

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 1 OF 2023

**AMRISHBHAI MANUBHAI
PATEL-----PLAINTIFF**

VERSUS

**NISHTKUMAR RAMNIKLAL SHAH-----1ST
DEFENDANT**

**SHREEJI QUARRY KENYA LIMITED-----2ND
DEFENDANT**

JUDGMENT

- 1. Through an amended plaint dated 4/4/2023, the plaintiff seeks:
 - (a) The court to terminate the partnership between him and the 1st defendant, subdivision of Title No. West Pokot/Ortum East/153 into two equal portions, to be held separately, and the costs of subdivision to be shared equally.**
 - (b) The court declares that he is validly in a joint common tenancy in equal shares over the suit property above, with the 1st defendant, whose purported transfer of his share to the 1st defendant and the subsequent transfer to the 3rd defendant were both unlawful and fraudulent.****

- (c) **Declaration that the agreement and other documents of transfer of his share to the 1st defendant were made through trickery and undue influence.**
 - (d) **Cancellation of transfer and registration of the suit property in favour of the 1st and 2nd defendants and its restoration to his name and that of the 1st defendant.**
 - (e) **Permanent injunction restraining the 2nd defendant from trespassing into, remaining on, mining quarry stones, or doing anything to offend the interest of him and the 1st defendant in the suit premises.**
2. The plaintiff contended that they were registered proprietors over Title No. **West Pokot/Ortum East/153**, that the 1st defendant, as tenants in common in equal shares, measuring **7.689 Ha**, where they had intended to establish a quarry business to which they planned to raise funds to procure a crushing machine for purposes of realizing their business dream or goal.
3. The plaintiff averred that at some point, the 1st defendant, through trickery and undue influence, made him sign documents to transfer his share of the suit property for the 1st defendant to be able, albeit

falsely, to obtain bank credit to purchase a crushing machine to start the business of their dream.

4. As a result, the plaintiff averred that no copies of the documents that he signed at the business premises were left under his custody, nor were there any witnesses thereof.
5. The plaintiff averred that neither was any consideration passed from the 1st defendant to him for his said share, nor was the said transaction presented to the area Land Control Board for approval as required by law.
6. Unfortunately, the plaintiff averred that the 1st defendant proceeded to alienate and or sell the suit premises contrary to the existing agreement between them, thus making it necessary for the plaintiff to cause a restriction to be registered against the title to the suit premises on **23/3/2022**.
7. The plaintiff averred that the alleged sale and transfer of the suit premises by the 1st defendant to the 2nd defendant and issuance of title on **26/7/2022**, was suspect since an official search conducted on the register on **15/3/2023** and signed by a Land Registrar indicated the status as the two tenants in common as the proprietors.

8. The plaintiff averred that if the suit property had been transferred to the 2nd defendant, then the same was procured through a fraudulent scheme and without his authority, rendering the same invalid, null, and void.
9. The plaintiff averred that since his relationship with the 1st defendant has become sour and the confidence between them has completely eroded, the partnership should end and the suit property subdivided into equal shares, so that each of them can hold their respective portions independently.
10. The 1st and 2nd defendants opposed the suit through an amended statement of defence dated **23/5/2025**. The 1st defendant admitted that the suit land was initially jointly registered in equal shares, but later the plaintiff voluntarily and lawfully transferred his whole share to him, and was later registered as a sole proprietor, for **Kshs. 2,300,000/=**.
11. The 1st defendant therefore denied that he used trickery and or undue influence of any form whatsoever for the plaintiff to transfer his share of the land; otherwise, the plaintiff acknowledged receipt of the consideration of **Kshs. 2,300,000/=**, at the execution of the sale agreement and in all the subsequent legal documents to transfer the land to him.

- 12.** The 1st defendant averred that to complete the transfer of the share in the suit land, the plaintiff voluntarily surrendered to him a Kenya Revenue Authority Personal Identification Number, a copy of his national identification card, and passport-size photographs.
- 13.** Further, the 1st defendant denied that the plaintiff placed any restriction on the title register to the suit land as alleged; otherwise, if any, the same was placed by the Land Registrar on his own volition, who the same way, later removed it as per the law.
- 14.** The 1st defendant averred that having been lawfully registered as the owner of the suit land, he sold and lawfully transferred the land to the 2nd defendant, without any alleged fraud on their part, otherwise, the plaintiff having lawfully sold and transferred his share of the land to him, there was no alleged fraud or how the acquired to the land and transferred the same to the 2nd defendant.
- 15.** The 2nd defendant on his part denied the alleged fraud against him and averred that the sale and transfer of the suit land by the 1st defendant to him was above board, he was a lawful owner of the same and has since registered of the title under him, heavily

invested on the quarry business in full view and within the knowledge of the 1st defendant and the plaintiff.

