



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CIVIL SUIT NO. 40 OF 2018

(Formerly Nairobi ELC 329 of 2013)

MICHAEL MUNYAO (*suing as the legal representative
of the estate of PATRICK JOHN MATHEKA*)
.....**PLAINTIFF**

VERSUS

JEREMIAH MUTHOKA KITELE**1ST**
DEFENDANT

JOAN KALEWA NYETTE**2ND**
DEFENDANT

JAMES KITAKA MUTUA**3RD**
DEFENDANT


JUDGMENT

Background of the case

1. In a plaint filed on 26/02/2023, Michael Munyao (“Michael”), who is the legal representative of the deceased plaintiff Patrick

John Matheka, brought suit against the defendants and made several averments. Michael and the deceased plaintiff are brothers.

2. The deceased plaintiff asserted that on 17/01/1985, he acquired 2.5 acres of land (**hereinafter referred to as the “purchased portion”**) from the 1st defendant’s father, Kitele Kiting’u -deceased, who was the owner of 2.5 acres of a land parcel previously identified as **plot no. 41 on L.R. No. 7147/11/R**, now known as **L.R. No. 12715/153 (hereinafter referred to as the “suit property”)**, constituting a total of 5 acres, with the other 2.5 acres belonging to the 3rd defendant. Subsequently, in approximately 2006, the defendants allegedly committed fraud by unlawfully transferring the suit property to the 2nd defendant. The deceased plaintiff specifically pleaded and particularised fraudulent conduct against these defendants and sought the following orders from this court: -

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- a) A declaration that the transfer in favour of the 2nd defendant was irregular and illegal.***
 - b) An order that the defendant herein transfer the suit property to the plaintiff.***
 - c) An order that the land registrar does rectify the register and do all acts necessary to show that the plaintiff is the registered owner of the suit property.***

d) In the alternative, the defendants be ordered to pay the plaintiff monies equal to the current value of the suit property herein.

e) Cost of the suit.

3. On service of the pleadings, the defendants filed a joint statement of defence dated 13/04/2022, denying the deceased plaintiff's assertions and putting him to strict proof. They also asserted that the 1st defendant's father and the 3rd defendant were the registered owners of the suit property, having acquired it in 1981, and that at no time had they sold it to the deceased plaintiff. They further asserted that the 1st and 3rd defendants had legally and procedurally sold it to the 2nd defendant, that the suit property no longer existed as it had long been subdivided, and that no cause of action had been made out against them.

Issues for determination

4. Having considered the pleadings and the evidence presented by the parties during the hearing on the merits and issues as framed in the filed submissions and plaintiff's list of issues, the singular issue for determination that will adequately address the dispute is **whether the plaintiff pleaded and proved his claim of fraud to the required standards.** Having outlined the issues to be decided, this court will now summarise the parties' evidence on the issue.

Hearing and evidence

5. The matter ultimately proceeded to a hearing from 27/07/2023, at which Michael (**PW1**) and the 1st and 3rd defendants (**respectively DW2 & DW1**) testified. Their evidence comprised witness statements, oral testimonies, and various documents. Their testimony in chief mirrored their pleadings.
6. Furthermore, Michael informed the court that the 1st defendant's father possessed shares in Syokimau Farm Limited, amounting to five acres. Of these, 2.5 acres were sold to the 3rd defendant at an earlier date, and the remaining 2.5 acres were sold to the deceased plaintiff. Following this sale, particularly to the deceased plaintiff, the 1st defendant duly informed his family, the 3rd defendant, and also issued a formal letter to Syokimau Farm Limited. Nevertheless, prior to obtaining letters of administration and confirmation of the grant, the 1st and 3rd defendants transferred the suit property to the 2nd defendant. He stated that, despite the 2nd defendant's knowledge that the 1st defendant was merely an administrator of his father's estate, she proceeded to purchase the suit property.
7. To substantiate his case, Michael adduced as evidence a limited grant over the deceased plaintiff's estate dated 26/11/2012, an allotment letter to the 1st defendant's father and the 3rd defendant dated 6/08/1981, a share certificate in their joint names dated 3/01/1983, an agreement for sale between the deceased plaintiff and the first defendant's father dated 17/01/1985, which indicated a deposit of Kshs. 7,000/-

was paid, and an outstanding balance of Ksh. 73,000/- was to be settled on or before 31/12/1985, which was also designated as the completion date. Furthermore, he presented a letter from the 1st defendant's father, dated 25/05/1985, informing Syokimau Farm Limited of the sale.

