>st</sup> plaintiff in all material aspects.
22. On cross examination, he stated that his father died in 1981 and that they filed Succession Cause in 2007. That his brothers conceded to the Succession Cause being filed. That they met the 1<sup>st</sup> defendant on 1<sup>st</sup> March 2012 when they were selling the suit property and that they signed an agreement on that date. That they sold the land to pay school fees for their children who needed it and that the beneficiaries needed money. That when he sold the land, he told his siblings who were around. He stated that the resolution of 30<sup>th</sup> March 2001 was signed by all the beneficiaries before the land was sold. That when they sold their land they told Edward their elder brother and that they all agreed to sell the land so as to pay school fees.
23. He stated that he could not remember what was paid as the first installment, Further, that he did not tell the 1<sup>st</sup> defendant that he was an administrator of the state. He insisted that he did not sell the land fraudulently. That not everyone agreed to the sale of the land. That he did not sue his advocate for misleading them. He confirmed that his family members were present during the confirmation of grant. He denied suggestions that in the confirmed grant the 1<sup>st</sup> defendant was granted the suit property. According to him, their advocates indicated the 1<sup>st</sup> defendant as the owner of the suit property without their knowledge and that they only realized the same upon obtaining the confirmed grant. That he did not take any step or sue the advocate over the same.
24. He stated that they were the ones who filed the summons for revocation of grant and that that matter is still pending to date. That in the summons for revocation of grant they seek to get back the land from the 1<sup>st</sup> defendant and therefore they have two cases seeking to revoke the 1<sup>st</sup> defendant title. He



- denied knowledge of his exhibit No. 11 which was the memorandum of understanding, but confirmed signing the same and stated that once the grant is rectified, they would sell the suit property at Kshs. 1, 500, 000/=.
25. He denied allegations that they had intended to cancel the agreement with the 1<sup>st</sup> defendant so that they get more money and stated that 2 of his father's grandchildren refused to have the land sold to the 1<sup>st</sup> defendant because land cannot be sold outside the family. That they sold the land because they had a problem with paying school fees and that they are the ones who sought confirmation of the grant to have the 1<sup>st</sup> defendant given title. According to him, if they succeed in the two cases, they will receive a sum of Kshs. 1, 500, 000/=.
26. In re-examination, he stated that when they sold the land they were not administrators of their father's estate and that his brothers objected to the sale of the suit property to the 1<sup>st</sup> defendant. He stated that they have never been paid the sum of Kshs. 570,000/= and that the 1<sup>st</sup> defendant should complete payment to take possession. That at the time they received the title they had not paid the balance of Kshs. 570,000/= . He conceded that exhibit No. 9 showed that there was a letter showing that the 1<sup>st</sup> defendant requested for the name of the person in whose name the cheque would be issued in respect of the balance of the consideration. That they refused to receive the balance. He confirmed that Sang & Langat Advocates were the ones who handled the Succession Cause on their behalf and stated that they never gave spousal consent. That the 1<sup>st</sup> defendant transferred the land to themselves without their consent. That marked the close of the plaintiffs' case.

### **Defendants' evidence**

27. DW1 was Salome Syomweu, a director and Secretary General of the 1<sup>st</sup> defendant. She adopted contents of her witness statement dated and filed on 28<sup>th</sup> November 2013 as her evidence in chief. She also produced the documents attached to the list of documents of even date. She confirmed having signed the sale agreement with the plaintiffs. According to her, the plaintiffs went to her office and stated that they had an emergency and needed money. That they entered into a rectified sale agreement dated 1<sup>st</sup> of March 2012. That before the plaintiffs sold them the land, all their family members went to their officers severally, including on 28<sup>th</sup> February 2012 when they requested for an advance of Kshs. 20,000/= to cater for their transport, which amount formed part of the purchase price which they acknowledged receipt. But they also indicated that their title was lost after the sale agreement had been entered into.
28. That their advocate conducted a search and realized that the said property was not in the name of the vendors. That they indicated that they had applied for grant of letters of administration in Succession Cause No. 499 of 2007. That they instructed their advocates to act for them in the matter to ensure that the sale is done according to the law and that the rectification of the sale agreement was done to reflect that part of the completion documents should include RL 1, R L7 and RL19 which was done and countersigned on all pages by the advocate. That they signed the sale agreement. That the deposit was paid and the balance of the purchase price was to be paid upon successful transfer which was agreed by all the family members. That the transfer was also done upon the issuance of the confirmation of grant and that the 1<sup>st</sup> defendant was surprised when the plaintiffs and their family members started being uncooperative and started issuing letters to their offices to the effect that some members of the family had objected to the sale and transfer. That they also refused to receive the balance whereof they had issued a cheque to their advocates to dispense with the issue.
29. She produced notice of appointment in the Succession Cause No. 499 of 2007 dated 9<sup>th</sup> February 2012 by the plaintiffs together with instruction/agency agreement instructions; certificate of confirmation



