



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ELC CASE NO. 672 OF 2017

JANE AKUMU MIGWAMBO
(Suing as the Legal Administratrix of the Estate of
PETERLIS MIGWAMBO AMOLO - Deceased)
.....PLAINTIFF

-VERSUS-

CAREN ANYANGO OCHIEL
THE COUNTY LAND REGISTRAR, MIGORI COUNTY
THE HONOURABLE ATTORNEY
GENERAL.....DEFENDANTS

JUDGEMENT

INTRODUCTION

1. This is a suit filed by Jane Akumu Migwambo, suing as the legal administratrix of the estate of Peterlis Migwambo Amolo (Deceased), against Caren Anyango Ochiel, the County Land Registrar, Migori, and the Hon. Attorney General.
2. The dispute concerns LR No. KAMAGAMBO/KONGUDI/865, which the plaintiff alleges was fraudulently transferred from the deceased to the 1st defendant on 7 October 1994. The plaintiff seeks cancellation of that title and restoration of the land to the estate of the deceased. The 1st defendant denies any fraud, insists she lawfully purchased the land from the deceased, and raises a counterclaim seeking an order directing the Land Registrar to rectify the acreage and a permanent injunction to protect her title.

PLAINTIFF'S CASE

3. The plaintiff avers that the deceased, Peterlis Migwambo Amolo, was the lawful registered owner of LR No. KAMAGAMBO/KONGUDI/865 until his death. She alleges that on or about 7th October 1994, the suit property was fraudulently and irregularly transferred to the 1st defendant, who was subsequently issued with a title deed on 21st October 1994. According to the plaintiff, the deceased never executed any transfer, never sold the land, and his alleged signature on the transfer documents was forged.
4. She further alleges that the 1st defendant, in collusion with the 2nd defendant, engaged in acts of fraud including: forging the deceased's signature and ID, impersonating the deceased, presenting fake transfer instruments, falsifying records, and misleading the Land Registrar. She contends that the transfer could not have occurred without the negligence or collusion of the 2nd defendant.
5. The plaintiff avers that the fraud was only discovered in 2011, after which she lodged a caution. She obtained copies of the transfer instruments in August 2014, revealing further alleged inconsistencies. She maintains that the transfer was illegal, conferred no valid title upon the 1st defendant, and if anything, the 1st defendant holds the land in trust for the estate of the deceased. She seeks declarations of fraud, cancellation of the 1st defendant's title, rectification of the register, and a permanent injunction restraining the 1st defendant from dealing with the land.
6. The Plaintiff therefore seeks judgment against the Defendants jointly and/or severally in the following terms, verbatim as pleaded:
 - a) Declaration that the Transfer and Registration of the Suit Property, that is, LR NO. KAMAGAMBO/KONGUDI/865 in favour of the 1st Defendant on the 7th day of October 1994, was fraudulent, illegal, null & void.
 - b) Cancellation of the Transfer and Registration of LR NO. KAMAGAMBO/KONGUDI/865 in the name of the 1st Defendant and rectification of the register to reflect the name of Peterlis Migwambo Amolo, Deceased.

- c) Permanent Injunction restraining the 1st Defendants either by herself, agents, servants and/or anyone claiming under the said Defendant from entering upon, re-entering, trespassing onto, cultivating, Building Structures, interfering with and/or in any other manner dealing with the suit Property, that is, LR NO. KAMAGAMBO/KONGUDI/865 and/or any portion thereof.
- d) In the alternative and without prejudice to the foregoing, declaration and/or decree that LR NO. KAMAGAMBO/KONGUDI/865 was transferred and registered in the name of the 1st Defendant, albeit on Trust for the Plaintiff and the Heirs of Peterlis Migwambo Amolo, now Deceased.
- e) Costs of this suit be borne by the Defendants.
- f) Such further and/or other relief as the Honourable Court may deem fit and expedient so to grant.

DEFENDANT'S CASE

- 7. The 1st defendant denies all allegations of fraud and asserts that she is the lawfully registered owner of the suit property, having purchased it from the deceased, who willingly participated in the transaction. She states that all legal formalities for transfer were complied with and puts the plaintiff to strict proof of the allegations of forgery and illegality. She further avers that she and her husband, Gideon Gilbert Ochiel, were bona fide purchasers for value, and that the suit property was transferred with the full knowledge and consent of the deceased.
- 8. The 1st defendant avers that the land was sold free of encumbrances, and that there exists no trust in favour of the estate or any beneficiary of the deceased. She states that the prayers sought in the plaint are unconstitutional and unenforceable and urges the Court to dismiss the suit with costs. Although she expresses readiness to consider alternative dispute resolution.

