

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KWALE

ELC CASE No. 10 OF 2021

FORMERLY MOMBASA ELC CASE No. 259 OF 2017

1. **IRENE KASIVA ROMER NZIOKA**

2. **ROMER KENNEDY** (as the Legal

Representatives of the Estate of

ROMER WOLFGANG)

PLAINTIFFS

VERSUS

1. **NURTON JANE NJOKI**

2. **ESTHER KAMAU**

3. **THE LAND REGISTRAR, KWALE**

4. **PHILIP MAKINI**

5. **H.O. MUNGARE**

6. **VINCENT K. MOGAKA**

7. **NGUTE MUTUA a.k.a DOREEN NGUTE MUTUA**

8. **ERIC MUMO KOLLE**

9. **JAMES NYAMAI MAKAU**

10. **CAPRICE MARTINA WEGER**

11. **JOSHUA MUEMA KOLLE**

12. **THE ESTATE OF MARGARET KOKI SIEBEL**

13. **THE ESTATE OF LOTHAR SIEBEL**

14. **P.M. MUTEGI** **DEFENDANTS**

JUDGEMENT

1. Vide Plaintiff dated 17th July, 2017 and amended on 27th November, 2019 the Plaintiff brought this suit against the Defendants seeking the following reliefs: -

- a. A declaration that Plot Number KWALE/DIANI/582 belongs to the deceased and therefore his estate alone and that the name of Margaret Koki Siebel (deceased) should be struck off the register for that property after the fraudulent transfer to the 1st Defendant is cancelled.
- b. A declaration that Erick Mumo Kolle ought not to have buried the remains of Margaret Koki Siebel on Plot Number KWALE/DIANI/582 and that that body should be exhumed and buried in a public burial site if the children of Margaret Koki Siebel do not exhume it and burry it elsewhere.
- c. A declaration that the entire process leading up to the registration of Nurton Jane Njoki as the proprietor of KWALE/DIANI/582 was fraudulent and invalid, rectification of the register by removing the name of Nurton Jane Njoki from that register and the cancellation of the title that she holds over that property.
- d. A declaration that all the documents involved in the transfer of KWALE/DIANI/582 are forgeries as the deceased Plaintiff was not in Kenya, did not sign them and that Margaret Koki Siebel not having been the owner of the property could not have sold it and could not have transferred it in 2016 when she had died in 2014.
- e. A declaration that the deceased Plaintiff alone and therefore his estate is the proprietor of KWALE/DIANI/583 having acquired that property from Lothar Siebel with the knowledge and consent of Margaret Koki Siebel and that the property was not transferred to him because Margaret Koki Siebel did not hand over the documents to him in her

- lifetime and her son Erick Mumo Kolle and his alleged wife, Ngute Mutua aka Doreen Ngute Mutua are holding the agreement, the receipts and the Transfers for both plots to the deceased Plaintiff's legal representatives name as well as the original title or that these documents may have been destroyed or burnt by Ngute Mutua and/or Erick Mumo Kolle.
- f. A declaration that the Land Registrar Kwale ought not to have accepted the transfer in favour of Nurton Jane Njoki for registration for Plot number KWALE/DIANI/582 and by doing so, he knowingly facilitated that fraud.
 - g. A declaration that by grossly understating the value of the Plot Number Kwale/Diani/582 Mr P.M. Mutegi, the Valuer, was involved in that fraud.
 - h. A declaration that any civil servant including the Land Registrar, Kwale and the Valuer, Kwale who engages in fraud is liable to be sued in both their personal capacity and official capacity.
 - i. A declaration that H.O. Mongare and Vincent K. Mogaka both advocates practicing in Diani participated in and facilitated the fraudulent transfer of the Plot No. 582 to the 1st Defendant.
 - j. A declaration without prejudice to any of the above that if Margaret Koki Siebel had any interest in Plot number KWALE/DIANI 582 and KWALE/DIANI/583 she paid herself full compensation when she took away the deceased Plaintiff's five matatus and three pick-ups as well as other movable assets in the businesses the deceased Plaintiff ran in Kenya and further that her estate is not entitled to any interest in

the two plots due to the severe head injury she caused the deceased Plaintiff that nearly killed the deceased Plaintiff and he left him with the constant need for medical care.

- k. A declaration that if Margaret Koki Siebel had any interests in Plot Number KWALE/ DIANI 582 and 583 such interests as joint proprietor were extinguished upon her death in January 2014.
- l. Special damages to include the payments the deceased Plaintiff made to his daughter after she lost her job including for her car, insurance and other living expenses while looking after the deceased Plaintiff's children while the deceased Plaintiff and his widow now the 1st Plaintiff travelled and remained in Kenya following up the fraud on Plot No. 582. Those expenses are rising. As at to date the special damages in that regard are in the sum of Euros 6,000.00. They continue to accrue at euros 600 per month as she lost her job while looking after the deceased Plaintiff's children in absence of the deceased Plaintiff and the mother. These damages are payable by the 1st, 4th, 5th, 6th, 7th, 8th, 12th and 14th Defendants jointly and severally.
- m. A mandatory injunction compelling Erick Mumo Kollo and Ngute Mutua jointly and severally to immediately release the deceased Plaintiff's suitcase and all the documents including any photocopies or soft copies they may have made to the deceased's legal representatives.
- n. Vacant possession of both Plot Numbers KWALE/DIANI/582 and 583 with an order of eviction to evict the 1st, 7th, and 8th

Defendants and any of their relatives, agents, employees, servants and tenants.

- o. A declaration that Erick Mumo Kolle is married to a German wife and the allegation by Ngute Mutua in a sworn affidavit that she is married to him amounts to perjury and that if they are indeed married then they have both committed the offence of bigamy.
- p. A declaration that the caution registered against Plot number KWALE/DIANI/583 in favour of Nguta Mutua is invalid and null and void, with an order compelling its removal by the Land Registrar.
- q. A permanent injunction restraining Caprice Martina Weger, Erick Mumo Kolle, Ngute Mutua and Jane Njoki Nurton from disposing off any interest in Kwale/Diani/583.
- r. A perpetual injunction restraining Erick Mumo Kolle, Nurton Jane Njoki, Ngute Mutua, Caprice Martina Weger and Joshua Muema Kolle by themselves, employees, servants, tenants or agents from entering or remaining upon either of the two plots with the exception of the children of Margaret Koki Siebel who may enter Plot number KWALE/DIANI/582 for purposes only of exhuming the remains of their mother and removing them from that property on prior arrangements.
- s. An order for the giving of accounts of all rents collected by Ngute Mutua and Erick Mumo Kolle in their personal capacity and as alleged representatives of Margaret Koki Siebel and for the payment of those rents, with interest to the deceased's estate.

- t. Judgment against the estate of Margaret Koki Siebel and against Erick Mumo Kollo, Ngute Mutua and James Nyamai Makau jointly and severally for KShs. 4,000,000.00 together with interest thereon on account of refusal to release the deceased Plaintiff's documents to enable him to sue James Nyamai Makau.
 - u. General, punitive and aggravated damages.
 - v. An order for the Plaintiffs costs of this suit to cover all the costs the deceased Plaintiff and his widow the 1st Plaintiff, Irene Kasiva Romer Nzioka and now both Plaintiffs and legal representatives of the deceased's estate have incurred by way of air tickets, airport transfers, taxis, accommodation and subsistence while pursuing this matter.
 - w. Interest at Court rate on any monetary award that may be made under the decree.
2. The Plaintiffs' case is that the late Romer Wolfgang (herein after referred to as Romer) and the late Margaret Koki Siebel (hereinafter Margaret) purchased parcels of land known as KWALE/DIANI/582 and 583 from the late Lothar Siebel (hereinafter Lothar). That the agreed price of Deutsche Marks 280,000/- paid in full by Romer in the year 1999, and they were registered as joint proprietors of parcel no. 582 in January, 2000. That Margaret and Romer lived on plot no. 582 while Romer took possession of Plot No. 583 with Margaret's knowledge, put up a perimeter wall and built a garage where he repaired his cars and his friends cars.

3. The Plaintiffs averred that Margaret did not release a briefcase containing the signed transfers in his favour and claimed that the same had been delivered to an advocate for safe-keeping. It is alleged that in 2003 Margaret attacked Romer with a blunt object occasioning him severe injuries which caused him to go into a coma and become blind, and thereafter he had to seek treatment constantly. That even after Romer returned to Kenya in 2010, Margaret still did not hand over the briefcase with the documents. The Plaintiffs averred that the said documents alongside his expired passport were used by the 7th & 8th Defendants to transfer Plot No. 582 to the 1st Defendant.
4. The Plaintiffs aver that the 7th Defendant resorted to extortion, threatening Romer's widow Irene Kasiva Romer Nzioki that she would use her late husband's documents to commit fraud and even sent the late Romer's medical card as proof that she had the documents. That the 7th Defendant later informed Romer and his wife that she had destroyed all the documents in the briefcase including those relating to Plot Nos. 582 and 583. Further, that Romer later learnt that Margaret had died at Msambweni Hospital on 24/01/2014 and was buried on Plot No. 582. They averred that upon Margaret's death, her interests on the said plot no. 582 were extinguished and the Romer became the sole owner of the land.
5. It is alleged that on 13.04.2017 Romer discovered that the 1st Defendant had registered a caution on Plot No. 582 in 2007 claiming a purchaser's interest, and that the same was

removed and the land transferred to the 1st Defendant on 19/09/2016. The Plaintiff's claim is that if the property was sold, it was without Romer's consent. In addition, that neither he nor Margaret was available in 2016 to apply for Land Control Board (LCB) Consent. It is also alleged that the transfer was effected on a forged affidavit which claimed that Romer was married to Margaret, and which was sworn in 2016, yet Margaret died in 2014. The Plaintiffs stated that the transfer was defective and the 4th Defendant ought to have rejected it, and faulted the 14th Defendant for valuing the property at KShs. 1,000,000/- yet it is developed land.