- 16.** The 1st defendant averred that the plaintiff, as an adult person of sound mind, knew the consequences of the sale and transfer of the land transaction he lawfully and voluntarily entered into. The defendants termed the plaintiff's suit as incompetent, vexatious, and disclosing no known cause of action.
- 17.** Through a reply to the amended defence dated **20/9/2023**, the plaintiff denied that he voluntarily and lawfully transferred his share of the suit land to the 1st defendant as alleged or at all. Equally, the plaintiff denied receiving **Kshs. 2,300,000/=**, cash as the purchase price from the 1st defendant for his share of the suit land, or executing any sale agreement to transfer the same to the 1st defendant.
- 18.** The plaintiff denied voluntarily surrendering his personal documents for the transfer of his share; otherwise, if any such action ever occurred, the same were not voluntarily in nature. The plaintiff denied validly or voluntarily selling or transferring his share of the land to the 1st defendant, terming the said transaction as invalid; otherwise, he retains a proprietary interest in the suit land.

- 19.** The plaintiff insisted that the acts of transferring and registering the share of his suit land in favour of the 1st defendant and the subsequent transfer to the 2nd defendant without his knowledge or consent were conducted fraudulently and without due regard to his rightful interest in the suit property.
- 20.** The plaintiff denied knowledge of the 2nd defendant's alleged heavy investment in the quarry business; otherwise, the same was made on the land without his consent or authorization.
- 21.** At the trial, **Amrishbhai Manubhai Patel** testified as **PW1**. He relied on a witness statement dated **3/1/2023** as his evidence in chief. He told the court that sometime in **2011**, he jointly bought title No. **West Pokot/Ortum East/153**, together with the 1st defendant and caused the same to be registered under their two names, with a dream of operating a quarry business on the premises because the land was rocky and unsustainable for agriculture, their only main challenge being to raise the funds to buy a crushing machine from India.
- 22.** PW1 said that on a date that he could not remember, the 1st defendant called him to his shop in Kitale town, and told him that he had an idea of how to raise fund to buy the crushing machine, through seeking finance

for the same, if only I could sign documents to transfer my shares of the suit premises to him, so that he could use the title as security, since my hardware business known as Shavan Merchandise Ltd, was not doing well, and that I had no other means of raising money for the project.

- 23.** PW1 told the court that he was then made to sign some documents, which were not witnessed by any third party, and could not remember exactly what the documents were and what it meant to sign them.
- 24.** PW1 said that he did not actually share his share of the suit land to the 1st defendant or attend any land control board consent, for the approval of the imagined transaction, nor did he receive any form of consideration for the same.
- 25.** PW1 said that the 1st defendant did nothing to raise the necessary funds to jump-start the quarry business project as agreed otherwise; he fraudulently and without his consent sold and transferred the land to the 2nd defendant without his authority or consent.
- 26.** PW1 told the court that he got wind of the lack of trust on the part of his partner; otherwise, the documents signed between him and the 1st defendant were procured through trickery, duress, and undue influence. PW1 relied on a copy of the title deed for

West Pokot/Ortum East/153, letter dated **13/6/2022** to the 1st defendant, letter dated **16/6/2022** from M/s Onyancha & Co. Advocates, letter dated **21/6/2022** from the Land Officer to him, letter dated **22/6/2022** addressed to the County Land Registrar, West Pokot.

27. Additionally, the plaintiff relied on a letter dated **24/6/2022** from Onyancha & Co. Advocate to the plaintiff's lawyer, a letter dated **24/6/2022** to the County Land Registrar, an official search certificate dated **23/3/2022**, a payment receipt dated **23/2/2022**, a copy of the green card for **West Pokot/Ortum East/153**, official search certificate payment receipt for **Kshs. 500/=** as P. **Exhibit No. 1, 2, 3, 4, 5, 6, 7, PMFI-8(a), (b), 10(a) and (b).**

28. Regarding the transfer dated **18/4/2022**, PW1 said that he did not know the advocate known as Mr. Bororio. PW1 said that the only document that he signed as security with the 1st defendant related to a crushing machine that they were to purchase from India. PW1 said that he signed those documents without reading them, for he trusted his then partner, the 1st defendant. PW1 said that he never signed any documents before a lawyer known as Mr. John Bororio or any other lawyer. PW1 denied appearing before a

land control board for the procurement of a land control board consent to transfer a share of his land to the 1st defendant.

- 29.** In cross-examination, PW1 admitted giving some of his personal documents to the 1st defendant, including the original title deed, blank land control board consent letter, and land transfer form, since he trusted him.
- 30.** PW1 denied signing a sale agreement dated **22/2/2019** with the 1st defendant. He termed the same as a forged document. PW1 confirmed that the entries in the sale agreement, opening the first card, belonged to him. He denied appearing before Mr. Nyakundi George, advocate, for the execution of the sale agreement.
- 31.** PW1 said that the signature on the sale agreement appeared to be his. As to **Kshs. 2,300,000/=** allegedly paid to him as consideration out of bank withdrawals dated **12/2/2019** and **15/2/2019**, PW1 denied receiving cash, **2,300,000/=** from the 1st defendant; otherwise, the purpose of the withdrawals is not indicated from the bank statement. PW1 denied that he was the sole receiver of the said monies

before he went to the firm of Mr. George Nyakundi, advocate, to sign the sale agreement.