Counterclaim

- 9. In their counterclaim, the 1st defendant reiterates that the transaction began in 1981 between Gideon Gilbert Ochiel and the deceased, and

concluded in 1994 when the land was registered in the 1st defendant's name with the deceased's full involvement. They assert that the Land Registrar has failed to rectify the acreage of the title as requested and that the defendants (plaintiff in the main suit) continue to interfere with their peaceful occupation. They seek: an order directing rectification of the acreage on the title; a permanent injunction restraining the plaintiff and persons claiming through her from interfering with their ownership and possession and costs of the counterclaim.

HEARING

10. The hearing commenced with the plaintiff, Jane (also Jennifer) Akumu Migwambo, adopting her written statement and producing her bundle of documents. She testified that the suit property, LR No. KAMAGAMBO/KONGUNDI/865, originally belonged to her late husband and was fraudulently transferred to the 1st defendant on 7th October 1994 through forged signatures, irregular Land Control Board documentation and collusion within the land registry. She stated she only discovered the alleged fraud in 2011 when she lodged a caution, and later obtained copies of the transfer instruments in 2014, which she said contained inconsistencies.
11. The 1st defendant's case was presented through her son, Adam Samo Ochiel (DW1), acting under a registered Power of Attorney. He adopted his statement and produced his documents asserting that his mother lawfully purchased the land from the deceased for Kshs. 15,000/=, and that the transfer and registration were properly undertaken. He denied any fraud and highlighted his mother's long public service with no complaint ever filed against her.
12. The 2nd and 3rd Defendants, through DW2, Carol Mutai, the Deputy Land Registrar, produced the official land records: the green card (opened 22/8/1994), the consent dated 2/9/1994, the transfer registered 7/10/1994, and the title issued 21/10/1994. She confirmed the presence of the plaintiff's caution of 5/9/2011 and explained the registry procedure for transfers.

Issues For Determination

13. The Court considers the following issues as arising for determination in this matter:
- a) Whether the transfer and registration of LR No. KAMAGAMBO/KONGUNDI/865 to the 1st Defendant was fraudulent or unlawful.
 - b) Whether the 1st Defendant lawfully acquired the property or holds it in trust for the Plaintiff.

Analysis and Determination

Issue No:1 Whether the transfer and registration of LR No. KAMAGAMBO/KONGUNDI/865 to the 1st Defendant on 7th October 1994 was fraudulent or unlawful

14. Fraud is a serious allegation and the law requires that it be specifically pleaded and strictly proved. Black's Law Dictionary defines fraud as: *"some deceitful practice or willful device, resorted to with intent to deprive another of his right... Fraud... includes all acts, omissions and concealments which involve a breach of legal or equitable duty... and are injurious to another."* This definition underscores that fraud entails intentional wrongdoing and cannot be founded on suspicion, error, or administrative gaps.
15. The principles governing the pleading and proof of fraud are well settled. As explained in *Bullen & Leake & Jacobs, 13th Edition*, citing authorities such as ***Wallingford v Mutual Society, Garden Neptune -v- Occident, Lawrence -v-Lord Norreys and Davy -v -Garrett***: *"Where fraud is intended to be charged, there must be a clear and distinct allegation... precise and full allegations of facts and circumstances leading to the reasonable inference that fraud was the cause of the loss complained of... General allegations, however strong... are insufficient."*
16. Our courts have consistently applied these principles, for example in ***Insurance Company of East Africa -v- Attorney General & 3 Others***, holding that fraud must be proved through evidence, not

suspicion.

17. This higher standard operates alongside the statutory protection accorded to registered proprietors. Sections 25 and 26 of the Land Registration Act enshrine the principle of indefeasibility of title. The Court of Appeal in **Arthi Highway Developers Ltd -v- West End Butchery Ltd and in Dr. Joseph Arap Ngok -v- Justice Moiwo ole Keiwua** confirmed that a registered title can only be impeached on proof of fraud or misrepresentation in which the registered proprietor is shown to have participated.
18. Accordingly, the burden of proving the alleged fraud lies with the plaintiff. Section 107 of the Evidence Act is explicit that a party who asserts a fact bears the obligation to prove it. Where fraud is pleaded, that burden is heavier than the usual balance of probabilities, though not as high as beyond reasonable doubt.
19. It also bears emphasis that parties are bound by their pleadings, and courts decide cases on the evidence placed before them. Suspicions, gaps, or assumptions cannot substitute for proof, particularly where the claim seeks to unsettle a registered title.
20. Applying the above legal principles to the present dispute, it is clear that the plaintiff did not tender evidence capable of meeting the elevated standard of proof required where fraud is pleaded. Her case was not supported by any forensic evidence, such as handwriting analysis; nor was there a police report, a complaint to investigative agencies, or testimony from any person who witnessed the alleged execution of forged documents. No material was produced showing that the 1st defendant fabricated signatures, presented false identity documents, or acted in concert with the Land Registrar to procure the registration.
21. The plaintiff herself admitted that she had no direct knowledge of the dealings between the deceased and the 1st defendant. What she relied upon were perceived documentary inconsistencies including missing dates, incomplete Land Control Board forms, and gaps in administrative entries. While such imperfections may raise questions about the efficiency of record-keeping, they fall far short of constituting positive, intentional deceit, which is the cornerstone of actionable fraud. The law is explicit