6. The Plaintiff averred that the 7th defendant placed a caution on Plot 583 on the false claim that she is the wife of the 8th Defendant, who has never been registered as the owner of the land. The Plaintiff's also claimed from the 7th, 8th and 9th Defendant the sum of KShs. 4,000,000/- advanced to the 9th Defendant. The Plaintiffs pleaded that there had been previous suits being HC Misc. App. No. 20 of 2016 and HCCC No. 156 of 2017 but both were withdrawn, and there is no other suit pending between the Plaintiffs and the Defendants. They expressed apprehension that the Defendants may commit further fraud in regards to Plot No. 583.
7. The 1st and 2nd Defendants filed a Statement of Defence dated 7th December, 2020 where they denied the allegations set out in the Amended Plaint. The 1st and 2nd Defendants denied the allegation that Romer and Margaret were registered as joint

proprietors of Plot No. 582 or that her rights were extinguished upon her death. They denied the Plaintiffs' claim over the suit properties since Romer never acquired lawful title to them. They pleaded that Romer's claim to ownership is founded on an illegality and is in violation of the Land Control Act and therefore of no consequence in law and fact.

8. The 1st and 2nd Defendant averred that Margaret was the sole legitimate owner of the land when the 1st Defendant transacted with her. They denied taking part in any fraud or wrongdoing. That Margaret's title was not extinguished since Romer did not legally obtain registration in his name, therefore his claim is still null, and only Margaret's estate has the legal capacity to deal with the property. They averred that the Plaintiffs' interests on the land, if any, were acquired contrary to the law and they cannot be assisted by this court, as it is tainted by bad faith, dishonesty and lies, thus the court ought not grant the prayers sought in the plaint.
9. The 1st and 2nd Defendant pleaded that the 1st Defendant is an innocent purchaser for value without notice of any defect. They stated that the Plaintiffs had not proved a prima facie case of fraud, and that the particulars thereof pleaded cannot be sustained owing to the illegal acts by Romer. They prayed that the Plaintiffs' suit be dismissed with costs.
10. The Plaintiffs filed a Reply to the 1st & 2nd Defendants' statement of Defence wherein they joined issue with the

contents thereof. The Plaintiffs denied all the averments in the 1st and 2nd Defendants Defence and asked that it be dismissed and judgment entered for the Plaintiff as prayed in the Plaint.

11. The Hon. Attorney General filed a Statement of Defence on behalf of the 3rd, 4th and 14th Defendants. They denied all the allegations set out in the Plaint, and claimed that the 3rd, 4th and 14th Defendant were acting within their statutory duty in placing a caution on Plot No. 582. In addition, that all the dealings with Plot Nos. 582 and 583 were done in good faith and with due regard to the law, and set out the particulars of statutory duty on the part of the 3rd, 4th and 14th Defendants. It was also pleaded that the Plaintiffs had not complied with Sections 4(3) read together with 12, 13A and 16 of the Government Proceedings Act. Consequently, the reliefs sought are not available or merited, thus the Plaintiffs' suit should be dismissed with costs.
12. The Hon. Attorney General also lodged a claim against the 1st, 2nd, 7th - 13th Defendants pursuant to Order 1 Rule 24 of the Civil Procedure Rules, claiming against them:-
 - (i) Full indemnity in respect of all the claims raised by the Plaintiff against the 3rd, 4th and 14th Defendants/Respondent;
 - (ii) All damages, loss and expense and costs of the suit; and
 - (iii) Such further or other reliefs as this Honourable Court may deem fit to grant.

13. The claim is based on the grounds that the 3rd, 4th and 14th Defendants were acting within their statutory duty and that all the dealings effected upon the suit properties, and that they were done in good faith and with due regard to the law. That the 3rd, 4th and 14th Defendants were deliberately misled by the 1st, 2nd, 7th - 14th Defendants and accepted the prescribed forms for lodging the caution and/or statutory declaration in support thereof. That the 1st, 2nd, 7th - 14th Defendants are merely looking for scapegoat in the 3rd, 4th and 14th Defendant.
14. The 5th Defendant also filed an Amended Statement of Defence dated 18th January, 2022. The 5th Defendant denied the allegations contained in the Amended Plaintiff. In particular, the 5th Defendant denied signing, commissioning or facilitating any documents, in the fraudulent transfer of plot nos. KWALE/DIANI/582 and 583. The 5th Defendant also denied having any knowledge of the transactions contained in the Amended Plaintiff, or being served with demand notice and put the Plaintiffs to strict proof of all their allegations.
15. The suit was also opposed by the 6th Defendant through his Amended Statement of Defence dated 20th March, 2020 who denied the allegations of facts in the Amended Plaintiff. The 6th Defendant denied the particulars of fraud set out in the Plaintiff and put the Plaintiffs to strict proof thereof. The 6th Defendant claimed that this court lacks jurisdiction to entertain the suit. That the suit is fatally incompetent and a nullity per procedure

and contravenes the Matrimonial Causes Act. He prayed that the Plaintiffs' suit be dismissed with costs.

16. On the part of the 7th and 8th Defendants, their Statement of Defence is dated 1st November, 2017. They also denied the allegations set out in the Plaint and specifically the allegation that Margaret's interests on Plot No. 582 were by law extinguished upon her death. They denied the allegation that Siebel disposed of his interests on the land to Romer or that he demanded any compensation thereof. They denied that Margaret knew of or took part in any negotiations to sell the land to Romer. They claimed that when Romer left, he took all his belongings and denied the issue of the briefcase. Further, the 7th Defendant denied knowing the existence of any documents or committing any fraud, and claimed that it is Romer and his wife who have threatened her.
17. The 8th Defendant denied knowledge of Romer's illness and averred that Margaret was interred on Plot No. 582 because it was her land and is now his home, thus he cannot be accused of trespass. They however averred that Margaret sought and obtained Romer's written authority to sell the property in order to seek medical attention. They denied that Lothar sold Plot No. 583 to the Plaintiff, and averred that the same remained in Margaret's exclusive control.
18. They further alleged that they were married under Kamba Customary law, and further that any caution registered was

done with the express instructions of the 8th Defendant. The 7th and 8th Defendant also denied any knowledge of and dealings between Romer through his registered company with the 9th Defendant. They further denied the allegations of fraud and or that there are any intentions to dispose any property and claimed that the Plaintiffs' apprehensions were unfounded. They asked the court to dismiss the Plaintiffs' suit with costs.

19. The 9th , 10th , 11th and 13th defendants did not enter appearance.

HEARING AND EVIDENCE

20. Hearing of the case commenced on 28th February, 2022. The court noted that the 9-13th Defendants had not participated in the matter since its inception.

The Plaintiff's Case

21. In support of the Plaintiffs' case, the 1st Plaintiff - Irene Kasiva Romer Nzioki testified as PW1. She adopted her witness statement dated 18th February, 2020 and also sought to rely on the Statement of her late husband, Romer Wolfgang. PW1 produced the documents in the bundle filed on 17/07/2017 as PEXb 1-27. PW1 testified that her husband denied signing the Transfer for plot no. 582. She testified that this land is developed with a 6-bedroom house built in 1999 as well as staff quarters. She explained in 2020 while this case was pending, the 7th and 8th Defendants built 5 more houses on it which are occupied by tenants.

22. PW1 testified that the transfer bears the stamp of Advocate Mong'are but she could not tell whether he signed it as she was not present. PW1 however testified that a second row plot in Diani cannot cost KShs. 1,000,000/-. PW1 told this court that the photo on the transfer was not her husband's photo, and neither were the signatures, the PIN number or the passport number as it expired in 2009. According to PW1 the year 2006 is written on top of the photo, but at the time her husband was very sick and admitted in hospital in Germany. She further said that the transfer is dated 19th September, 2016, but in September, 2016 her husband was again in Germany.
23. PW1 also informed this court that the documents in the suitcase were never surrendered to her husband. She explained that the two properties are together but separated by a wall built by Romer. Further that, the 1st Defendant built 3 apartments on plot no. 583, but prior to that, Romer had a garage thereon to repair his matatus. PW1 also pointed out that Margaret died on 24/1/2014 therefore she could not have signed transfers in 2016. She testified that they were advised to report the matter to Diani Police Station, but no one had been arrested yet. She prayed that the prayers in the Amended Plaint be granted. PW1 was recalled on 23/10/2024 and she produced the RIM in the Plaintiffs' supplementary list of documents filed on 20/11/2023 as PEX28. She explained that it shows the exact location of the suit properties.

24. PW1 was cross-examined by Mr. Kurgat for the 1st and 2nd Defendants and she explained that the 2nd Plaintiff is her son. She testified that she got married to Romer after he had bought the property. She also said that there are cottages on both Plot Nos. 582 and 583, but Margaret is buried on Plot No. 582. PW1 stated that her late husband was sick between 2003 - 2013 and went into a coma for 1 year. Referring to Romer's statement, PW1 testified that her late husband purchased Plot. No. 582 together with Margaret since he was a foreigner. PW1 explained that the plots are beach plots since they are 10 minutes to the beach and are near KaziKazi. She further clarified that the 7th and 8th Defendants live on the plot where Margaret is buried, but she was not aware they were there because Margaret had a claim.
25. PW1 testified that according to the RIM, the house was constructed on plot no. 582, while plot no. 583 which had the garage is occupied by the 1st and 2nd Defendants. PW1 testified that the 1st Defendant has a title and has constructed on the plot she lives in. PW1 made it clear that the house her husband bought is on plot no. 582 and is occupied by the 7th and 8th Defendants. She testified that to her knowledge, the 1st Defendant has occupied the land since the year 2017.
26. PW1 was then cross-examined by Ms. Njau state counsel and she testified that her husband's passport number was CIL70VJ8H (sic CL70VJ8H) as seen at page 117 of her bundle, alongside her marriage certificate. She said that Margaret had

the briefcase with all the documents thus she has no document and her copies were obtained from the Land Registry. The witness testified that the 7th Defendant promised to send the briefcase to their hotel, but she never sent it. PW1 further testified that the transfer dated 20/09/1993 was to Romer and Margaret. PW1 also testified that the title and the green card had her husband's name and that her husband had a Kenyan ID.