- 32.** PW1 denied signing the land control board consent application form to sell and transfer his share. PW1 said that the only application form he signed was in respect to using the title deed as collateral to secure a bank facility. Equally, PW1 said that he only signed the transfer form to be used as collateral for a bank loan. As to the title deeds issued on **20/7/2022** and **27/7/2022**, PW1 said that it cannot be true since an official search issued to him by Mr. E.M. Wafula on **15/3/2022** was clear that the suit property at the time was jointly owned.
- 33.** PW1 said that the same Land Registrar could not have issued the certificate of official search to show entries, yet he had issued a title deed to the 2nd defendant.
- 34.** PW1 said that he discovered the fraud when the 2nd defendant disclosed purchasing the quarry in **2022**. PW1 said that he did not report the matter to the police; otherwise, it was the 1st defendant who sent the police to him with a criminal case.
- 35.** As to the letter dated **22/6/2022**, PW1 said that it did not bear the receiving stamp from the Land Registrar, West Pokot. PW1 contended that it was irregular to issue the title deed to the 2nd defendant before his

restriction was lifted. PW1 said that the 1st defendant has not produced any acknowledgement by him of the **Kshs. 2,300,000/=** from the 1st defendant.

36. John Bororio advocate testified as **DW1**. He relied on a witness statement dated **28/2023** as his evidence-in-chief. DW1 told the court that on **18/4/2022**, he attested a transfer form which was brought to him, containing copies of the parties' passport photographs, copies of identification cards, and Kenya Revenue Authority Personal Identification Number certificates in the presence of both the buyer and the seller. DW1 told the court that he witnessed the two append their signatures on the documents. He produced the transfer form as **D. Exhibit No. 5**. He said that he knew the parties before the said date. DW1 said that he merely attested to the transfer form; otherwise, the parties came before him with an already printed and prepared transfer form, whose maker he did not inquire about.

37. DW1 said that the printed land transfer form that was brought to him had captured all the parties' details, which he verified upon the parties having availed him of their original identification documents for attestation.

38. Nishitkumar Ramniklal Shah testified as **DW2**. He relied on a witness statement dated **23/5/2022** as his evidence-in-chief. He told the court that initially, he owned title No. **West Pokot/Ortum East/153**, with the plaintiff in equal shares, until sometime in **February 2019**, when PW1 sold to him his entire share of the land for **Kshs. 2,300,000/=**, which he acknowledged receipt of in cash before he voluntarily signed a transfer form, an application for land control board consent, and a transfer form after availing the supporting personal documents, including a KRA PIN certificate, a copy of the ID card, and passport-size photographs.

39. DW2 said that he paid for the appropriate stamp duty for the transfer, after which a title deed was issued to him. DW2 said that it was the plaintiff who demanded a cash payment. DW2 denied using tricks or undue influence or intimidation of any form in securing the sale and transfer; otherwise, the plaintiff, as an adult male of sound mind, sold the share knowing fully well what he was doing.

40. DW2 said that he subsequently sold and transferred the land to the 2nd defendant, who took vacant possession. DW2 denied that he fraudulently sold and transferred the land to the 2nd defendant, otherwise

using forged documents. DW2 said that the suit is intended to vindicate or embarrass him, based on half-truth and falsehood.

- 41.** DW2 produced as exhibits a copy of a sale agreement dated **22/2/2019**, statement of account form, application for KCB, consent, LCB consent, transfer form, KRA PIN certificate, copy of the ID card, KRA PIN, copy of title deed for **West Pokot/Ortum East/153** dated **20/7/2022**, demand letter dated **16/6/2022**, as **D. Exhibits. No. 1 - 10.**
- 42.** DW2 said that the quarry equipment cost almost **Kshs. 80,000,000/=**, yet the land is valued at **Kshs. 5,000,000/=**. DW2 said that the plaintiff obtained the **Kshs. 2,3000,000** at his shop, before the parties proceeded to the law firm of DW1 to execute the sale agreement.
- 43.** Further, DW2 said that the plaintiff had insisted on a cash payment since he was taking his daughter and wife for urgent medical attention; otherwise, the plaintiff was also planning to relocate from Kenya to the United States of America. DW2 denied receiving the letter produced as **P. Exhibit No. 5** addressed by the plaintiff to the Land Registrar. DW2 said that there was no proof that the letter was delivered to or received by the Land Registrar.

- 44.** DW2 confirmed that the plaintiff did not sign any document to acknowledge receipt of the consideration, other than the sale agreement, before DW1. DW2 clarified that the sale agreement's use of words stakeholder or "shall be paid" was not contradictory in any way; otherwise, the plaintiff had already received the consideration before they went to the lawyer's office. DW2 said that they counted the money at his shop before handing it over to the plaintiff, with no one else present except the two of them. DW2 said that the plaintiff packed the money in a briefcase, which he carried to the office of the lawyer.
- 45.** DW2 said that the lawyer made inquiries from them before preparing and witnessing the sale agreement; otherwise, the plaintiff did not disclose any non-payment of the consideration. DW2 said that it was the plaintiff who came up with the idea of preparing a transfer form in a cybercafé to reduce the expenses of the lawyers in preparing the transfer form.
- 46.** Equally, DW2 said that it was the plaintiff who preferred Mr. John Bororio, advocate. DW2 confirmed that both of them attended the land control board meeting for the issuance of the land control board

consent. DW2 said that he had no land control board minutes before the court.

