

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC SUIT NO. E033 OF 2021

CAREN OCHIENG OLOO.....

.....PLAINTIFF

-VERSUS-

SOLOMON ONYANGO OKUNA.....1ST

DEFENDANT

FRED OKOTH NANDWA.....2ND

DEFENDANT

THE LAND REGISTRAR KISUMU.....3RD

DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH

DEFENDANT

THE ATTORNEY GENERAL.....5TH

DEFENDANT

JUDGMENT

1. The facts giving rise to this suit are straightforward; the register for all that parcel of land known as Title No. Kisumu/Chiga/318 (hereinafter referred to as “the suit property”) was opened on 14th December 1983 with one Kathorina Onudi as the first registered owner of the property. On 30th May 1988, the suit property was transferred to one Ibrahim Otieno, who subsequently transferred the property to one Manuel Cyril Rattos on 10th July 1989. Manuel Cyril Rattos was issued with a title on the same date. On 30th June 1998, Manuel Cyril Rattos charged

the suit property to Trust Bank Limited. Trust Bank Limited is under liquidation, and the charge in its favour by Manuel Cyril Rattos has not been discharged.

2. On or about 13th August 2012, the 1st Defendant, in collusion with the officers at the Land Registry at Kisumu, created a parallel register for the suit property in which the 1st Defendant was indicated as the first registered owner of the suit property, having been allegedly registered on 14th December 1983. In pursuance of the fraudulent scheme, the 1st Defendant was purportedly issued with a fraudulent parallel title deed for the suit property on 13th August 2012.

3. On 27th August 2012, the 1st Defendant purported to sell the suit property to the Plaintiff at a consideration of Kshs. 2.6 million, of which the 1st Defendant was paid Kshs. 1.1 million on the execution of the agreement and a further sum of Kshs. 800,000/- making a total of Kshs. 1.9 million. The balance of Kshs. 700,000/- was not paid due to the 1st Defendant's failure to hand over vacant possession of the whole property. The suit property was purportedly transferred and registered in the name of the Plaintiff on 14th September 2012 in the parallel register, and the

Plaintiff was purportedly issued with a title deed on the same date.

4. On 4th December 2013, after about a year from the date of purchase of the suit property, the 2nd Defendant wrote to the Plaintiff informing her that the suit property was charged to Trust Bank Limited and that the original title deed in respect thereof was being held by the Deposit Protection Fund, the then liquidators of Trust Bank Limited. The 2nd Defendant informed the Plaintiff further that the purported transfer of the suit property to her by the 1st Defendant was fraudulent and was being investigated.
5. The Plaintiff, upon receipt of this information, reported the matter to the Police. After the Police completed the investigation, the 1st Defendant was arrested and charged at the Chief Magistrate's Court at Kisumu in Criminal Case No. 117 of 2016 with the offences of obtaining Kshs. 1.9 million by false pretence from the Plaintiff, and forgery of a title deed for the suit property. After a lengthy trial, the 1st Defendant was found guilty of all the offences he was charged with in a judgment that was delivered

in the criminal case on 4th May 2020. On 4th June 2020, the criminal court placed the 1st Defendant on probation for 3 years.

6. After the conclusion of the criminal case, the Plaintiff brought this suit against the Defendants on 24th May 2021. The Plaintiff averred that she was the registered proprietor of the suit property, which she lawfully acquired from the 1st Defendant after conducting due diligence, including a site visit and title search, which confirmed the 1st Defendant as the owner of the property. The Plaintiff averred that the search on the property revealed that it had no encumbrances. The Plaintiff averred that the suit property was transferred to her and she was issued with a title deed by the 2nd Defendant, who was a Land Registrar at Kisumu at the material time.

7. The Plaintiff averred that while she was in the process of commencing development on the suit property, she was informed by the 3rd Defendant through a letter that the suit property belonged to Manuel Cyril Rattos and that the transfer of the suit property to her by the 1st Defendant was fraudulent. The Plaintiff averred that it was dishonest and irresponsible for the 3rd Defendant to claim that the transfer of the suit property to the

Plaintiff was fraudulent while the Land Registry at Kisumu had issued a search certificate confirming that the 1st Defendant was the registered owner of the suit property and that the property had no encumbrances. The Plaintiff averred that the title deed in her favour was also issued by the 2nd Defendant, who was then the District Land Registrar at Kisumu, who must have satisfied himself that the transaction was lawful and procedural.

8. The Plaintiff averred that the 3rd Defendant had no statutory power to cancel a lawfully issued title, and the 3rd Defendant's threat to cancel her title to the suit property was unlawful and ultra vires its powers conferred by law. The Plaintiff averred that if indeed the suit property belonged to Manuel Cyril Rattos, then the actions of the 1st, 2nd, 3rd and 4th Defendants amounted to a breach of contract, trust, and statutory duty.