27. On cross-examination by Mr. Kabiaro for the 5th Defendant, PW1 testified that Mong'are is an advocate who participated in the signing of the transfer dated 19/9/2016. She testified that Mr. Mong'are certified the copies of Romer and Margaret's passports while Vincent Mogaka certified the KRA PIN. She could not however confirm whether he was the one who signed since she was not there when the document was signed. She also explained that there was no date indicated on the certification, and reiterated that the photos on the transfer were neither Romer's nor Margaret's.
28. Cross-examined by Ms. Ondieki for the 6th Defendant PW1 testified Mogaka is implicated because he stamped the Affidavit (page 10 of plaintiffs bundle) but she could not tell if the signature thereon was his signature.
29. Upon cross-examination by Mr. Muyala for the 7th & 8th Defendants, PW1 testified that Romer compensated Lothar in Deutsch Marks 280,000/- since Margaret had no money. PW1

testified that she knew Doreen and even went with her to search the house in the company of Police. She referred to the photographs in her list of documents and explained that page 112 (sic 111) shows Margaret's grave. She reiterated that the briefcase containing her husband's documents was left with Margaret, but she could not tell its contents. With regards to the RIM, PW1 testified that she procured the RIM in 2017 and again in 2020 and had brought it to court as proof.

30. On re-examination, PW1 testified that Doreen told them the suitcase was with a lawyer in Mombasa. She reiterated that the Affidavit is dated 22/09/2016 but Romer was in Germany at the time and Margaret died on 24/1/2014. She reiterated that the photographs and passport number were not her late husband's. She testified that the only advocate who witnessed the Transfer was H.O. Mong'are. PW1 testified that she had a copy of the RIM that is certified by the coast regional surveyor. She clarified that she brought the RIM because the 8th and 7th Defendants brought a wrong map.
31. The Plaintiff called John Muteti Kollo who testified under oath as PW2. He adopted his witness statement dated 28/10/2021 as his evidence-in-chief. PW2 testified that Margaret was his elder sister and that she died.
32. PW2 was cross-examined by Mr. Kurgat and he testified that Margaret was married to Lothar Siebel and they lived in Diani near Kaskazi Hotel. He testified that he was there when they

bought the land and he supervised the building of the house on plot 583 where Margaret is buried. He testified that plot 582 was purchased by Jane Nurton from Margaret after Romer returned abroad. He confirmed that Margaret and Lothar were married. That he has never seen the title for plot no. 582.

33. On cross-examination by Mr. Makuto state counsel , PW2 testified that he knew the 1st Plaintiff is in court because she wants to know where her husband's land is. He testified that he knew Romer purchased plot no. 582 because he was there and was one of the witnesses, however, he couldn't recall the exact date of the purchase.
34. He was again cross-examined by Mr. Kabiari and testified that he witnessed Margaret purchase the land from Francis in the presence of his sons, but never saw any transfer or agreement.
35. PW2 was thereafter cross-examined by Ms. Ondieki and he testified that he did not know Vincent Mogaka Advocate and had not seen any document signed by him in this case.
36. When he was cross-examined by Mr. Muyala, PW2 testified that he lived with Margaret between 1974 - 2001. That he knew she was married to Siebel and bought plot no. 583. He also stated that he knew she had 4 children, among them Erick who is married to Doreen. He reiterated that he supervised the building of the big house on plot no. 583. He also said that he was there when Romer bought land with Margaret but he

wasn't there for the payment of the last instalment as he was supervising matatus.

37. On re-examination, PW2 testified that Plot No. 583 still belongs to Romer and Margaret. Further, that when Romer returned to Germany, Lothar raised issues but Romer gave him money and Lothar left the house. PW2 testified that the matatus belonged to Romer and they were stationed on plot no. 583.
38. With the above the Plaintiff's case was marked as closed.

The 5th Defendant's Case

39. The 5th Defendant testified as DW1 and introduced himself as an advocate of the High Court of Kenya practicing under Mong'are & Company Advocates based in Kwale town, with an office in Nyamira town. He clarified that he has no office in Ukunda. He pointed out that he had been sued with respect to signing and facilitating documents in plot nos. 582 and 583. DW1 pointed out that the particulars of fraud are not particularized in the Plaint. He testified that he did not know Margaret Koki Siebel or Norton Jane Njoki and had never met them in his practice. With regards to the transfer dated 19/9/2016, he testified that he did not know and had never seen the lady and man appearing on the photos therein.
40. DW1 acknowledged that the transfer bore the stamp of H.O Mong'are, but said that he didn't know the stamp or the signature and that they were totally strange to him. He testified

that he was not familiar with the particulars in the transfer and that he did not certify it. He denied knowledge of the expired passport number given and further denied writing by hand the word "DRAWN", and pointed out that it is not dated. He denied certifying any KRA PIN or the passport. He testified that he never authorized a transfer pertaining the suit properties or authored the LCB consent. DW1 then adopted his witness statement as part of his evidence.

41. On cross-examination by Mr. Kinyua, DW1 testified that his postal address is Box 41 Kwale as indicated on the stamp. DW1 also testified that his names are Harry Mong'are Ongaga. He could not tell if someone had forged his signature and stamp. He asserted that the documents were total forgeries but conceded that he had not reported any of the alleged forgeries to the police despite having had the documents since the time of service. DW1 admitted that he knew the 6th defendant as an advocate but clarified that he is not his partner and that they don't do business together.
42. DW1 further confirmed that none of the parties in the transfer appeared before him. He admitted that there was an investigation conducted with regards to the transfer where he was questioned and interrogated and he gave police the same evidence. DW1 testified that he didn't know the plaintiff. DW1 testified that the year on the transfer wasn't clear, but assuming it was 2006 or 2008, he explained that by that time he wasn't admitted to the Bar.

43. DW1 was also cross-examined by Mr. Kurgat and explained that his statement is dated 25/8/2017. He also explained that he was admitted to the Bar in 2010 and practices only in Kwale and Nyamira. When the witness was referred to his amended statement of defence, he admitted that he didn't have any physical address or office in Diani. He reiterated that the documents are forgeries but again conceded that he neither reported the fraud attributed to him to the police nor lodged a complaint with land registrar Kwale. He also didn't know if the suit properties are beach plots or agricultural, but claimed that he had never appeared before LCB Kwale on behalf of a client. DW1 testified that the stamp used was not his, and that to his thinking, someone made a stamp.
44. On cross-examination by Mr. Makuto, DW1 testified that his name on LSK search engine is Henry Mong'are Ongaga and that his initials are H.O. DW1 testified that he did not write to the registrar Kwale to inform them that he did not witness the transfers. He also did not write a protest letter to V.O Mogaka. He also admitted that he had not presented his actual stamp to court.
45. DW1 was also cross-examined by Ms. Ondieki whereupon he reiterated that he has never interacted with V. Mogaka before.
46. DW1 was further cross-examined by Mr. Muyala and he explained that when he is not in his office, no documents are

signed in his absence. DW1 informed this court that Mr. Vincent Mogaka has never signed for him documents. DW1 denied the signature on the transfer but admitted that he had not supplied any specific signature to the court.

47. On re-examination, DW1 testified that the inscriptions on his stamp are Mongare and Co. Advocates.

The 3rd, 4th and 14th Defendants' Case

48. The Hon. Attorney General called Siema Mwanguni to testify in support of the 3rd, 4th and 14th Defendants' case and she was marked as DW2. She introduced herself as a Land Registrar Kwale, staff no. 20200208244. DW2 had the records for plot nos. 582 and 583. She testified that the register/green card for parcel no. 582 was opened on 23/08/1993 with the first entry being in favour of Francis Kibera Omuende. That on 20/9/93 the parcel was transferred to Julius Musee Maluki and Salome Mukua, and thereafter was transferred to Romer Wolfgang and Margaret Koki Siebel on 27/01/2000. That Jane Norton placed a restriction 25/10/2007 claiming purchasers interest, but the same was lifted on 19/9/2016 and on the same date the property was transferred to Norton Njoki and title issued to her.

49. DW2 had a copy of the transfer dated 6/9/93, as well as the transfer to Romer Wolfgang and Margaret Koki dated 19/9/2000. She also had the original transfer dated 19/09/2016 which is witnessed by H.O Mongare P.O Box 41 Kwale, and she explained that entry No. 8 on the green card was made

pursuant to this transfer. DW2 informed this court that they had not received any complaint from Romer Wolfgang that he had not sold the property. DW2 however confirmed that on 23/5/2017 they received the court order and it was registered, and confirmed that the order showed that the applicant was Romer Wolfgang.

50. DW2 told the court that the title document issued to Romer and Margaret over Plot No. 582 is dated 27/01/2000. The previous title for Plot No.582 was issued to Julius Maluki on 20/9/93, the original of which was returned for cancellation. There was also a title issued to Francis Omwenda over Plot No. 582 on 23/8/93, whose original was also returned for cancellation. DW2 also had the transfer to Jane Norton. DW2 also presented the letter dated 10/12/2021 by Wildad Alamin to the Attorney General setting out the details regarding the property. DW2 produced all these documents and they were marked DEXb 1-10 in the order appearing on the list dated 17/05/2022. DW2 testified that the only document executed/witnessed by the land registrar is the one from Julius to Margaret and Romer. DW2 clarified that the transfer dated 19/9/2016 was not witnessed by the land registrar but by an advocate.