47. Suveshkumal Hivji Kerai testified as **DW3**. He relied on a witness statement dated **23/5/2023** as his evidence-in-chief. DW3 told the court that he was one of the directors of the 2nd defendant, who bought the land title No. **West Pokot/Ortum East/153** from the 1st defendant to carry out quarry business.

48. DW2 told the court that before buying the land, they conducted due diligence and established that the 1st defendant was the sole owner. DW3 said that they finally executed a sale agreement with the 1st defendant and made payment to him, after which they went through the legal process of transferring and registering the land under the 2nd defendant's name.

49. DW3 denied commission of any alleged fraud or forgery; otherwise, the 2nd defendant was a *bona fide* purchaser for value without any impediment to the title held by the 1st defendant at the time of sale and transfer.

50. DW3 said that the company has invested heavily in the suit land by installing various machines thereon, involved in stone crushing as part of the quarry business. DW3 relied on the 2nd defendant's board

resolution dated **22/5/2023**, the certificate of incorporation dated **13/2/2015**, **CR12** of the directors dated **5/10/2020**, an agreement for sale dated **21/7/2020**, Kenya Revenue Authority payment receipt for stamp duty, and a copy of the title deed issued to the 2nd defendant as **DD-12** to **DD-16**.

51. Stephen Nyakundi, advocate, testified as **DW4**. He relied on a witness statement dated **2/8/2023** as his evidence in chief. DW4 confirmed preparing a sale agreement between the plaintiff and the 1st defendant dated **22/2/2019**, which was executed by the two parties before him after the party confirmed to him the terms and conditions of the sale.

52. DW4 said that he never saw the seller giving him cash payment to the plaintiff; otherwise, he did not enquire on the mode, time, and manner the payments were made.

53. At the close of the defence testimonies, parties filed written submissions. The plaintiff relied on written submissions dated **30/10/2025**. He submitted that by **17/2/2022**, the sale agreement had become null and void under **Section 6** of the Land Control Act. Further, the plaintiff submitted that the consent issued on **22/2/2022** was suspicious.

- 54.** The plaintiff submitted that there is no evidence of the transfer to the 2nd defendant in the copy of the green card issued on **7/3/2023**. Entry number **3** indicates that a title deed was issued on **10/11/2011**, whereas entry number **4** shows that the county land registrar placed a restriction, until the ownership dispute was resolved. There is no evidence that the restriction was lifted. The plaintiff submitted that the title deeds were issued in total disregard of the restriction, and transfers were processed unlawfully and without due regard to his interests.
- 55.** The plaintiff submitted that from the statement of Mr. Nyakundi, the sale agreement was drawn after confirming that the consideration had been made. Again, the plaintiff averred that he would not have confirmed having been paid, and at the same time stated that he was to be paid after signing the agreement for sale.
- 56.** Relying on **Section 26** Land Registration Act, **Sections 107, 109,** and **112** of the Evidence Act, the plaintiff submitted that he had adduced credible evidence that he was not paid for his interest in the subject matter of the suit. The 1st defendant bore the burden of proof that there existed a valid sale agreement and that the plaintiff was paid the alleged

consideration of **Kshs. 2,300,000/=**. The plaintiff also submitted that, upon denying signing of the documents or receiving any consideration, the evidential burden shifted to the 1st defendant to demonstrate that the transaction was lawful and that consideration was paid.

57. The plaintiff submitted that the 1st defendant failed to produce any payment voucher, acknowledgment, or witness to confirm the alleged payment. The bank statement shows a withdrawal of **Kshs. 2,300,000/=** is not evidence of payment to the plaintiff.

58. Further, the plaintiff submitted that the title held by the 1st defendant was a product of a corrupt scheme involving the lands' officials and the 1st defendant, who could not pass a good title to the 2nd defendant.

59. Reliance is placed on **Article 40(6)** of the Constitution of Kenya, **Daudi Kiptugen -vs- Commissioner of Lands & 4 Others [2015] eKLR, Alice Chemutai Too -vs- Nickson Kipkurui Korir & 2 Others (2015) eKLR, Kampala District Land Board & Another -vs- National Housing and Construction Corporation 2005 UGSC 20, 25 August 2000, Kassim Ahmed Omar & Another -vs- Anwar Ahmed Abed & Others Malindi ELC NO. 18 of 2015 and Champaklal Ramji Shah & 3**

Others -vs- Attorney General & Another, HCCC No. 145 of 1997, to submit that the 1st Defendant's title to the suit property was not acquired lawfully and the subsequent registration cannot enjoy protection under the law.

- 60.** Th 1st and 2nd defendants rely on written submissions dated **21/10/2025**, isolating four issues for determination. It is submitted that the burden was on the plaintiff to prove fraud, forgery, and or trickery, and the defendants on the sale, transfer, or registration of the suit land.
- 61.** It was the defendants' submission that the element of fraud which the plaintiff should prove includes intentional misrepresentation, and falsification of his signature through a forensic document examiner's evidence, which he failed to provide.
- 62.** The defendants submitted that the plaintiff, in his testimony, did concede signing some documents which he did not read and did not understand their content. If this be so, the defendants submitted that the plaintiff cannot be heard to say that the signatures on the documents were forged.
- 63.** The defendants submitted that the plaintiff ought to have hired a document examiner to assess his signatures and produce a report as proof of forgery.