9. The Plaintiff averred that by reason of the Defendants' fraudulent actions, she stood to suffer immense loss and damage should her title to the suit property be cancelled.

10. The plaintiff sought judgment against the Defendants jointly and severally for;

- a) A declaration that the Plaintiff is the lawfully registered proprietor of the suit property and, as such entitled to physical possession, occupation, and enjoyment of the rights associated therewith.
- b) A declaration that the 3rd and 4th Defendants and/or their designated officials have no statutory powers to cancel the Plaintiff's title to the suit property.
- c) In the alternative and without prejudice to the foregoing prayers, an order compelling the Defendants to refund and compensate the Plaintiff in the sum of Kshs. 1.9 million and other incidental expenses incurred in the transaction, together with interest from the date of the transaction.
- d) General damages for breach of contract, trust and statutory duty.
- e) Exemplary and aggravated damages.
- f) Costs of the suit.

11. The 2nd Defendant did not enter an appearance. The 1st Defendant entered an appearance but did not file a defence. The 3rd, 4th and 5th Defendants entered an appearance and filed a statement of defence on 20th September 2021 through the

Attorney General. The 3rd, 4th and 5th Defendants averred that the purported title issued to the Plaintiff was a forgery. The 3rd, 4th and 5th Defendants averred that the title was issued fraudulently without the knowledge of the 3rd, 4th and 5th Defendants. The 3rd, 4th and 5th Defendants averred that they were strangers to the letter that was written to the Plaintiff by the 3rd Defendant, but if such a letter was written, it was to prevent any fraudulent dealing with the suit property by the Plaintiff. The 3rd, 4th and 5th Defendants denied that the Plaintiff acquired the suit property lawfully, and that she was entitled to any compensation. The 3rd, 4th and 5th Defendants urged the court to dismiss the suit with costs.

12. At the trial, the Plaintiff adopted her witness statement filed on 24th May 2021 as part of her evidence in chief, and produced the documents attached to her list of documents dated 6th April 2021 as P.EXH.1 to 12 respectively. The Plaintiff told the court that she purchased the suit property at Kshs. 1.9 million from the 1st Defendant after doing a search. The Plaintiff stated that she was issued with a title deed by the 3rd Defendant. The Plaintiff stated that it was when she was waiting to start development on

the property that she was informed by the 3rd Defendant that the suit property belonged to Manuel Cyril Rattos, a fact that was not disclosed in the certificate of official search issued to her by the 3rd Defendant before her sale agreement with the 1st Defendant. The Plaintiff stated that she reported the 1st Defendant to the Police, he was arrested, charged, and convicted. The Plaintiff stated that the 2nd Defendant, who was the District Land Registrar at the material time, issued her with the search certificate and the title deed for the suit property.

13. The Plaintiff stated that she entered into the agreement of sale with the 1st Defendant based on the certificate of official search that was issued to her by the 3rd Defendant. The Plaintiff averred that there was no way she could have known that the documents that were issued to her by the Land Registry at Kisumu were forgeries. The Plaintiff told the court that she was seeking a refund of the purchase price paid to the 1st Defendant, the expenses incurred in the transaction, and general damages.

14. The 1st Defendant did not participate in the trial, while the 3rd, 4th and 5th Defendants did not adduce evidence. After the close of evidence, the parties were directed to make written

closing submissions. The Plaintiff filed submissions dated 12th June 2025. The Plaintiff submitted that the 1st Defendant, having been found in the criminal case to have forged the title to the suit property that he transferred to the Plaintiff, the only remedy that was left for the Plaintiff was a refund of the purchase price as sought in her alternative prayer. The Plaintiff submitted that she had proved that she paid the 1st Defendant Kshs. 1.9 million for the suit property. The Plaintiff submitted that the said payment was confirmed in the judgment in the criminal case in which the 1st Defendant was found guilty of receiving Kshs. 1.9 million from the Plaintiff by false pretence. The Plaintiff submitted that the 1st Defendant did not defend the suit. The Plaintiff submitted that the criminal court found that the 1st Defendant sold to the Plaintiff land that did not belong to him. The Plaintiff submitted that he had proved that he was entitled to a refund of the purchase price paid to the 1st Defendant, together with interest from the 29th August 2012.