51. With regards to Plot No. 583 DW2 presented the green card opened on 21/8/93 in name of Francis Kibera Omwende. It showed that the land was then transferred on 20/9/93 to Margaret Koki Siebel and Lothar Siebel, and title issued on same day. DW2 testified that a caution was registered on 2/5/2017 by

Ngote Mutua claiming as a beneficiary, but she confirmed that the last registered owner is Margaret and Lothar Siebel.

52. Mr. Kinyua for the plaintiff cross-examined DW2 and she admitted that if the photo on the transfer from Margaret and Romer to Norton Jane Njoki was not Romer's and the passport and pin are incorrect, then the transfer would not be valid. DW2 also agreed that if Margaret died in 2014, she cannot have been available to sign the 2016 transfer. Collectively, DW2 testified that a transfer form without the proper particulars of the parties was not valid. DW2 testified that the certification on the transfer did not indicate the date when Jane appeared before H.O Mongare. DW2 confirmed that the stamp has a signature and there is a handwritten inscription "*Drawn & Filed by Mongare & Co. Advocates*" and that the transfer was not dated.
53. DW2 further testified that there is no passport copy for Romer in the file, and conceded that the land registrar couldn't authenticate without seeing the passport. She added that if Romer wasn't in Kenya in 2016 he couldn't be able to swear the affidavit. DW2 confirmed that their records did not have any power of attorney from Romer to Margaret Siebel, or a consent from Romer to Margaret allowing her to transfer the property to Jane Norton.
54. DW2 was cross-examined by Mr. Kurgat, upon which she testified that all the 3 transfers are in their official records. DW2 told the court that the transfer dated 19/9/2016 to Jane is on

record and was witnessed by H.O. Mongare and entered by Makuni (Onyiego). DW2 testified that there was nothing in their records to show that he had been charged and nothing about any investigations. DW2 clarified that Plot No. 583 is registered under Margaret and Lothar Siebel whereas Plot No. 582 is in the names of Norton Jane Njoki.

55. On cross-examination by Mr. Kabiari, DW2 testified that with regards to the transfer lodged on 19/9/2016 the transferor's PIN was certified by Vincent Mogaka, while the transferee's PIN and Margaret's passport are certified by Mongare and Company. DW2 explained that they have a duty to verify all the documents and that if a document doesn't satisfy the verification she wouldn't register it.
56. DW2 was then cross-examined by Ms. Ondieki and testified that the Affidavit at page 10 of plaintiff bundle is supposed to be a spousal consent. DW2 said that a restriction can only be placed by the registered owner or the registrar himself. Further, that where the restriction is placed by the registrar he can remove it, and if it is by the registered owner then the owner can remove it. DW2 testified however, that the restriction was registered on 19/9/2016 by Jane Njoki Norton, yet she was not the proprietor therefore she did not have capacity. DW2 stated that it is the registrar who withdrew the restriction, she told the court that she could not speculate if he acted against the law.

57. Lastly, DW2 was cross-examination by Mr. Muyala and testified that the transfer at page 6 did not conform with the Land Registration Act. With regards to Plot No. 583, DW2 testified that it does not have any anomalies and the owners are Margaret and Lothar.
58. DW2 was re-examined and he testified that she had come to court as the current land registrar to give evidence on the status of the suit parcels.
59. Phillip Makini a Land Registrar who worked in Kwale between 2014 and 2016 testified as DW3. DW3 testified that he received the transfer document through the presentation book and that he did not interact with the persons in the transaction. DW3 explained the procedure that documents are taken through after they are presented for registration. He testified that he didn't know Romer Wolfgang, Irene Kasuve, Margaret or Lothar Siebel, and would not be able to identify them. DW3 testified that if fraud was committed, he wasn't party to it since he only executed the documents presented. He adopted the letter dated 22/2/2022 as his evidence before court. He however admitted that he did not know the locations of Plot Nos. 582 and 583.
60. DW3 was cross-examined by Mr. Kinyua and testified that the documents were received on September, 2016. DW3 was referred to the 1st page of the transfer and testified that it did not indicate the date they appeared before H.O Mongare. DW3

testified that there is no indication on the transfer as to who identified Romer or whether H.O Mongare knew him contrary to Section 45 of LRA. He testified that as a registrar, he had no capacity to verify ID Numbers and PINS, and he could also not tell if the photo is the likeness of Romer. He explained that had he seen the gaps, he would not have registered the transfer. DW3 explained that the signature at the bottom of the document on registration is his, but the lack of a date is an oversight. DW3 testified that he did not know that Margaret died in 2014. He testified that he verified the information on the transfer from the photocopies.

61. On cross-examination by Mr. Kurgat DW3 testified that by the time documents are presented to him, they are already verified by two investigation officers/ clerks employed by the Ministry of Lands to verify and confirm that the documents are ready for registration. He explained that the documents are then registered and are taken to him to adopt once they have been fully verified. DW3 told the court that the documents met the threshold for registration and he signed them. With regards to Section 45, DW3 testified that once the advocate has executed he did not have to know the persons. He denied participating in any fraud and said that there is no way of knowing if a person is dead when the documents are presented.

62. Under cross-examination by Mr. Kabiaro, DW3 testified that he has never interacted with H.O Mongare. He confirmed that he could not tell if the signature on the stamp belongs to Mr.

Mongare. DW3 testified that there was no mistake since the transfer complied with most of the regulations.

63. On cross-examination by Ms. Ondieki DW3 stated that where there are emerging concerns/issues he can summon the party, however, he was satisfied when he saw the basic requirements.
64. DW3 was also cross-examined by Mr. Muyala, he testified that the transfer met the basic requirements.
65. DW3 was re-examined and testified that he registered the documents in good faith when they were presented. Further, that he had just found out about Margaret's death, but had the information been available then, he would have required her appearance at his office before he signed.

The 7th & 8th Defendants' Case

66. Erick Mumo testified as DW4 in support of the 7th and 8th Defendants' case and adopted his witness statement filed on 23/6/2018 as part of his evidence. He told the court that Margaret was his mother and Lothar Siebel his step-father. He testified that he was not aware about the suitcase referred to in this case and that he had never seen it or used any document to commit fraud. He said that Lothar never sold the house to Romer and denied the alleged compensation, stating that the two never met. DW4 testified that Margaret and Lothar divorced in 2002 and the house in Kenya was left to his mother.

67. DW4 testified that plot 582 was bought by his mother Margaret and Romer. That when his mother fell sick and needed money for treatment she asked Romer to sell the plot and he agreed on condition that it was not sold below KShs. 1,000,000/-. He did not know when or whether it was transferred, or whether his mother signed a transfer. DW4 explained that the 7th defendant is the mother of his son. He asked the court to drop the case against him as well as costs. DW4 produced the documents in the list of documents dated 1/11/2017 and filed on 23/01/2018 as his exhibits DEXH 1-10.
68. Upon cross examination by Mr. Kinyua he testified that there was no transfer of the house to his mother. He explained that he married the 7th Defendant under Kamba customary law in 2013 and denied being married to a Germany woman. DW4 was referred to the transfer and he said the he did not know the white man and black woman in the photos. He asserted that it was not his mother. He also testified that although he did not know the 1st Defendant, his mother told him she sold the land to the 1st Defendant, but he was unaware how much his mother was paid for the property or when she was paid. DW4 admitted that it is not possible for his mother to have signed an affidavit in 2016 as she was dead then.
69. DW4 confirmed that he added three houses on plot no. 583 in 2020 during the pendency of this suit, and that there is rent being collected by his wife. He explained that the land had not been transferred to him. He clarified that although they filed a

succession cause in 2018, they are yet to obtain letters of Administration for Margaret's estate because they didn't prosecute it, therefore the 7th Defendant isn't the administrator of Margaret's estate. He also admitted that he didn't obtain approval from NEMA or the County to build. He claimed that his wife wasn't involved in the transfer to the 1st Defendant. He testified that the perimeter wall on plot no. 583 was built by Lothar while the garage on plot no. 582 was built by Romer in 1999. DW4 did not know when the 1st Defendant developed the properties. That Margaret bought plot no. 582 with Romer although he did not know if she contributed to the purchase of the plot. DW4 added that Romer allowed Margaret to sell plot no. 582.

70. When DW4 was cross-examined by Mr. Kurgat he testified that he didn't participate in the sale of the property. DW4 told the court that Margaret's grave is on Plot no. 583, which is where he built. That he has not built anything on plot no. 582, and that it was empty when his mother sold it except for the garage. He clarified that plot no. 582 is next to the road and is occupied by the 1st Defendant who has built on it. With regards to the accounts accrued from earnings from the property, DW4 testified that he owed no duty to pay the Plaintiffs any money. He said that his mother only had the title to 583 and it doesn't contain Romer's name.

71. DW4 was then cross-examined by Mr. Kabiario and testified that his mother never told him she had a personal lawyer, and

neither did she tell him that she had interacted with H.O Mongare.

72. DW4 was again cross-examined by Mr. Makuto and testified that his mother sold plot 582 but he did not know if she transferred it. He reiterated that it was not possible that she appeared before an advocate after 2014 to swear an affidavit or signed the transfer document as well as the LCB after 2015 as she was already deceased.
73. Lastly, DW4 was cross-examined by Ms. Ondieki, upon which he testified that he lives in Germany, but when in Kenya he stays in the property at Diani. That however, during all this time he never met Vincent Mogaka or interacted with him and his parents never mentioned him.
74. On re-examination, the witness indicated that he never promised to have the 7th Respondent give the suitcase in Germany. He clarified that he didn't have any dealings with the 1st Defendant in the transfer of plot 582. He was also not aware of the exact amount of the rental income.

1st Defendant's Case

75. The 1st Defendant, Jane Njoki Norton testified as DW5. She adopted her witness statement dated 7/12/2020, and produced the documents in the list of documents filed on the same date as DW5 EXb1 - 6. She also opted to rely on her statement of Defence filed on 7/12/2020.