of grant dated 21<sup>st</sup> May 2013; copy of Gazette notice for temporary grant dated 21<sup>st</sup> January 2011; copies of transfer documents duly executed and copies of identity cards, pins and photographs of the plaintiffs; receipts of payment of transfer; copy of final sale agreement dated 1<sup>st</sup> March 2012; copy of acknowledgement of part payment for sale agreement dated 28<sup>th</sup> February 2012 and copy of cheques dated 22<sup>nd</sup> July 2013.

30. On cross examination, the witness stated that when the plaintiffs approached the 1<sup>st</sup> defendant, they had documents showing that they had land in Lukenya and they had a copy of title which was not in their name. She confirmed that at the time of the sale of the suit property, the same was in their name of the deceased father of the plaintiffs. That it was not true that the plaintiffs' family members stated that the sale agreement was unlawful. She denied having seen P -Exhibit No. 7 before, and stated that that letter had never been delivered to their offices. She also denied having ever seen P- Exhibit No. 9. She stated that she instructed the 1<sup>st</sup> defendant's advocates to respond to that letter. That their title was issued on 1<sup>st</sup> October 2013 and that the transfer process was ongoing when the letters were brought to them.
31. That it was their advocate who handled the transfer on their behalf and that she had not produced spousal consent. In re-examination, she stated that she had not been served with exhibit No. 8 and she had never been served with a court order stopping her from proceeding with the transfer process. She also stated that she had never received a court order revoking the confirmation of grant and that the transfer was done through transmission. That marked the close of the 1<sup>st</sup> defendant's case.
32. The court directed parties to file submissions in support of their respective cases. On record are the plaintiffs' submissions dated 28<sup>th</sup> June 2024.

#### **Plaintiffs' submissions**

33. Counsel for the plaintiffs submitted that the transfer of the suit property from the deceased's name into the name of the 1<sup>st</sup> defendant was unlawful, irregular, fraudulent and void. It was argued for the plaintiffs that the transfer to the 1<sup>st</sup> defendant was unlawful because as at 1<sup>st</sup> March 2012 when the suit property was sold to the 1<sup>st</sup> defendant, the registered proprietor of the suit property was the late Richard Ndavi. That the grant of letters of administration were issued to the plaintiffs on 22<sup>nd</sup> March 2013 and confirmed on 21<sup>st</sup> May 2013 but that the 1<sup>st</sup> defendant proceeded to effect transfer in its favor and therefore the sale and transfer is illegal because at the point of the agreement the plaintiffs did neither had grant of letters of administration nor a confirmed grant.
34. They referred to the case of *Were & Another v Ongaro (Deceased) & 7 Others* (Land Case 13 of 2013 [2022] KEELC 3829 (KLR) (11 August 2022) (Judgment) for the proposition that there can be no distribution of a deceased persons estate before confirmation of grant. To buttress this position they also relied on the cases of *Charles Gungu Gwiyanga (Deceased) (Succession Cause 44 of 2021) [2022] KEHC (KLR) (22 July 2022) (Ruling)* and *The Estate of Barasa Kanenje Manyu (Deceased) (Succession Cause 263 of 2001) [2020] KEHC 1 (KLR) (30 July 2020) (Ruling)*.
35. It was further submitted that the sale of the suit property to the 1<sup>st</sup> defendant was done without consent and knowledge of the beneficiaries of the estate and that the beneficiaries wrote letters dated 13<sup>th</sup> July 2013 and 22<sup>nd</sup> July 2013. Counsel referred to section 33 of the *Land Registration Act* and argued that it is the owner of the property who should apply for replacement of a lost title that the 1<sup>st</sup> defendant proceeded to obtain title despite the family indicating that they had not given consent.
36. Counsel argued that the plaintiffs had proved to the required standard that the 1<sup>st</sup> defendant's registration as proprietor of the suit property was obtained through fraud, illegality, without procedure