15. The Plaintiff submitted that the Defendants should be held jointly and severally liable to the Plaintiff for her claim. The Plaintiff submitted that the 2nd and 3rd Defendants were part of the

scheme to defraud her. The Plaintiff submitted that the 2nd Defendant issued her with a certificate of official search, which confirmed that the 1st Defendant was the registered owner of the suit property. The Plaintiff submitted that the 2nd and 3rd Defendants also allowed the 1st Defendant to transfer the suit property to the Plaintiff, and issued the Plaintiff with a title deed for the suit property. The Plaintiff submitted that the 2nd and 3rd Defendants caused the Plaintiff to honestly believe that the 1st Defendant owned the suit property. The Plaintiff submitted that it was only fair that the Defendants be found jointly and severally liable for the loss suffered by the Plaintiff. In support of this submission, the Plaintiffs cited Salim v. Co-operative Bank of Kenya Ltd. & 2 others[2024]KEELC 853 (KLR) and Mariera & another v. Ogwancha & 2 others [2023] KEELC 21423 (KLR).

16. The Plaintiff submitted that she had suffered emotional and financial loss due to the activities of the Defendants. The Plaintiff submitted that she was entitled to general and exemplary damages. The Plaintiff submitted that she should be awarded Kshs. 3,000,000/- as general damages for breach of contract, and Kshs. 3,000,000/- as exemplary damages.

17. The Attorney General (A.G) filed submissions on behalf of the 3rd, 4th and 5th Defendants dated 19th June 2025. The A.G submitted that the 3rd to 5th Defendants did not participate in the fraudulent and illegal activities of the 1st Defendant. The A.G submitted that it was the 3rd Defendant who discovered the fraud and alerted the Plaintiff of the same, and was instrumental in the prosecution and conviction of the 1st Defendant. The A.G submitted that the 3rd to 5th Defendants acted diligently and in good faith and could not have been part of the illegal activities of the 1st Defendant. The A.G submitted that the Plaintiff was defrauded due to her failure to undertake sufficient due diligence. The A.G also took issue with the Plaintiff being referred to as “Caren Ochieng Oloo” in the plaint, while in all other documents produced by her in support of her case, she was referred to as “Caren Achieng Oloo”. The A.G urged the court to find that the Plaintiff’s case was not proved as against the 3rd to 5th Defendants.

Analysis and Determination

18. The Plaintiff has established that the 1st Defendant, with the collusion of the officers at the Kisumu Land Registry, defrauded her of Kshs. 1.9 million in a sham land sale. It has been established that a parallel register for the suit property was opened at the land registry as a vehicle for that fraud. There is no way in which the 1st Defendant could have opened a land register at the land registry without the involvement of the insiders. This fraudulent and illegal land register was kept side by side with the genuine register. The genuine register for the suit property in its proprietorship section had Manuel Cyril Rattos as the proprietor of the suit property. In the encumbrance section of the genuine register, there was a charge in favour of Trust Bank which had not been discharged. The fraudulent parallel register had the 1st Defendant as the proprietor of the suit property. There was no encumbrance registered against the property in this register.

19. When the Plaintiff came along looking for land to purchase, the 1st Defendant and his accomplices in and outside the Kisumu Land Registry found an opportunity to strike. A search on the suit property conducted at the land registry by the Plaintiff's representatives before the Plaintiff entered into an agreement of

sale with the 1st Defendant was processed on the parallel fraudulent register of the suit property. The certificate of official search issued on 14th August 2012 by the 2nd Defendant, who was the District Land Registrar at Kisumu at the material time, as planned and expected, showed that the 1st Defendant was the owner of the suit property and that the property was free from any encumbrance.

20. The Plaintiff gave evidence that was not controverted that the 1st Defendant took her to the suit property, and she found the 1st Defendant and his relatives occupying the property. The Plaintiff gave evidence that the 1st Defendant told her that he was planning to move from the suit property, together with the said relatives, to another family property once the sale transaction went through. It came out from the criminal proceedings that the 1st Defendant and his said relatives were occupying the suit property courtesy of their relationship with a previous owner of the property and had no right to the property. I agree with the Plaintiff that having conducted a physical search which confirmed that the 1st Defendant had an interest in the suit property by virtue of his occupation and conducted an official search on the

title which confirmed that the 1st Defendant was the first registered owner of the suit property, the Plaintiff had no reason to doubt that the 1st Defendant was the owner of the property. There was no way the Plaintiff would have known that the information given to her by the land registry was from a parallel register for the suit property planted at the registry by fraudsters working within and outside the registry. The Plaintiff's case was based on the Torrens System of land registration, which guarantees sanctity of title to any person acquiring land from a registered proprietor in good faith.