Reliance is placed on **Sawe -vs- Barclays Bank of Kenya, HCCC No. 28 of 2019 KEHC 16125 [KLR] (20th December 2024) (Judgment).**

- 64.** The defendants submitted that the plaintiff has failed to plead and distinctly prove fraud otherwise; it cannot be inferred from the facts as held in **Vijay Morjaria -vs- Nansingh Madhusingh Darbar & Another [2000] eKLR.**
- 65.** As to the alleged restriction, the defendants submitted that there was no evidence that it was lodged by the plaintiff and not the Land Registrar, as can be seen from **P. Exhibit No. (9)**. Further, the defendants submitted that **P. Exhibit No. (5)** was never received or acted upon by the Land Registrar as proof that the plaintiff objected to the lifting of the restriction on time or at all, otherwise, the plaintiff should have called the Land Registrar as his witness for cross-examination why he lifted the restriction and or issued a title deed in favour of DW2 and DW3 as per **D. Exhibits. No. 9 and 10.**
- 66.** The defendants submitted that the evidence of DW3 and DW4 was clear that the plaintiff voluntarily attended their offices and executed the sale agreement and transfer form without any alleged misrepresentation, coercion, or fraud.

- 67.** The defendants submitted that the evidence of DW2 and the production of **D. Exhibit Nos. (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), and (11)** was clear that all the above documents were secured or given out by the plaintiff voluntarily, hence amounted to a binding contract between PW1 and DW2, which was lawful and binding.
- 68.** The defendants submitted that the plaintiff has not pleaded and proved the elements of fraud, mistake, misrepresentation, coercion, and undue influence to form a basis of vitiating the contract. The defendants submit that the court cannot set aside a contract simply because a party has changed its mind after it later poses a hardship.
- 69.** The defendants submitted that the contract of sale before the court is depicted by documentary evidence which clearly shows that it does not suffer from unconscionability, or illegality, fraud, misrepresentation, trickery, coercion, mistake, duress, or undue influence.
- 70.** The defendants submitted that though **D. Exhibit Nos. 12, 13, 14, 15, 16, and 17**. It is clear that the title deed issued on **26/7/2022** was lawfully, procedurally, and regularly issued to the 2nd defendant with no wrongdoing or unlawful deeds.

71. The defendants submitted that the plaintiff has failed to prove any fraud or conspiracy against them to the required standard as provided under **Sections 107 - 109** of the Evidence Act. Reliance is placed on **Mumbi M'Nabea -vs- David Wachira [2016] eKLR.**

72. In sum, the defendants submitted that they have demonstrated that:

- (a)** *There was a valid contract of sale of land between the 1st defendant and the plaintiff and between the 1st defendant and the 2nd defendant.*
- (b)** *The two sale agreements are not tainted with fraud, misrepresentation, forgery, undue influence, duress, or trickery.*
- (c)** *The plaintiff has not proved anything contrary to No. (a) and (b) above, and hence the suit should fail without costs to them.*

73. The court has carefully reviewed the pleadings, evidence on record, and written submissions filed by the parties. The issues calling for my determination are:

- (a)** ***Whether the plaintiff has proved that his share of the suit land, which was held jointly in equal shares, was fraudulently and allegedly 'sold', transferred, and registered in the name of the 1st defendant, without his consent, authority, and or payment of any consideration.***

- (b) If the court should terminate the joint tenancy in equal shares and subdivide the land equally between the 1st defendant and the plaintiff.**
- (c) If the sale and transfer of the suit land between the 1st and 2nd defendants was tainted with irregularity and illegality.**
- (d) Whether the plaintiff is entitled to the reliefs sought.**
- (e) What is the order as to costs?**

74. It is trite law that parties are bound by their pleadings, and issues for the court's determination flow from the pleadings. See **IEBC -vs- Stephen Mutinda Mule & Others [2014] eKLR**. In this suit, the plaintiff has pleaded that title No. **West Pokot/Ortum East/153** measuring **7.689 Ha**, was registered as held in tenancy in common in equal shares, in which the parties had intended to establish a quarry business. The plaintiff averred that in an attempt to secure funds for the business endeavor, the 1st defendant using trickery and undue influence caused him to sign documents to transfer his share of the suit property solely for the 1st defendant to be able, albeit falsely, to obtain a bank credit to purchase a crushing machine to start the business, only for the 1st defendant to use

the documents to register himself as the sole owner of the land, without payment of any consideration.

75. The plaintiff averred that the 1st defendant subsequently sold and fraudulently transferred the suit land to the 2nd defendant, despite a pending restriction on the title register to secure his interests, which was irregularly and fraudulently ignored in the to secure the transfer and registration in favour of the 2nd defendant, without regard to his interest, on the suit property, consent, authority, or approval.

76. The starting point is to establish whether the suit property was held in tenancy in common in equal shares. The title deed held by the plaintiff and 1st defendant was issued on **10/11/2011**. It does not include the words tenancy in common in equal shares. The governing law on the concept of tenancy in common in equal shares in **2011** was **Sections 101, 102, and 103** of the repealed Registered Land Act, Cap **300**. **Section 101** defines the same as follows: "An instrument made in favour of two or more persons and the registration giving effect to it, shall show **(a)** whether these persons are joint or proprietors in common and **(b)** whether they are proprietors in common, the share of each proprietor."