and through a corrupt scheme. They relied on the case of Samuel Odhiambo Oludhe & 2 Others v Jubilee Jumbo Hardware Ltd & Another (2018) e KLR and section 26 of the *Land Registration Act* and the case of Re Estate of Mukhobi Namonya [2020] e KLR.

37. On whether the plaintiffs were entitled to the orders sought in the plaint, reference was made to section 26 of the *Land Registration Act* and the case of Ngugi v Kamau & another (Environment & Land Case 36 of 2020) [2022] KEELC 2261 (KLR) (23 June 2022 (Judgment) and urged the court to cancel the 1<sup>st</sup> defendant's title.

### **Analysis and determination**

38. The court has carefully considered the pleadings, evidence and submissions filed. Two issues arise for determination by court, namely;
- a. Whether the 1<sup>st</sup> defendant acquired the registration of the suit property lawfully and;
  - b. Whether the plaintiffs deserve the prayers sought in the plaint.
39. Article 40 (1) and (6) of *the Constitution* of Kenya grants legal protection only to lawfully acquired and owned property. The same states as follows;
- 40 Protection of right to property
1. Subject to Article 65, every person has the right, either individually or in association with others , to acquire and own property-
    - a. Of any description; and
    - b. In any part of Kenya
  2. ....
  3. ....
  4. ....
  5. ....
  6. The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
40. Section 26 of the *Land Registration Act* provides for conclusiveness and indefeasibility of title as follows;

“Certificate of title to be held as conclusive evidence of proprietorship

- (1) 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; or



(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

41. Thus, registration of title confers indefeasible and absolute ownership of land to the registered proprietor. But a title may be challenged on account of having been obtained through fraud, want of procedure, illegality or corruption, whether or not the registered proprietor was party thereto. Hence a title without proof of lawful acquisition is not protected in law.
42. In the case of *Dina Management Limited v County Government of Mombasa & 5 Others* (Petition No. 8 (E010) of 2021 (2023) KESC 30 KLR, the Supreme Court of Kenya held that a title can be invalidated if it is demonstrated that the same was not procedurally or lawfully acquired.
43. In the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held as follows:
- “We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
44. It is trite that allegations of fraud must be pleaded with precision and also strictly proved. The standard of proof for fraud in civil cases is higher than the standard of proof required in ordinary civil matters but slightly lower than the standard of proof required in criminal cases of beyond reasonable doubt.
45. In the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR the court stated that:
- “It is trite law that any allegations of fraud must be pleaded and strictly proved. see *Ndolo vs Ndolo* (2008)1KLR (G & F) 742 wherein the court stated that “.. we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases..” In case where fraud is alleged it is not enough to simply infer fraud from the facts.”
46. In the instant case, the plaintiffs’ case is that they sold the suit property to the 1<sup>st</sup> defendant when they did not have a grant of letters of administration and that their family objected to the sale. According to them this was an illegality which must be nullified by cancelling the 1<sup>st</sup> defendant’s title. They accused the defendants of fraud alleging that the 1<sup>st</sup> defendant induced the plaintiffs to transact with him in an illegal agreement knowing that the plaintiffs had no capacity to do so. Further that he forged transfer and other documents to cause a fraudulent transfer of the suit property; fraudulently effecting transfer knowing that the sale agreement had been rescinded; presenting for registration land registration and transfer documents knowing that they were false; admitting transfer documents knowing that they were fraudulent and illegal, and transferring the suit property that is in the name of the 1<sup>st</sup> defendant before the purchase price was paid in full.
47. The plaintiffs accused the 2<sup>nd</sup> and 3<sup>rd</sup> defendants of fraudulently registering the deceased parcel in the name of the 1<sup>st</sup> defendant; changing the Registry Index Map reflecting the 1<sup>st</sup> defendant as the registered



proprietor of the suit property; fraudulently issuing the 1<sup>st</sup> defendant with the title deed of the suit property and colluding with the 1<sup>st</sup> defendant to register the suit property in his name.