21. In Shimoni Resort v. Registrar of Titles & 5 others [2016] eKLR, the court cited the Court of Appeal decision in Charles Karathe Kiarie & Others v. Administrators of Estate of John Wallace Mathare (deceased) & 5 Others [2013] eKLR where the court had stated as follows on the Torrens System of land registration:

“The Registration of Titles Act is entirely a product of the Torrens System of registration. The word “Torrens” is derived from Sir Robert Torrens, the third premier of South Australia and pioneer and author of a simplified

system of land transfer which he introduced in 1958. This system emphasizes on the accuracy of the land register which must mirror all currently active registrable interests that affect a particular parcel of land. Government as the keeper of the master record of all land and their owners guarantees indefeasibility of all rights and interests shown in the land register against the entire world and in case of loss arising from an error in registration the person affected is guaranteed of government compensation...”

22. I agree with the Plaintiff that it was ironic that the same land registry that had issued him with a search confirming that the 1st Defendant was the registered owner of the suit property and that the property had no encumbrances, and had facilitated the transfer of the property from the 1st Defendant to her by registering the transfer and issuing her with a title deed for the property, could again write to her claiming that the transaction was fraudulent. In the circumstances of this case, I am satisfied that the Plaintiff conducted sufficient due diligence before entering into the contentious agreement of sale with the 1st Defendant and parting with her money.

23. The 1st Defendant was charged, tried and found guilty of forgery of the title deed for the suit property and obtaining Kshs. 1.9 million from the Plaintiff by false pretence. What the Plaintiff is seeking from the Defendants is a refund of Kshs. 1.9 million paid to the 1st Defendant as the purchase price for the suit property in the sale transaction that was vitiated by the 1st Defendant's fraud. The Plaintiff has also sought the recovery of the expenses incurred in the transaction, and general and exemplary/aggravated damages.

24. The Plaintiff has proved that she was a victim of fraud perpetrated against her by the 1st Defendant with the collusion of the 2nd and 3rd Defendant. The Plaintiff has proved that she lost Kshs. 1.9 million in the fraud, being the purchase price paid to the 1st Defendant, and Kshs. 104,000/-, which she paid as Stamp Duty on the transfer. The 1st Defendant did not defend the Plaintiff's claim. The Plaintiff is entitled to recover Kshs. 1.9 million from the 1st Defendant, as there was a total failure of consideration for which the payment was made. Keeping the said payment would amount to unjust enrichment.

25. In Lord Goff and Professor Gareth Jones's book, The Law of Restitution, 5th Edition (1988), pages 11 and 12, which was cited in Chase International Investment Corporation and another v. Laxman Keshra and others [1978]KLR154, the elements of unjust enrichment were given as follows:

(a). The defendant has been enriched by receipt of a benefit;

(b). The defendant has been so enriched at the expense of the plaintiff;

(c). It would be unjust to allow the defendant to retain the benefit and;

(d). There is no defence or bar to the claim.

26. The 1st Defendant is liable to the Plaintiff for the refund of the said sum of KShs.1.9 million. The Plaintiff is also entitled to the sum of Kshs. 104,100/- paid as Stamp Duty, being a direct loss suffered by the Plaintiff as a result of the 1st Defendant's breach of contract. The total amount due and payable by the 1st Defendant to the Plaintiff is therefore Kshs. 2,004,100/-. I am not persuaded that the Plaintiff is entitled to general and aggravated damages. The Plaintiff has not demonstrated that she suffered more loss or

damages as a result of the 1st Defendant's breach of contract over and above the actual loss of the said sum of Kshs. 2,004,100/-. The Plaintiff is therefore not entitled to general, exemplary, and aggravated damages claimed.

27. The next question that I need to answer is whether the 2nd, 3rd, 4th, and 5th Defendants should be held liable jointly with the 1st Defendant for the payment of the said sum of Kshs. 2,004,100/- to the Plaintiff. As mentioned earlier in the judgment, the Plaintiff's claim against the 2nd, 3rd, 4th and 5th Defendants was based on the Torrens System of land registration, in which, as stated in Shimoni Resort v. Registrar of Titles & 5 others(supra) is a system which:

“...emphasizes on the accuracy of the land register which must mirror all currently active registrable interests that affect a particular parcel of land. Government as the keeper of the master record of all land and their owners guarantees indefeasibility of all rights and interests shown in the land register against the entire world and in case of loss arising from an error in registration the person affected is guaranteed of government compensation...”