- 77.** In *Isabel Chelangat -vs- Samuel Tiro Rotich & Others [2012] eKLR*, joint tenancy as opposed to tenancy in common was described as arising whenever land is conveyed or devised to two or more persons without any word to show that they are to take distinct and separate shares. The court said that joint tenancy carries with it the right of survivorship and the four units of possession, interest, title, and time.
- 78.** Joint tenancies in law are therefore considered as one, and none of them can claim any portion of the suit land as they hold the title as one with equal rights, and their ownership could only be severed under **Section 102** of the repealed Act, now succeeded by **Section 91(7)** of the Land Registration Act.
- 79.** In *Mukazitoni Josephine -vs- Attorney General [2015] eKLR*, the court observed that a joint tenancy cannot be severed unless one of the four units of title, time, possession, or interest is broken. The court said that in a joint tenancy, a joint tenant holds everything and or nothing as held in *Stack -vs- Dowden [2007] KHL 17*.
- 80.** **Section 91** of the repealed Registered Land Act provided that where an instrument of transfer of an interest of land to two or more persons does not

specify the nature of their interest, there shall be a presumption that they hold the interest as tenants in common equal shares. **Section 91(6)** thereof provided that where land is held in common, no tenant in common shall deal with their individual share in favour of any person other than either tenant in common, except with the consent in writing of the remaining tenant, but such consent should not be unreasonably withheld.

81. Section 94 thereof provided that tenants in common may, with the consent of all tenants in common, apply to the registrar to partition land occupied in common and to subdivide the land, in accordance with the agreement of the tenants in common.

82. Section 96 thereof relates to the sale of co-owned land, where the land is incapable of partition, by seeking a court's intervention.

83. Section 96(3) thereof provided that a tenant in common was entitled to purchase the land or any share of it that is offered for sale, either at an auction or at any time by private sale.

84. Tenants in common, as indicated above, have the freedom to dispose of their interest in the property as they see fit during their lifetime. Tenancy in common is therefore composed of the following characteristics:

- (a) Each owner holds a specific and distinct share in the property.
- (b) Owners can sell, transfer, or bequeath their share independently.
- (c) There is no right of survivorship.

85. In **Kibui & Another -vs- Kibui (Administrator of the estate of Mary Wangechi Kibui & Others, Civil Appeal No. E087 and E094 of 2022 consolidated [2025] KECA 1149 [KLR] (20th June 2025) (Judgment)**, the lease had been issued in favour of the deceased Mary and James with a specification of $\frac{1}{2}$ undivided share. The court said it meant that the two owned the suit land in common, as the share of each was determined.

86. In **Mabruk & Another -vs- Nicholas & Others [2013] KEELC 19005 [KLR] (27th July 2023) (Judgment)**, the suit property was held in tenancy in common in equal shares under Cap **300**. The court said that in such a scenario, a share of a co-tenant is not affected by the death of one of the co-owners, but devolves to the estate of the deceased.

87. The court found that the 2nd defendant, who had bought the land, held a defeasible title which had been acquired irregularly since the seller had no capacity to transfer the title to any third party as his

sole benefit, without involving other beneficiaries to the estate. From the caselaw and the cited law, the title deed held by the plaintiff and the 1st defendant had not defined their status. **Section 91** of Cap 300 comes into play, the presumption is that the same was held in tenancy in common in equal shares.

88. The second issue is whether the tenancy in common in equal shares was lawfully terminated through an agreement of the co-owners. In this suit, the plaintiff attacks the sale agreement between him and the 1st defendant on account of undue influence, trickery, and forgery. As a general rule, courts do not rewrite contracts, and whoever desires a court to give judgment as to any legal right or liability, dependent on the establishment of certain facts which he asserts, must prove that those facts exist. The burden of proof under **Sections 107, 109, and 112** of the Evidence Act is on he who wants the court to believe the existence of those facts.

89. In **Mumbi M'Nabea -vs- David M. Wachira [2016] eKLR**, the court said that a court must assess the oral, documentary, and real evidence advanced by each party and decide which case is more probable or more likely to have happened than not.

- 90.** Fraud is defined by *Black's Law Dictionary, 11th Edition*, as some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to cause injury. As to contracts, fraud is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. It includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justify reposed, and are injuries to another, or by which an undue and unconscientious advantage is taken of another.
- 91.** Fraud must be specifically pleaded and proved on the face of the pleadings. Fraudulent conduct must be distinctly alleged and distinctly proved and cannot be inferred from the facts. See **Vijay Morjaria -vs- Nansingh Madhusingh Darbar & Another** (*supra*), the court cited **Kinyanjui Kamau -vs- George Kamau [2015] eKLR**, where the court said that the standard of proof in a charge of fraud and forgery is higher than that required in an ordinary civil suit.
- 92.** In **Munyu Maina -vs- Hiram Gathiha Maina [2013] KECA 941 [KLR]**, the court said that when a registered proprietor root of title is under challenge, it

is not sufficient to dangle the instrument of title as proof of ownership[and that a party must go beyond the instrument and prove the legality of how he acquired the title by showing the acquisition was legal, formal and free of any encumbrances.