48. I have considered the evidence on both sides. It is common ground that at the point of sale of the suit property by the plaintiffs to the 1<sup>st</sup> defendant, the plaintiffs had not obtained grant of letters of administration to the estate of the deceased Richard Ndavi. Although they had filed Succession Cause No 499 of 2007 in Machakos High Court. Both parties confirmed that the transfer of the suit property to the 1<sup>st</sup> defendant was predicated on the confirmed grant issued in the aforesaid Succession Cause where all the beneficiaries confirmed to the probate court, their agreement with the proposed distribution of the deceased's estate which proposal included the fact that the suit property should be registered in the name of the 1<sup>st</sup> defendant. Parties also confirmed that the relevant forms LR1, LR 7 and LR 19 were duly executed by the plaintiff.
49. DW1 stated that he was not aware of what he was signing and that he signed the form at night. I found this evidence untrustworthy as this witness did not dispute the fact that he willingly signed the sale agreement, knowing that he was selling the suit property. He stated that he sold the property because his family needed money. The plaintiffs testified that they had an emergency and urgently needed money to pay school fees for their children which is why they entered into the sale agreement.
50. It is also not disputed that the 1<sup>st</sup> defendant was registered as proprietor of the suit property on the basis of a confirmed grant in Machakos Succession Cause No. 499 of 2007. The plaintiffs confirmed that they were all in court on the date when the Succession Case came up for confirmation together with other family members and the beneficiaries confirmed to court the proposed distribution which the court endorsed. The plaintiffs further stated that they had filed summons for revocation so that the registration of the suit property in the name of the 1<sup>st</sup> defendant is cancelled. No order in regard to that summons was produced in court. Therefore, up to date, the confirmation of grant awarding the suit property to the 1<sup>st</sup> defendant remains in force. The evidence further demonstrated that the plaintiffs refused to receive the balance when it was agreed in the agreement that the balance would be paid upon registration. The defendant produced a cheque for the balance of the consideration, which the plaintiffs refused to receive.
51. As the defendant obtained registration of the suit property through transmission, upon succession having been done in the presence of the plaintiffs and his family members, I find and hold that the plaintiffs failed to prove fraud. They sold the land when they were desperately in need of their children's school fees and therefore the allegation that they were induced to enter into a land sale agreement is not true and has not been proved. No one can be induced to be in need of their children's school fees.
52. The fact that the plaintiff confirmed signing the transfer forms, his allegation that they were forged is also not true. The registration of the suit property by the Land Registrar was based on court orders issued in Succession Cause at the instance of the plaintiff who filed Succession Cause and therefore, the plaintiffs have not demonstrated any wrong doing on the part of the Land Registrar.
53. It is clear to me that the process of registration of the suit property in the name of the 1<sup>st</sup> defendant was based on a lawful court order being the confirmed grant which remains in force to date, having not been set aside or reviewed, therefore, whether or not the sale was done before the issuance of grant, is in my view immaterial.
54. As the transfer of the suit property to the 1<sup>st</sup> defendant was through a lawful court process and more specifically through Succession proceedings in the High court, subsequent to a purchase agreement, this court having the same status as the high court, has no power to cancel the title for the suit property as that would amount to sitting on appeal of the order of confirmation of grant from the High Court.



If the plaintiffs are unhappy with the confirmation, this court is a wrong forum for them to complain. Since the acquisition of title by the 1<sup>st</sup> defendant was through a lawful process of succession proceedings in the High court, I am of the view that the plaintiffs have failed to prove fraud or illegality on the part of the 1<sup>st</sup> defendant, and therefore the latter's title cannot be vitiated under section 26 of the [Land Registration Act](#).

55. For the above reasons, I find no merit in the plaintiffs' case which I hereby dismiss with costs to the 1<sup>st</sup> defendant.

56. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Waiyaki holding brief for Mr. Muumbi for the plaintiffs

No appearance for the defendant

Court Assistant- Delphine