76. DW5 was cross-examined by Mr. Kinyua and testified that the 2nd Defendant is her sister. She explained that she went to the LCB with Margaret. That Romer, whom she knew as one of the owners of the property, was not there and the Board insisted the transfer could not be done without him. According to DW5, Margaret told her that Romer was in Germany that's why he didn't attend the LCB sitting. She said that she did not know H.O Mongare personally, and had never met him or Vincent Mogaka, although she had been to his office to get an affidavit. She said that she has never discussed the transfer with either Mr. Mogaka or Mongare.
77. DW5 testified that she signed an agreement with Margaret. That it was witnessed by Francis Ochieng Oguta, and she paid KShs. 2.5 million to Margaret on the date of signing the agreement in 2006. She explained that the photo, PIN and Passport numbers on the transfer from Margaret were hers, but her sister signed for her before Mongare & Company Advocates. She did not know who signed on behalf of the vendor, and could not tell if the man's photo is Romer's because she never met him, although Margaret confirmed she had his permission to sell. She testified that Margaret is buried on plot 583, while she developed plot 582. DW5 did not know of the possibility that the two plots could be switched on the ground.
78. DW5 stated that they eventually got the LCB consent on 27/4/2016 ten years after they entered the agreement. DW5

recalled that Margaret gave her the documents including the original title in her name and Romer's in 2006 before they signed the sale agreement. DW5 admitted that she developed the property by putting up 3 cottages, a store room, borehole and water tank in 2007. She claimed that she learned of Romer's death after this case was filed. DW5 said that she gave her sister the documents she got from Margaret to take to the lawyer, being the original title, signed transfer, passport size photos, Romer's PIN and Passport number but the copy of the passport was not there. DW5 indicated that she did not agree with the value given in 2016 as it should have been higher than since it had the cottages, however, at the time of sale, the land was just bushy with only the garage and the value was right at 1 million.

79. On cross-examination by Mr. Makuto, DW5 told this court that after 2008, Margaret told her that she thought Romer was dead, but no proof was supplied. She handed the documents to her sister physically in 2016, but they did not include any document relating to Romer or Margaret since she didn't have any. She further said that she instructed Kemosi Mogaka and Vincent Advocates in 2016. That she did not instruct H.O. Mongare who prepared the transfer in her favour. Per DW5, her instructions were for them to get her title to the land she bought but in a proper way. She expounded that she got Romer and Margaret's passport number from the previous transfer from Julius. She asserted that she did not appear before H.O Mongare. She

acknowledged that what the lawyers did was wrong because they didn't follow the right procedure.

80. DW5 was cross-examined by Mr.Kabiaro, upon which she testified that she instructed the advocates through her sister, but she did not give her a P/A to represent her. DW5 clarified that the transfer in her favour is for plot no. 582. She further clarified that neither she, Margaret nor Romer appeared before H.O. Mongare.
81. DW5 was then cross-examined by Mr. Muyala and she said she had never met the 7th & 8th defendants and only came to know them through the present case. That she could confirm that Margaret had Romer's authority to sell the property.
82. On re-examination, DW5 said that there are buildings and caretaker on the land. DW5 testified that Margaret has a big house where she lived, and to the best of her knowledge the structure is still in place. As regards the LCB consent, she conceded that she didn't sign any application for it. Further, that she had neither Romer's or Margaret's PIN number and she did not know where it came from. She asserted that her cottages are located in 582 and this was the land she was shown by Margaret, while Margaret stayed on plot no. 583.
83. With the above the 1st and 2nd Defendant's case was closed.

SUBMISSIONS

84. At the close of the hearing the court directed the parties to file their final written submissions and they complied. The Plaintiff's submissions filed herein are dated 9th September, 2025. The 1st and 2nd Defendants filed their submissions dated 15th September, 2025, while the 3rd, 4th and 14th Defendants submissions are dated 10th December, 2024. The 7th and 8th defendants filed their submissions on 20th November 2025 which was inordinately late and the court did not consider the same.

ANALYSIS AND DETERMINATION

85. I have considered the pleadings filed by the parties herein, the witness testimonies as well as the evidence adduced before this court. I have also read and considered the submissions filed by the Advocates on record on behalf of their respective clients as stated above. The following issues commend for determination by this court:-

- (i) Whether Romer Wolfgang and Margaret owned plot no. 582 jointly;***
- (ii) Whether the late Romer Wolfgang acquired plot no. Kwale/Diani/583;***
- (iii) Whether the 1st Defendant legally acquired title to Kwale/Diani/582 as a bona fide purchaser for value and without notice;***
- (iv) Whether the transfer to the 1st Defendant was obtained fraudulently;***

- (v) Whether the Certificate of Title to the Plot No. 582 ,
in the name of the 1st defendant should be cancelled
and reverted to the deceased .**
- (vi) Whether the Plaintiff is entitled to the prayers
sought in the Amended Plaint; and**
- (vii) Who shall bear the costs of this suit?**

**Whether Romer Wolfgang and Margaret owned plot no.
582 jointly?**

86. I find it pertinent to outline the definitions and character of joint ownership as pertains land.
87. Section 2 of the Land Act defines “co-tenancy” to mean the ownership of land by two or more persons in undivided shares and includes joint tenancy or tenancy in common.
88. The Land Registration Act gives a more detailed definition. Section 91 thereof provides:-

91. Meaning and incidents of co-tenancies

(1) In this Act, co-tenancy means the ownership of land by two or more persons and includes joint tenancy or tenancy in common.

(2) Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights there shall be a presumption that they hold the interest as tenants in common in equal shares.

(3) An instrument made in favour of two or more persons and the registration giving effect to it shall show—

(a) whether those persons are joint tenants or tenants in common; and

(b) the share of each tenant, if they are tenants in common.

(4) If land is occupied jointly, no tenant is entitled to any separate share in the land and, consequently—

(a) dispositions may be made only by all the joint tenants;

(b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; and

(c) each joint tenant may transfer their interest inter vivos to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void.

89. The two types of co-tenancies are differentiated by the effect of the death of one of the co-tenants. With regards to a tenancy in common, Section 91(5) of the [Land Registration Act](#) provides that:-

(5) If any land, lease or charge is owned in common, each tenant shall be entitled to an undivided share in the whole and on the death of a tenant, the deceased's share shall be treated as part of their estate.

90. With regards to joint ownership however, Section 60 of the [Land Registration Act](#) is to the effect that:-

60. Transmission on death of joint proprietor

If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.

91. Pursuant to Section 60 above, the Plaintiffs contend that upon the death of Margaret Koki Siebel, Romer Wolfgang automatically became the sole proprietor of the parcel of land known as Kwale/Diani/582.

92. While the Plaintiffs claim that Plot No. 582 was acquired from Lothar Siebel, upon payment of Deutsche Marks,280,000/-, I have seen what appears to be an agreement for sale dated 9th December, 1999 indicating that the land known as No. 582 in Diani was purchased by Romer Wolfgang and Margaret Siebel from Julius Musee Maluki and Simon Mukua Mwongera at the price of KShs. 750,000/-.

93. The court has also seen an acknowledgment note dated 26th January, 2000 which states that payment of the purchase price above was effected in full. There is also a transfer dated 27/01/2000 and registered on 27th January, 2000 to Wolfgang and Margaret Siebel for Plot No. 582 and who were issued a title deed on the same date. This information is reflected on the green card for the said parcel which was produced in court by

the Land registrar (see page 6, 11 -12 & 15 of the bundle produced by the Land Registrar Kwale). DW2 confirmed in her testimony she had the transfer to Romer Wolfgang and Margaret Koki in the parcel file.

94. Arising from Section 91(3), an instrument made in favour of two or more persons and the registration giving effect to it must show whether those persons are joint tenants or tenants in common, and it must also show the share of each tenant, if they are tenants in common. My review of the transfer to Romer and Margaret and the title does show that the two were proprietor's in common. Moreover neither the transfer nor the title deed dated 27th January, 2000 indicate that Romer and Margaret were joint owners.
95. In the absence of such specification on the type of co-tenancy, and in view of the fact that it has been made clear that Romer Wolfgang and Margaret Koki Siebel were not married, they cannot be deemed to be joint tenants. In this regard, Section 91(2) provides that where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights, there shall be a presumption that they hold the interest as tenants in common in equal shares. I must therefore respectfully disagree with the plaintiffs contention hereinabove that they were joint tenants and that upon Margaret's death which predated Romers then the plot became Romers.

96. It is therefore the finding of this court as far as the registration of Romer and Margaret is concerned and the title issued thereon, they are tenants in common, each holding an equal undivided share in the land.

Whether the late Romer Wolfgang acquired plot no. Kwale/Diani/583

97. With regards to plot no. 583 the records presented before court reveal the same was acquired by Margaret and Lothar Siebel from Francis Kibera Omwenda vide an undated transfer registered on 20th September, 1993 and they were issued a title deed of the same date. This evidence was corroborated by DW2 the land registrar then based at Kwale land registry that a the green card opened on 21/8/93 that the land was transferred on 20/9/93 to Margaret Koki Siebel and Lothar Siebel, and title issued on same day. DW2 confirmed that the last registered owner was Margaret and Lothar Siebel.

98. The Plaintiffs claim that Romer Wolfgang equally purchased plot no. Kwale/Diani/583 from Lothar Siebel and compensated him for it. It was also pleaded that the late Romer Wolfgang erected a perimeter wall around the land and constructed a garage from where he repaired his fleet of matatus and friends' cars.

99. Unlike plot 582 which has an agreement to show the land was purchased by Margaret and Romer, the court was not led to any evidence to show that Romer Wolfgang did in fact buy plot no. 583 from either Margaret or Lothar Siebel. The plaintiffs case is that these documents were contained in a briefcase belonging

to Romer which was left Margaret and was with the 7th defendant her son. However even assuming it was there was no way of confirming what it contained. PW1 testified on cross examination by Mr. Muyala that she could not tell the contents of the briefcase. Maybe an OB together with a list attached to it as presented to the police would have assisted the court.