93. The plaintiff is denying relinquishing his co-ownership rights to the 1st defendant through the purported sale agreement, transfer forms, and or receiving any consideration; otherwise, his consent was not freely obtained, and the documents were not willingly and consciously executed with an intention to dispose of his share to the suit land. The plaintiff goes on to attach the sale and transfer between the two defendants without procuring his consent or approval, for the land remained as held in common.

94. In ***Eighty Four Investments Ltd -vs- Irungu & 4 Others, Civil Appeal No. 122 of 2019 [2025] KECA 1365 [KLR] (25th July 2025) (Judgment)***, the property in dispute was held in tenancy in common in equal shares. At issue was whether a sale agreement had involved the two co-owners and whether a co-owner could sell the property to the exclusion of the other co-owner. The court said that had due diligence been undertaken, it would have revealed the interest of the co-owner in the property; hence, the appellant

was not an innocent purchaser without notice, as he had contended.

95. The plaintiff, as regards the 1st defendant, pleads undue influence, duress, and trickery. He says that though he signed some documents with the 1st defendant, the intention was not to dispose of the half share, but to use the share as security to secure financial assistance in the furtherance of their joint quarry business.

96. Particulars of duress, coercion, and undue influence must be pleaded and proved by a party alleging them.

See **Mohamed Ahmed Abdun & another v Mini Bakeries (MSA) Limited [2019] KECA 341 (KLR).**

Courts of law do not rewrite contracts but enforce them, unless the contract is vitiated by illegality, undue influence, duress, or fraud. See **National Bank of Kenya Ltd -vs- Pipe Plastic Samkolit (K) Ltd & Another [2001] eKLR.**

Order 2 Rule 10(1)(a) of the Civil Procedure Rules provides that the particulars of any misrepresentation, fraud, breach of trust, willful default, or undue influence on which a party relies on must be pleaded.

97. In **Mwaringa -vs- Waashe (Civil Appeal E012 of 2022) [2025] KECA 297 (KLR) (21 February 2025) (Judgment),** the court observed thus:

“The reason why parties intending to enter a contractual relationship reduce contracts into writing is to affirm the terms to the exclusive memorial of the parties and to lend certainty”.

98. “Once parties enter into a contract, there is no room left for them to introduce extrinsic evidence to add or modify the contract.” The court held that the appellant had failed to prove the particulars of coercion or duress under which he allegedly signed the agreement, and that he must rest assured that his hands were totally bound by what he had committed himself to do.

99. In **RTS Flexible Systems Limited -vs- Molkerei Alois Müller GmbH [2010] UKSC 14**, the court held that whether or not there is a binding contract between parties and if so upon what terms depends upon what they had agreed, but not upon their subjective state of mind. Further, the court said that it also depends upon what was communicated between them by words or conduct and whether it lends to an objective conclusion that they intended to create a legal relation and had agreed upon all the terms which they regarded or the law required as essential for the formation of a legally binding relation.

100. **Section 3(3)** of the Law of Contract Act, as read together with **Section 38** of the Land Act, is the governing law on the sale agreement between the plaintiff and the 1st defendant, as well as that between the defendants. All the essential features of the said law appear to have been complied with. Execution of the first sale agreement and the transfer forms with the sole intention to dispose of the whole shares or interests in the suit land are what the plaintiff is denying; otherwise, the intention was procured fraudulently, through undue influence, misrepresentation of facts, and coercion.

101. A statement is deemed to be innocently misrepresented if the maker honestly believed in its truth, though false. See **Oscar Chess Ltd -vs- Williams [1957] 1 WLR 370.** Fraudulent misrepresentation in a statement is where the maker knows that it is false, he makes it carelessly or restlessly, and does not believe in its truth. See **Derry -vs- Peek [1889] 14 App Cas 337.** A negligent misrepresentation of facts occurs where there was a special relationship between the maker and the recipient of the statement; hence, the maker owed the recipient a duty of care. See **Hedley Byrne & Co. Ltd -vs- Heller & Partners Ltd [1964] AC 465.**

- 102.** Duress in contract law is where a person agrees to a transaction as a result of threats. See **Hassanali Issa and Co. -vs- Jeraj Produce Store 967 E.A. 55.** In **Barton -vs- Armstrong [1976] AC 104,** the court observed that the absence of choice does not negate consent in law since consent may be obtained through advice, persuasion, influence, inducement, representation, and or commercial pressure.
- 103.** Undue influence is proved by demonstrating that the victimized party was someone with a disadvantage, making him prone to be affected by such pressure, and that the influencing party was a person in a special relationship with the victim, giving him an advantage over the victim.
- 104.** Undue influence may take several forms, such as importuning, exhortation, flattery, deception, insinuation, or trickery. See **Bank of Credit and Commerce International SA -vs- Aboody [1992] 4 All ER 955,** **Royal Bank of Scotland PLC -vs- Etridge No. 2 [2001] UKHL 44,** **CIBC Mortgages plc -vs- Pitt [1994] 1 AC 200** **Netwest Bank -vs- Bougan [1985] AC 686,** **Royal Bank of Scotland -vs- Etridge [2001] 3 WLR 1021,** **Barclays Bank Plc v O'Brien [1994] 1 AC 180** and **Lloyds Bank -vs- Bundy [1975] QB 326.**