8. During cross-examination, he testified that the family of the 1st defendant carried out probate proceedings concerning the estate of the 1st defendant's father, and that the transfer of the suit property to the 2nd defendant occurred on 22/08/2006, significantly prior to the deceased plaintiff's demise in 2013.
9. Regarding payment of the remaining balance of Kshs. 73,000/-, he told the court that although he had not witnessed the sale agreement or payment of the balance, he was informed by either the father of the 1st defendant or Sabina Kitele that the balance had been discharged through various means: either to the wife of the seller, or via the transfer of twelve cattle to third parties, or by payment of school fees for two of the 1st defendant's siblings, together with some money given to Sabina Kitele (ostensibly the mother or stepmother of the 1st defendant). He further testified that the deceased plaintiff had settled the entire balance before the letter dated 25/05/1985 to Syokimau Farm Limited regarding the sale was issued.
10. As for the 3rd defendant, he informed the court that he was unaware that the 1st defendant's father had sold the purchased land to the deceased plaintiff. To his knowledge, he

was a co-owner of the suit property along with the 1st defendant's father, in equal shares, and had always maintained possession. Upon the demise of the 1st defendant's father, probate proceedings were conducted, resulting in the transfer of one-half of the suit property to the 1st defendant before its eventual sale to the 2nd defendant.

11. In support of his case, he produced the share certificate, allotment letter, a copy of the title to the suit property, a gazette notice dated 15/11/2005 on granting letters of administration, a certificate of confirmation of the grant, an agreement for sale dated 8/03/2006, a transfer, and a completion acknowledgement, among other documents. His evidence was unshaken during cross-examination, except that he added that the deceased plaintiff had been a neighbour and that he had never contended that he had purchased the suit property. The 1st defendant's evidence corroborated that of the 3rd defendant.

Submissions

12. After the hearing concluded, and at the request of the parties, they argued their respective cases through written submissions that were well received from the law firms of **Mss. Mulandi Kisabit & Associates** representing the plaintiff, dated 22/10/2025, and from **Laichena Mugambi & Ayieko Advocates LLP** for the defendants, dated 3/12/2025. Therefore, in its analysis and determination, the judgment will

carefully consider the arguments presented in the rival submissions, along with the relevant law and judicial precedents cited. The issue previously identified will be addressed shortly.

Analysis and determination

13. As concerns the first limb, the pertinent legal framework for protection and impeachment of title documents over land is found in our **Article 40 (1) and (6)** of the **Constitution**. These provisions restrict legal protection to property that has been lawfully acquired and owned. According to these **Sub-Articles**, every person has the right, whether individually or in association with others, to acquire and own property within Kenya.
14. Statutorily, **Sections 24 and 25** of the **Land Registration Act** acknowledge the registered owner as the absolute owner of the land and provides protection under **Section 24**. However, a title document may be impeached on various grounds outlined in **Section 26** of the Act, including fraud.
15. It is a well-established principle of law that fraudulent conduct must be specifically pleaded as required by **Order 2 Rule 4** of the **CPR**. In the present case, the plaintiff's claim met the 1st threshold by alleging and particularising fraud against the defendants. Notably, the 1st defendant was not sued in his capacity as an administrator of his late father's

estate but in his personal capacity, and the defendants' counsel's arguments that **Order 31** of the **Civil Procedure Rules (CPR)** should suffice does not carry weight.