28. As stated earlier in the judgment, I am satisfied that the Plaintiff did all that was within her power to establish the lawful registered owner of the suit property before she entered into a sale agreement with the 1st Defendant, who presented himself as the owner of the suit property. I agree with the Plaintiff that the fraud against her was committed by the 1st Defendant in collusion with the officers at the Kisumu Land Registry who were privy to the fraud. The officers at the Land Registry in collusion with the 1st Defendant fraudulently created a parallel register for the suit property in the name of the 1st Defendant as the owner of the property while there was in existence the original genuine land register (Green Card) for the suit property which had the name of the Manuel Cyril Rattos as the owner of the suit property and which showed that the property was encumbered with a charge in favour of Trust Bank Limited.

29. When the Plaintiff did a search on 14th August 2012, the official search that was given to her on the same date showed the information from the fraudulent parallel register for the suit property that had been planted in the Land Registry with the name of the 1st Defendant as the registered owner of the suit

property. Based on the outcome of this search, and her visit to the suit property, which confirmed that the 1st Defendant was in occupation of the same, the Plaintiff entered into a sale agreement with the 1st Defendant on 27th August 2012 and subsequently paid the sum claimed after the property was transferred to her name.

30. I am of the view that the Government is vicariously liable for the misfeasance of its officers where loss is suffered in the process. I agree with the Plaintiff that the Government of Kenya is liable for the loss and damage that she suffered as a result of her reliance on the erroneous information that was provided by Government officials at the Land Registry at Kisumu, and for the said officials' involvement in the fraudulent, purported sale and transfer of the suit property by the 1st Defendant to the Plaintiff.

31. The Plaintiff has claimed compensation for the sum of Kshs. 1.9 million paid to the 1st Defendant as the purchase price for the suit property. The Plaintiff is also entitled to compensation for the sum of Kshs. 104,100/- paid by the Plaintiff to the Government of Kenya as Stamp Duty. The total compensation due to the Plaintiff

for which the Government of Kenya is vicariously liable is therefore Kshs. 2,004,100/-.

32. I am of the view that in the circumstances of this case, even the 2nd Defendant cannot escape personal liability. As stated earlier, the 2nd Defendant was a land registrar at the Kisumu Land Registry at the material time when the fraudulent land register for the suit property was created. He was the land registrar who issued the Plaintiff with the certificate of search showing that the 1st Defendant was the owner of the suit property and that there were no encumbrances on the suit property. He was also the land registrar who registered the transfer in favour of the Plaintiff and issued the Plaintiff with a title deed for the suit property. He did not file a defence and did not give evidence in his defence. Although the 2nd Defendant was not charged together with the 1st Defendant in the criminal case, the Plaintiff's claim herein that the 2nd Defendant was complicit in the fraud against her has not been controverted.

33. In Dr. Olango Onudi the acting County Secretary v. Samuel Okuro & Others, CA NO. 79 OF 2018, the Court of Appeal stated as follows:

'The law is that public officers do not enjoy immunity from litigation in respect to acts, which though done in the name of the office, are overtly outside the remit of their offices. If there is need for support of this now well settled proposition, is the decision of this Court in Ethics and Anti-Corruption Commission -vs- Judith Marilyn Okungu & another (2017) eKLR where the Court held as follows; "... There is ample authority to the effect that a person against whom fraud or illegality is alleged cannot escape personal liability (should the fraud or illegality be proved) on the basis that he was acting as an agent or servant of another. Indeed, government functionaries of whatever seniority are not immune from personal liability for unlawful acts such as deceit, fraud or contempt of court. See STANDARD CHARTERED vs. PNSC (supra) and M. Vs. HOMES OFFICE & ANOR (supra).

The latter case 12 locates this personal liability at the heart of the rule and quotes Prof. Dicey in the following terms; "When we speak of the rule of law as a characteristic of our country, [we mean] not only that no man is above the law. But(what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or the universal subjection of all classes to one law administered by the ordinary courts,

has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person. (See Introduction to the Study of the Law of the Constitution (10th edn, 1965) pp193-194.)”

It is my finding, therefore, that the 1st, 2nd, 3rd, 4th and 5th Defendants are jointly and severally liable to the Plaintiff for her loss and damage.

34. On the issue of costs, under Section 27 of the Civil Procedure Act, Chapter 21 Laws of Kenya, costs of and incidental to a suit are in the discretion of the court. The plaintiff has succeeded in her claim against the Defendants. The Plaintiff is therefore entitled to the costs of the suit.

35. **Conclusion**

In conclusion, I hereby enter judgment for the Plaintiff against the Defendants jointly and severally for;

(a) Kshs. 2,004,100/- together with interest at court rates from 24th May 2021 until payment in full.

(b) The costs of the suit.

**Delivered and signed at Kisumu on this 18th day of
December 2025**

**S. OKONG'O
JUDGE**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. P.D.Onyango for the Plaintiff

N/A for the Defendants

Ms. J.Omondi-Court Assistant