- 105.** A party alleging a contract to be illegal and vitiated by undue influence must abide by the guidelines set in **Kenya Airways Ltd -vs- Satwant Singh Flora [2013] eKLR**. In **Dhiman vs Shah Civil Appeal E38 of 2023 KECA 1264 [KLR] (11TH July 2025) (Judgment)**, the court held that a court may refuse to uphold a contract or specific terms of it, if they were imposed in a way that a party took undue advantage of the one party's vulnerability, ignorance, or lack of bargaining power.
- 106.** In this suit, the plaintiff admits that he signed some documents, which the 1st defendant brought to him, that he may not remember their contents. He admits that the signature on all the sale agreements, land control board application forms, and the transfer forms belongs to him.
- 107.** PW1 admits surrendering some personal documents, like the ones accompanying the transfer form, to the 1st defendant. PW1 admits that the documents which he signed related to the transfer of his shares for the purposes only of securing a loan facility from a financial institution to kick off their business dream of establishing a quarry business. PW1 says that he believed and trusted the 1st defendant as a business partner.

108. The rule in interpreting a contract is that the whole agreement must be considered based on the natural meaning given to the words used in the four corners of the document. Extrinsic evidence may not be introduced to vary the terms and conditions of a contract. See **Fidelity Commercial Bank Ltd -vs- Kenya Grange Vehicle Industries Ltd [2017] eKLR.**

109. There is no evidence before the court as the plaintiff wants the court to believe that the plaintiff and the 1st defendant had entered into a partnership in line with the Partnership Act, Cap **29**. There is no evidence that the suit premises belonged to the 1st defendant and the plaintiff as partners in a quarry business. Evidence by way of a business partnership by dint of **Section 2** of the Partnership Act, such as through minutes, business letters, written orders for the crushing machine, invoices, receipts, or a written request for the same from India or elsewhere, is lacking.

110. Evidence of a joint business plan relating to a quarry business to be established on the suit land is lacking. Correspondences between the partners sourcing for credit in their joint names or engaging for the use of the suit premises as collateral for a loan are

lacking. The manner of capital contribution to the partnership, its management, share of profits or losses, accounting, partnership records, and the manner of identifying partnership property are lacking.

111. **Section 19** of the Partnership Act is specific that where co-owners of an estate or interest in any land are partners concerning profits made by use of that land, and purchase other land out of its profits, the land so purchased is not, in the absence of an agreement to the contrary, partnership property. **Section 20** of the Act provides that a document is validly executed by a partnership as a deed if executed by the two partners. In this suit, the plaintiff has not tendered any evidence, as indicated above, to link the suit premises with any partnership related to the quarrying business. The court must be supplied with credible evidence by way of documentation to make a finding that the sole intention to sign the documents, as the plaintiff says he signed, related to the procurement of credit facilities for the purpose of starting a quarry business and not to dispose of his share of the land to the 1st defendant. Unfortunately, the plaintiff failed to tender such evidence.

112. On the other hand, the evidence of DW1 and DW4, who witnessed the sale agreements and the transfer forms, was consistent and believable that the plaintiff, accompanied by the 1st defendant, appeared in their offices to execute the documents which are before the court. Proof of execution of the documents under **Sections 70, 71, 73, 74, and 75** of the Evidence Act was met through DW1 and DW4.

113. The plaintiff, on the other hand, did not invoke **Section 76** of the Evidence Act and subject the exhibits to a forensic document examiner. The court therefore finds that the plaintiff has failed to offer sufficient evidence to vitiate both the sale agreement, an application for land control board consent, and the transfer form used to register the suit land in favour of the 1st defendant on account of forgery, fraud, illegality, duress, undue influence, or misrepresentation. As a consequence, the court finds that the co-ownership of the suit land was lawfully terminated by the parties.

114. Coming to the sale and transfer of the suit land between the 1st and 2nd defendants, the plaintiff, as indicated above, lawfully exited the ownership of the suit land, meaning that the 1st defendant, as a sole proprietor, was free to offer the land for sale to the 2nd

defendant, free of any overriding rights in favor of the plaintiff. Evidence to vitiate the sale and transfer was not led by the plaintiff to the required standards.

115. Evidence of the existence and the legality of a validly registered restriction on the title register as at the time the sale and the transfer arose is missing. The plaintiff failed to establish that the 2nd defendant was privy to or aware of any adverse claims or interest in his favor to be covered by the doctrine of innocent purchaser for value without notice, as held in **Sehmi & another -vs- Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment), Torino Enterprises Limited -vs- Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment),** and **Dina Management Ltd -vs- County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)**

(Constitutional and Human Rights) (21 April 2023) (Judgment). The defendants have produced

all the paper trail to the root of their titles to the suit land without a break in the chain of acquisition as per

Munyu Maina -vs- Hiram Gathiha Maina (*supra*).

The upshot is I find the plaintiff's suit lacking merit. It is dismissed with costs.

116. Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **12th** day of **November 2025**.

In the presence of:

Court Assistant - Dennis

Miss Nafula for Samba for the plaintiff present

Onyancha for the defendants present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**