that fraud cannot be inferred from suspicion, conjecture, or administrative oversight.

22. In contrast, the 1st defendant presented a coherent and unbroken chain of official records. The Land Registry documents showed a duly executed transfer in favour of the 1st defendant, supported by a Land Control Board consent, followed by formal presentation, registration on 7th October 1994, and issuance of title on 21st October 1994. The Deputy Land Registrar candidly confirmed that the registry records reflected these sequential steps and that there was nothing in the register to suggest manipulation, forgery, or collusion. Under the doctrine of the presumption of regularity, which attaches to official acts, the burden lay squarely on the plaintiff to rebut the validity of those entries. She did not.
23. In the totality of circumstances, the Court is satisfied that the plaintiff failed to produce clear, cogent, and distinctly proved evidence of fraud, as required by law. Her claim rests on general assertions and administrative inconsistencies, which, in law, do not impeach a duly registered title.
24. The 1st defendant's title therefore enjoys the protection of Sections 25 and 26 of the Land Registration Act, and there exists no evidential foundation upon which to disturb it. Accordingly, the Court finds no basis to declare the transfer unlawful or fraudulent.

Issue No. 2: Whether the 1st Defendant lawfully acquired the property or holds it in trust for the Plaintiff

25. Having upheld the validity of the transfer and the lawfulness of the registration in favour of the 1st defendant, the Court must now determine whether the 1st defendant nonetheless holds the suit property in trust for the plaintiff or the estate of the deceased.
26. A trust whether express, resulting, or constructive is a fact-based equitable claim, and as with all such claims, the burden rests on the party alleging it. The plaintiff was therefore required to demonstrate, through reliable and consistent evidence, that the intention of the deceased, or the surrounding circumstances of the transaction, pointed to a trust relationship in her favour.

27. The plaintiff's claim of trust was pleaded purely in the alternative, and not anchored on any contemporaneous conduct, agreement, or communication from the deceased indicating that the 1st defendant was to hold the property on behalf of his estate. The plaintiff led no proof that the deceased lacked intention to pass proprietary rights to the 1st defendant, nor any evidence of joint development, contribution, or mutual understanding that would give rise to a resulting or constructive trust.
28. On the contrary, the documentary record presented by the defence showed that the deceased appeared before the Land Registrar, executed the necessary documents, and voluntarily transferred the property. In the absence of evidence demonstrating that the transfer was anything other than an outright sale, the Court cannot infer a trust.
29. It is also noteworthy that the plaintiff did not plead or prove any continuing possession, contribution, or other proprietary relationship that might support an implied trust. Her claim centred entirely on the allegation that the deceased never sold the land. Having already found that the plaintiff failed to prove fraud, and in light of the unchallenged presumption of regularity attaching to the transfer and registration, the foundation upon which the alleged trust was premised collapses.

Final Orders

- a) The Plaintiff has failed to prove fraud or illegality in the transfer of LR No. KAMAGAMBO/KONGUNDI/865. The transfer of 7th October 1994 and the title issued on 21st October 1994 are upheld as lawful and valid.
- b) The Plaintiff has not proved any form of trust against the 1st Defendant. The 1st Defendant is confirmed as the absolute proprietor of the suit property under Sections 25 and 26 of the Land Registration Act.
- c) The Plaintiff's suit filed on 7th December 2015 is dismissed in its entirety.
- d) On the Counterclaim:
 - I. The validity of the 1st Defendant's title is affirmed.
 - II. The prayer for rectification of acreage is declined.

III. A permanent injunction is issued restraining the Plaintiff, her agents, or persons claiming through her from interfering with the 1st Defendant's ownership and possession of LR No. KAMAGAMBO/KONGUNDI/865.

e) Costs of both the suit and counterclaim are awarded to the 1st, 2nd, and 3rd Defendants.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **2ND** day of **DECEMBER, 2025.**

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

Mr. Lagat for the Plaintiff

No Appearance for the Defendants

Philomena W. Court Assistant