100. Further, if the land was purchased prior to the year 2000, there has been no explanation given why Romer never pursued registration of the land in his favour as he did for plot no. 582. I say so considering that it is alleged by the plaintiff that in 2003 Margaret attacked Romer with a blunt object. Therefore, Romer was not ailing between year 2000 and 2003 not to be able to follow up on the registration of plot 583 in his name.

101. As earlier indicated, the plot no. 583 is registered and the title was issued in the name of Lothar and Margaret Siebel. The import and the law of registration was aptly enumerated by Justice Sila Munyao in the case of **Rosemary Wanjiru Njiraini v Officer In Charge of Station, Molo Police Station & another [2017] eKLR thus; -**

'17. It has been the law, and it still is the law, that the Certificate of Title issued to a person is prima facie evidence, that the said person holds title to the land noted therein. In the pre-2012 land regime, this was provided for in Section 28 of the Registered Land Act and Section 23 of the Registration of Titles Act which were drawn as follows :-

RLA S.27. Subject to this Act -

- (a) **the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;**
- (b) **the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.**

RTA S.23 (1) *The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.*

(2) *A certified copy of any registered instrument, signed by the registrar and sealed with his seal of office, shall be received in evidence in the same manner as the original.*

18. The current law is in Section 26 of the Land Registration Act, 2012, which provides as follows: -

26. (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.*

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.'

102. The fact that Romer Wolfgang built a garage and a perimeter wall is not proof enough that he had an interest in the land capable of earning him registration. As matters stand, and pursuant to Section 26(1) reproduced above, the land remains registered in the name of Lothar and Margaret Siebel. The Plaintiff not having proved that the land was purchased by Romer Wolfgang, then Margaret and Lothar hold the same to the exclusion of any other interest.

Whether the 1st Defendant legally acquired title to Kwale/Diani/582 as a bona fide purchaser for value and without notice;

103. It is not in dispute that Plot No. 582 is currently registered in the name of the 1st Defendant. The 1st defendant's case is that she purchased the property from Margaret who had authority from Romer to sell the property.

104. The 1st Defendant claimed that she was a bona fide purchaser for value and without notice of the defects in the title. At this juncture, the main issue this court needs to determine is whether the 1st Defendant can in fact benefit from the plea or defence that she is a bona fide purchaser for value without notice. It is pertinent to lay out the law with regard to this plea.

105. The Black's Law Dictionary 10th Edition defines a 'bona fide purchaser' as follows:

'One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.'

106. As to what amounts to a bona fide purchaser for value, the Court of Appeal in the case of **Arthi Highway Developers Limited vs West End Butchery Limited & 6 others (2015) eKLR**, cited the Ugandan Court of Appeal Case of **Katende vs**

Haridar & Company Ltd (2008) 2 EA 173, where the Court explained that:-

“A bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a Certificate of Title**
- b. He purchased the Property in good faith**
- c. He has no knowledge of the fraud**
- d. The vendors had apparent valid title**
- e. He purchased without notice of any fraud**
- f. He was not party to any fraud.**

A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

107. However, the above is not enough. It has been held for a party to establish that they are a bona fide purchaser for value the court must first go to the root of the title. In **Samuel Kamere vs Lands Registrar, Kajiado (2015) KECA 644 (KLR)** for instance, the Court of Appeal held as follows: -

“It is evident that there are two competing claims over the suit property, and we have said that the plaintiff’s proprietary interest is already established. Since the appellant’s title is under challenge, in order to be considered a bonafide purchaser for value, he must prove that he had acquired a valid and legal title,

secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration for the purchase of the suit property.”

108. DW5 produced in evidence Title Deed over Kwale /Diani S.S/582 in the name of Norton Jane Njoki dated 19/09/2016, Sale Agreement over Kwale /Diani S.S/582 between Margaret Koki Siebel and Norton Jane Njoki dated 20/7/2006, an excerpt of a Note of authority from Romer Wolfgang to Margaret Koki Siebel dated 21/07/2004, Kenya Revenue Authority Stamp Duty Declaration, Assessment & Pay-In Slip dated 30/8/2016 as well as the title registered in Romers and Margaret names dated 27/1/2000 and attendant transfer from Julius Musee Maluki and Simon Makau Mwangela of even date.

109. I will therefore proceed to review the documentation and the plea of bonafide purchaser guided by the foregoing decisions. From the above documents produced the 1st Defendant currently holds the certificate of title to plot no. 582 having allegedly purchased it from Margaret Koki Siebel. She also claims to be in actual possession although the issue of which parcel she is in possession being contested. The 1st Defendant claims she executed the sale agreement in 2006 and paid the purchase price stipulated therein in full.

110. Due diligence is a very critical component in deciding whether a purchaser did not have a notice of other claims or defects. In

Suleiman Rahemtulla Omar & another v Musa Hersi Fahiye & 5 others (2014) eKLR the Court of Appeal defined the duties bestowed upon a person claiming *bona fide* purchaser's interest. It held that:

“It is our view that counsel for both parties failed to carry out sufficient due diligence before committing their clients to the transaction. It is true that practically speaking counsel for the purchaser carries the heavier burden when it comes to carrying out due diligence. This is so because it is his client who stands to lose if he commits his funds to purchase a property that later turns out to be problematic. This does not however, absolve the vendor’s counsel from the responsibility of confirming that his client has a good title to the property he seeks to dispose of and also that the property has a clear Title.”

111. The 1st Defendant did not tender any evidence to show that she conducted due diligence by conducting a search or any inquiries on the suit property. Indeed on cross-examination by Mr. Makuto state counsel, DW5 told this court that after 2008, Margaret told her that she thought Romer was dead, but no proof was supplied. Therefore, the first 1st Defendant clearly knew that the land was registered to both Margaret and Romer, and that Margaret kept alternating between telling her that Romer was in Germany or that he was dead, yet she did not take any steps to verify the status of the other co-owner.

112 On the issue of sell of Plot 582, I note that the 7th and 8th Defendants claim that Margaret sought and obtained Romer’s

consent before selling the land to the 1st Defendant. They averred at paragraph 20 of their Defence that:-

“... when Margaret was ailing, she wrote to the Plaintiff asking him if she should dispose the property which was undeveloped for purposes of seeking medical attention, the Plaintiff agreed on the condition that the same is not sold below KShs. 1,000,000/- and a note was written by the Plaintiff authorizing the sale ...”

113. On her part, DW5 produced in evidence a hand-written note claiming that it was a written consent by Romer allowing Margaret to sell the suit land on condition that it would not be sold below KShs. 1,000,000/-. The same is written in German and the 1st Defendant did not provide a translation to the same. The court had no way of verifying the contents and import of the note.

114. Moreover Section 86 of the Civil Procedure Act stipulates that the language of the High Court and the Court of Appeal shall be English. Article 7(2) of the Constitution of Kenya 2010 similarly provides that the official languages of the Republic of Kenya shall be English or Kiswahili. The Court of Appeal in **Raphael Lukale Vs. Elizabeth Mayabi & Another (2018) eKLR** speaking on section 86 above held that

‘.....We are of the considered view that today the relevance of that provision remains in the requirement that documents used in the proceedings in the High Court must be translated into English..’

115. The above notwithstanding, even if this court were to assume that the said note allowed Margaret to source a buyer for the land, it is not a Power of Attorney and cannot be used as legal authority to sign the transfer on behalf of a registered owner of land. The legal framework on appointment of an agent for the purpose of disposing an interest in land is contained in Sections 116 of and 117 of the repealed Registered Land Act. The same provisions are given section 48 of the Land registration Act.
116. The said note would have no legal consequences for purposes of transfer of land and therefore there was no valid transfer.
117. That aside, there is the requirement that the purchaser must not have had any knowledge of, or taken part, in any fraud associated with the transaction. In the circumstances, and being that the 1st Defendant has not demonstrated that she conducted proper due diligence before purchasing the land despite the glaring defects, she cannot claim to have had no notice of the defects in the title.
118. The 1st Defendant's woes are compounded by her own admission that she did not sign the transfer, but that her sister, Esther Kamau who is the 2nd Defendant herein signed on her behalf. She also admitted that she never donated any power of attorney to her sister to so act on her behalf regarding plot no. 582.
119. Further, at page 10 of the Plaintiff's list of documents is an Affidavit allegedly sworn by Romer Wolfgang and Margaret Koki

Siebel on 22nd September, 2016. The same indicates that the two were husband and wife and had sold the land to the 1st Defendant herein, and they were requesting the Land Registrar to transfer the land to the 1st Defendant. The Affidavit shows it was sworn before Vincent K. Mogaka Advocate . As seen in the Certificate of Death No. 491366 dated 9/0/2017, Margaret Koki Siebel died at Msambweni Hospital on 24/01/2014 and could not have sworn an affidavit in the year 2016.

120. In addition, the 1st Defendant admitted in her testimony that she is the one who handed over documents to her sister to take to the advocates allegedly instructed to process the title deed. She denied having handed over any of Romer's documents. The passport number for Romer Wolfgang indicated in the transfer to the 1st Defendant is 4084096740. However as at 2016 when the land was transferred, this passport had expired. Page 117 of the Plaintiff's bundle shows that on 26/01/2010 Romer was issued a new passport that expired on 25/01/2020 bearing the number C5L0VJ8H. That is not the only problem with the transfers, the photographs of the vendors on the transfer to the 1st Defendant have been disowned by not just the Plaintiffs herein, but also the 8th Defendant who is Margaret's son.

121 Amidst all the foregoing it is not enough for DW5 to state that all she wanted was to obtain title in the proper manner. It is also not enough for her to state that she did not prepare the transfers or the documentation. Cross examined by Mr. Makuto DW5 acknowledged that what the lawyers did was wrong

because they didn't follow the right procedure. DW5 did not create any confidence in the court that she was innocent in all the happenings leading to the transfer of the property in her name.

122. Moreover, the 8th Defendant testified that they are yet to process letters of administration over his mother Margaret's estate. Therefore, even if the 1st Defendant had a Power of Attorney or any form of authority to execute on behalf of Margaret Koki Siebel, that authority was extinguished upon her death. And since no letters of administration have been issued to date, there was no one with legal authority to sign the transfer dated 19/09/2016 on her behalf.

123. DW2 corroborated further the gaps that would make the title registered in the name of the 1st defendant to be an illegal or irregular title and thus not a good title. The witness told the court there was no passport copy for Romer in the parcel file, and therefore the land registrar couldn't confirm without seeing the passport. DW2 confirmed that their records did not have any power of attorney from Romer to Margaret Siebel, or a consent from Romer to Margaret allowing her to transfer the property to Jane Norton.

124. The Supreme Court in **Dina Management Ltd vs County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) (2023) KESC 30 (KLR)**,

“As held by the Court of Appeal in Munyu Maina vs Hiram Gathiha Maina Civil Appeal No 239 of 2009 [2013] eKLR, where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

125. The evidence therefore confirm beyond doubt that the acquisition of plot no. 582 by the 1st Defendant was illegal, unprocedural and cannot be considered to have been legal and or regular. That being the case, the 1st Defendant cannot benefit from the defence of a bona fide purchaser for value and without notice she had no good title.

126. It is therefore the finding of this court that the 1st Defendant is not a bonafide purchaser. As a result, her title cannot be protected by the court. In this regard the court is further guided by the Supreme Court holding in **Dina Management Limited (Supra)** where the Apex court held thus’-

[111] Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been

unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of the Constitution. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.

127. The court must also resolve the contest touching on the location of the two properties. The 7th and 8th Defendants produced an un-identified hand-drawn sketch plan showing that plot 582 is the one located near the road and giving access to plot no. 583. This is contrary to the RIM produced by the Plaintiffs as PEXb28 which indicates that Plot no. 583 is the parcel that is next to the road and which gives access to plot no. 582. In view of the fact that PEXb28 is a government document and duly certified by the relevant office, as opposed to the unidentified sketch plan produced by the 7th and 8th Defendants, I am convinced therefore that the proper positioning of the suit properties on the ground is as shown on the RIM produced by the Plaintiff's herein.

Whether the transfer to the 1st Defendant was obtained fraudulently;

128. The Plaintiffs pleaded that the Defendants fraudulently colluded to transfer plot no. 582 to the 1st Defendant from the late Margaret and Romer. The allegation of fraud is no doubt denied by the Defendants who responded to the suit. The 3rd, 4th and 14th Defendants claimed that they acted in good faith in

dealing with the suit properties, in line with their statutory duties while dealing with the documents presented to them, and did not participate in any fraud.

129. It is trite that in cases where fraud is alleged, it is not enough to simply infer fraud from the facts. In ***Vijay Morjaria vs Nansingh Madhusingh Darbar & another (2000) eKLR***, the court stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

130. It is a principle of the law that the party who alleges must prove. The Plaintiffs therefore needed to prove to the required standard the allegations of fraud they raised against the Defendants. The Plaintiffs started by pointing out the defects in the transfer registered in favour of the 1st Defendant, which have already been pointed out in the analysis touching on the legality of the title registered in name of the 1st defendant.

131. Additionally, DW3 the land Registrar who served at Kwale and who is the officer that handled the transaction at the time,

testified in cross examination that had he known of the defects on the transfer, he would not have signed it. However, he did know, and he ought to have known. He claimed that the passport numbers were verified from the copies of the passports provided, but the Plaintiff's passport presented in 2016 had expired in the year 2009. The 1st Defendant further admitted that she never presented a copy of Romer Wolfgang's passport. Shouldn't that fact alone have raised eyebrows and alerted him to the defects in the documents? In addition, even if he was unaware that the two vendors were dead, since they claimed to be married in the Affidavit dated 22/09/2016, he ought to have requested for proof of that marriage, but as is evident, the said affidavit did not provide any proof that they were indeed married. I have already observed hereinbefore that DW2 confirmed most of the gaps in the registration of the 1st defendant's title. The back stops at the Land Registrar who finally endorses the register and he cannot lay blame on investigation clerks who he contends had undertaken the verification. DW2 admitted they were under a duty to verify the documents.

132. With regards to the valuation of the land done by the 14th defendant, the 1st Defendant produced an Agreement for Sale of the land dated 20th July, 2006 between herself and the late Margaret. The agreement purchase price therein was KShs. 2,500,000/-, yet in 2016 the 14th Defendant valued it at KShs. 1,000,000/-. This cannot have been done without the knowledge and collusion of the 1st, 2nd and 14th Defendants.

133. All in all the glaring defects and irregularities already discussed, leads me to the finding that the land cannot have been transferred to the 1st Defendant without fraud being a factor. It is the finding of this court that the Plaintiffs have therefore proved the allegations of fraud with regards to the transfer of Plot No. 582 to the 1st Defendant.

134. But I must add that what was not proved however, was the allegation that the 7th Defendant used the documents allegedly in the suit case to extort the Plaintiffs' family. The WhatsApp extract produced as proof of the said extortion, while hurtful do not show that the 7th Defendant threatened to use any of the late Romer Wolfgang's documents to commit fraud as alleged. I have already pointed elsewhere in this judgement there was no evidence of what was contained in the briefcase.

135. Further the court has been invited to make a declaration that H.O.Mongare and Vincent Mogaka participated and facilitated the fraudulent transfer of the plot 582 to the 1st defendant. I have reviewed the evidence and I noted the line of cross examination taken by Mr. Makuto state counsel, Mr Kinyua and Muyala where the witness conceded they had not presented a sample of his real stamp to prove that the one used to procure registration in favour of the 1st Defendant was forged and as well as his real signature. This perse would not make him an actual participant. It was his evidence that someone must have made the stamp. He stated he did not know the parties neither did they appear before him. The 1st defendant testified she did not appear before Mr. Mogaka to sign the document. DW5

stated Romer and Margaret and herself never appeared before Mr Mongare.

136. Vincent Mogaka Advocate on the other hand is said to have commissioned an Affidavit purportedly sworn by a deponent who at the time had been dead for over 2 years. The legal burden of proof in my view still lay on the plaintiff to prove the actual participation of Mr. Mongare and Mr. Mogaka in the fraud in as much as stamps allegedly belonging to them were used. The burden did not shift in this instance. The participation was therefore not proved to the required standard.

Whether the Certificate of Title to the suit land, in the name of the 1st defendant should be cancelled and reverted to the estate of the late Romer Wolfgang

137. It is trite that a title obtained fraudulently, illegally, unprocedurally, or through a corrupt scheme cannot be allowed to stand. In such a case, the title would be liable to cancellation. Going by the findings hereinabove, the 1st Defendant acquisition of Plot No. 582 was not at all regular or legal. It goes without saying that the same is for cancellation.

138. I pondered over the question as to what happens to the land after the cancellation of the title registered in the name of the 1st Defendant's title. Since the land was initially registered in the names of the late Romer Wolfgang and Margaret Koki Siebel, then ideally it should revert to this position as was before the illegal transfer.

139. However, there is an emerging contention that the subject of the sale between Romer and the previous owners was agricultural land falling within a controlled area. Firstly it is my view that as long as the 1st defendant have not succeeded in defending their title and the court having made a finding that the 1st defendants title is irregular then the 1st defendant has no business impeaching the title held by Romer and Margaret.

140. But should I be wrong on the above, indeed the transaction was a controlled transaction. It is not in dispute that the consent was issued by the Land Control Board. What appears to be in issue is the validity of the consent to transfer and its import to the sale and purchase transaction of the plot 582 that was agricultural land culminating to the transfer and registration of Romer and Margaret as proprietors. The validity is impugned on the basis of section 9 of the Land Control Act which provides as follows

9. Granting or refusal of consent

(1) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall—

.....

(c) refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not—

(i) a citizen of Kenya; or

(ii) a private company or co-operative society all of whose members are citizens of Kenya; or

(iii) group representatives incorporated under the Land (Group Representatives) Act, 1968 (Cap. 287); or

(iv) a state corporation within the meaning of the State Corporation Act, 1986 (Cap. 446).

141. Going by Section 9(1)(c) above, the Land Control Board is mandatorily precluded from issuing consent in a transaction in which the land is to be disposed of in any way to a person who is non-citizen. As has been pointed out, the late Romer Wolfgang was not a Kenyan citizen. Although PW1 testified that Romer had a Kenyan ID, the same was not produced in court. The totality of the 1st Defendant's defence, is that Romer Wolfgang ought not have been issued with title over Plot No. 582.

142. It is important in my view to note that the title for plot no. 582 is registered in the names of two individuals, Romer and Margaret. While Romer is a foreigner, Margaret is a Kenyan citizen and therefore I do not see a problem with the Board having issued the consent as long as the title is not in the name of Romer alone.

143. Moreover it is my considered view that the obligation to refuse the consent is placed on the particular Land Control Board to deny the consent when it is sought. It was incumbent upon the Board to verify the nationalities of all applicants and deny consent where it ought to have been denied. The fault herein lies solely with the government officials who allowed the transaction to proceed by issuing the consent.

144. I have read the decision in **Joseph Mathenge Kamutu Vs Joseph Wainaina & another ELC 102 of 2014 at Nyeri**

cited by Mr. Kurgat. The same is distinguishable as it involved a contract which obligated the vendor to obtain LCB consent and he did not. In that case no consent was obtained at all. In the present case the consent was issued. Infact the court declined to render the agreement void. Also see paragraph 33 of the rulingit is the refusal for consent which renders a controlled transaction void.

145. It is the plaintiffs case that Romer was tricked into buying the property jointly because he was told he could not own land as foreigner. But there is evidence that he paid for the property. There is also evidence corroborated by PW2 that he lived on the property except that he had to travel for medical attention. The evidence that he was ailing has not been controverted by any of the parties.

146. In **Wambugu vs Yoshino (Environment & Land Case 33 of 2023) (2025) KEELC 4175 (KLR)**, the ELC at Nyandarua faced with a similar scenario and held that:-

“25. It is not in dispute that the suit property is registered in the name of the Plaintiff. However, all the monies used to purchase the said land come from the Defendant. The same was bought for Ksh. 2,250,000/- and although the sale agreement refers to the Plaintiff as one of the purchasers together with the Defendant, the Plaintiff together with PW2 , his wife admit that all the purchase money came from the Defendant. I would believe the Defendant that since he

is a foreigner and did not understand that being not a Kenyan citizen, he could not be registered owner of agricultural land in Kenya. Although ignorance of the Law is no excuse, the Plaintiff seems to have tricked him into registering the land in his (Plaintiff's) name. The fact that all the monies were paid for by the Defendant, the Plaintiff has no interest whatsoever on the suit land and I need say no more.

26. The Plaintiff therefore holds the land in constructive trust for the Defendant and the Defendant succeeds in his counter-claim and this court finds in favour of the Defendant and gives him judgement as prayed for in the counter-claim. As indicated earlier, the Plaintiff's claim in the Plaint is hereby dismissed with costs."

147. The court in the above case imposed a constructive trust to protect the rights of a foreigner who had been misled into buying agricultural land and registering it in a co-tenancy with a citizen. Further in ***Willy Kimutai Kitilit vs Michael Kibet Civil Appeal No 51 of 2015*** the Court of Appeal sitting in Eldoret, stated that:

"... Similarly, equity is law and Section 6 (2) does not prohibit a court in exercise of its equitable jurisdiction in the process of adjudicating a land dispute from declaring that a party holds land in a fiduciary capacity. A court's decision being final and binding subject to appeal, it would be illogical to hold that

such a decision of a court requires the consent of the Land Control Board before it becomes final and valid.”

148. I think it would be a travesty of justice to find against Romer for a mistake that was not his and where no evidence was tendered to show that Romer influenced the LCB into issuing the consent. As already indicated hereinabove, the Plaintiffs produced an agreement for sale dated 9th December, 1999 indicating that the land known as No. 582 in Diani was purchased by Romer Wolfgang and Margaret Siebel from Julius Musee Maluki and Simon Mukua Mwongera at the price of KShs. 750,000/-. They also produced an acknowledgment note dated 26th January, 2000 in which the vendors therein acknowledged that payment of the purchase price was effected in full.
149. While the Plaintiffs claims Romer paid for the land from his funds with no contribution by the late Margaret Koki Siebel, there is nothing to prove this fact. In the absence of evidence on how the payment of the purchase price was apportioned, this court can only proceed on the basis of ownership in common as per the earlier discussion and finding in the 1st issue.
150. In **Migori County Government & another v Migori County Transport Sacco (Civil Appeal 110 of 2017) [2021] KECA 7 (KLR) (23 September 2021) (Judgment)**, the Court of Appeal held that the court was always possessed of residual inherent powers which allowed it to make any orders in the

wider interest of justice.....and not precluded from making any other orders under its inherent jurisdiction for the ends of justice to be met to the parties.'

151. Section 13 (5) of this court's Act empowers the court to make any order and grant any relief as the court deems fit and just.

152. In my view justice will be served if the land is registered in the name of the late Margaret Koki Siebel, but a half undivided share thereof will be held by her estate in trust for the estate of the late Romer Wolfgang.

Whether the Plaintiff is entitled to the prayers sought in the Amended Plaint

153. In their Amended Plaint, the Plaintiffs submitted a lengthy list of prayers sought from this court in the present suit. The prayers have been listed at the beginning of this judgement. From the foregoing analysis the Plaintiffs have partially succeeded in their claim. It also goes without say that based on the findings of this court discussed hereinabove prayers a), b), e), i), k), m), p) and q) are not available to the deceased plaintiff. I need not repeat the reasons thereof.

154. I will also proceed to highlight in summary the other reliefs including the reasons for declining to grant them as follows;-

155. With regards to ownership of the land, the 1st Defendant's registration has been found to be irregular and thus liable for cancellation pursuant to the provisions of Section 80 of the Land Registration Act.

156. On exhumation as sought in prayer b) , in view of the courts finding that the late Margaret Koki Siebel also held an interest in the suit land, the deceased Plaintiff is not entitled to the order of exhumation of her body from the suit land.
157. The prayer for a mandatory injunction compelling Erick Mumo Kollo and Ngute Mutua jointly and severally to immediately release the deceased Plaintiff's suitcase and all the documents including any photocopies or soft copies they may have made to the deceased's legal representatives is also not tenable. With all due respect, the matter of lost documents or forgery or using any document so withheld to commit fraud is a matter for the criminal justice system and the relevant security agencies. Had anyone been charged and a conviction meted then maybe there would be a basis upon which this court would be emboldened to consider this prayer.
158. This court was also told that the late Margaret Koki Siebel took away the deceased Plaintiff's five matatus and three pick-ups as well as other movable assets in the businesses the deceased Plaintiff ran in Kenya. Further, that her estate is not entitled to any interest in the two plots due to the severe head injury she caused the deceased Plaintiff that nearly killed the deceased Plaintiff and he left him with the constant need for medical care. The Plaintiffs did not offer evidence that the late Margaret took away any such vehicles and/or properties or the particulars thereof. Additionally, this matter of confiscation of assets and the alleged assault causing intentional harm are also not matters falling within the jurisdiction of this court.

159. The Plaintiffs also asked for special damages incurred in pursuit of this suit by them and for the loss of employment by the late Romer Wolfgang's daughter in Italy. It is trite that such special damages must specifically be pleaded and proved. The Plaintiffs did not tender any evidence of these special damages, thus the claim fails.
160. In addition, owing to the fact that the 7th and 8th Defendants and their family members remain on the land by virtue of the interest held thereon by the late Margaret Koki Siebel, then there can be no General, punitive and aggravated damages against them.
161. The court also notes that the Plaintiffs in their submissions abandoned the prayer for special damages as no evidence in proof was led before the court.
162. The Plaintiff further asked this court to issue a declaration that Erick Mumo Kolle is married to a German wife and the allegation by Ngute Mutua in a sworn affidavit that she is married to him amounts to perjury and that if they are indeed married then they have both committed the offence of bigamy. In my considered view this is not the territory for this court. The issue of marriages and offences committed thereunder falls within the High Court and not the ELC.
163. As regards the prayer seeking an order for the giving of accounts of all rents collected by Ngute Mutua and Erick Mumo Kolle in their personal capacity and as alleged representatives of Margaret Koki Siebel and for the payment of those rents, with interest to the deceased's estate, it is my considered view that

this is a matter for distribution of the estate of deceased properties and lies under probate at the appropriate time.

164. On the declaration that by grossly understating the value of the **Plot Number Kwale/Diani/582** Mr P.M. Mutegi, the Valuer, was involved in that fraud. It is the view of this court that since Mr. Mutegi was an officer transacting the duties of the Land Registrar under his official capacity he ought to be treated as such. This will also apply to the invitation for a declaration that any civil servant including the Land Registrar, Kwale and the Valuer, Kwale who engages in fraud is liable to be sued in both their personal capacity and official capacity. However, this does not mean the court is absolving the officers from any wrong doing. Clearly there was no good faith in the way they handled their duties.

165. The prayers seeking a declaration that all the documents involved in the transfer of **KWALE/DIANI/582** are forgeries as the deceased Plaintiff was not in Kenya, and that the Land Registrar Kwale ought not to have accepted the transfer in favour of Nurton Jane Njoki for registration for Plot number **KWALE/DIANI/582** and by doing so, he knowingly facilitated that fraud in my view are subsumed in the prayer declaring the registration of the 1st defendant as fraudulent, irregular and which has been granted.

Who shall bear the costs of this suit?

166. On costs, the Supreme Court of Kenya in **Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others (2014) eKLR**, stated as follows:-

“[18] It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs.”

167. The rule that costs follow the event emanates from Section 27(1) of the Civil procedure Act, which provides that:-

27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

168. The court is nevertheless clothed with discretion on whether or not to award costs. In exercising its discretion, the Court is to consider various factors including but not limited to the special circumstances of the case and it is guided by ends of justice. In this suit, the Plaintiff has only just partially succeeded in his claim. Moreover, there are instances of blood relations. Due to this fact, I am convinced that it is only just that each party bear their own costs of the suit.

Conclusion

169. Flowing from the above discussions, the Amended Plaintiff dated 27th November, 2019 is hereby determined with judgement entered for the plaintiff in the following manner:

1) THAT declaration be and is hereby issued that the entire process leading up to the registration of Nurton Jane Njoki as the proprietor of KWALE/DIANI/582 was fraudulent and invalid, rectification of the register by removing the name of Nurton Jane Njeri from that register and the cancellation of the title that she holds over that property.

2) THAT upon cancellation above the land KWALE/DIANI/582 shall be registered in the name of the late Margaret Koki Siebel, with half undivided share thereof to be held by her estate in trust for the estate of the late Romer Wolfgang.

3) That vacant possession of Plot Numbers KWALE/DIANI/582 and with an order of eviction to evict the 1st and 2nd Defendants and any of their relatives, agents, employees, servants and tenants therefrom within 90 days of this judgement.

4) Each party shall bear their own costs

Orders accordingly

Judgement dated signed and delivered this 10th day of December 2025

JUSTICE A.E DENA

JUDGE

10/12/2025

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Kinyua for the Plaintiffs

Mr. Kurgat for the 1st and 2nd defendants

Mr. Kabiara for 5th defendant also Holding Brief for Ms. Ondieki

Mr. Muyala for 7th and 8th defendants

No appearance for the rest of the parties

MS Asmaa Muftaa Court Assistant.