16. Even if this court may be mistaken, this matter has been pending in court for twelve years. In its considered view, it is of utmost importance to address the substantive issue conclusively to ensure that the parties are not burdened with another lawsuit should this one be struck out. Furthermore, causes of action were disclosed against the said defendants.
17. With respect to the 2nd threshold of proof, the evidential burden rests on the person alleging fraud to prove his claim, as provided by **Sections 107** and **109** of the **Evidence Act**. Furthermore, reliance solely on inference from the facts to establish fraud or irregularity is not permitted. In **Koinange and 13 others v Koinange [1986] KLR 23**, which has been cited in several court decisions which this court associates with, the court reaffirmed the fundamental principle of the law of evidence that he who alleges must prove.
18. Having particularised fraud as earlier emphasised, the onus was on the plaintiff to substantiate it on a standard of proof exceeding the balance of probabilities but falling short of proof beyond a reasonable doubt. **See the Court of Appeal decision in Vijay Morjaria v Nansingh Madhusingh Darbar & Hulashiba Nansingh Darbar (Civil Appeal 106**

of 2000) [2000] KECA 223 (KLR) (Civ) 1 December 2000 (Judgment).

19. Moreover, in **Ratilal Gordhanbhai Patel v Lalji Makanji [1957] EA 314 and another [1979] KLR**, it was established that fraud primarily concerns an individual's state of mind and intentions, rather than the outcomes of their actions. Additionally, fraud is defined by **Black's Law Dictionary, 11th Edn, at p. 802**, as a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment.

20. In this case, the defendants assert that the lawsuit is barred by the statute of limitations pursuant to **Section 7** of the **Limitation of Actions Act**; however, pursuant to the provisions of **Section 26** of the same **Act**, the statutory period for a cause of action on fraud commences when the plaintiff becomes aware of it. Evidence demonstrates that the plaintiff became aware of the fraudulent conduct on 14/01/2013, following a complaint made to the assistant chief of Mlolongo location. The plaintiff filed the suit in 2013, within three years of the date of discovery. Therefore, this court concludes that the claim is not time-barred.

21. Regarding the particulars of fraud, the plaintiff led evidence concerning only two of the numerous allegations of fraud alleged against the defendants. They were particulars on

dealings with the suit property, despite the lack of obtaining letters of administration over the 1st defendant's father's estate and transactions conducted with knowledge that the purchased portion had been sold to the deceased plaintiff.

22. About the 1st limb, the 1st and 3rd defendants rebutted this allegation and tendered cogent and credible evidence. Their supported evidence demonstrated that probate proceedings concerning the estate of the 1st defendant's father were conducted in **Nairobi HCSC 574 of 2005**, with a grant of confirmation issued on 23/06/2006. Subsequently, the suit property was transferred to the beneficiary, the 1st defendant, as a tenant in common. This evidence remained unchallenged, and the court is satisfied and finds that the legal processes for conveying the one-half portion of the suit property were conducted without fraud. The court further finds that the deceased plaintiff did not meet his evidentiary burden on this limb.

23. As for the 2nd limb, the 1st and 3rd defendants refuted Michael's evidence and asserted that they were not privy to the existence of the sale agreement. This court concurs with their position, as none of the parties involved, including Michael, served as witnesses to the alleged sale agreement. Moreover, none of the documents presented by the plaintiff as evidence demonstrated that the defendants possessed knowledge of such a document. In light of the absence of proof of the defendants' awareness of the agreement and

considering the definition of fraud, this court finds that this limb remains unsubstantiated. It also finds that this limb fails.

24. As this court concludes, it is necessary to mention that in filing this case, it is obvious Michael was driven by greed, as it was evident he was on a fishing expedition and did not seem to know much concerning the suit property. Additionally, it was absurd that he was seeking the suit property not for the estate of the deceased plaintiff but for his own benefit.

25. Furthermore, the deceased plaintiff, a well-educated person, well knowing (if at all such an agreement for sale exists as he alleges), he was in breach, and a suit on such a contract was time-barred by dint of **Section 4 (1) (a)** of the **Limitation of Actions Act**, gave up any rights (if at all) over the suit property several years, yet 28 years later, Michael is resurrecting a claim his brother the deceased plaintiff had no interest in whatsoever in. Truly, this court empathises with the defendants who have been dragged into this unnecessary case.

26. Nevertheless, in the end, based on the reasons and findings set out above, this court finds that the deceased plaintiff failed to prove his case to the required standard. His case is therefore dismissed. As it is trite law that costs follow the event, the defendants shall have the costs of the suit.

Judgment accordingly.

Delivered and Dated at Machakos this 3rd day of February, 2026.

**HON. A. Y. KOROSS
JUDGE
03.02.2026**

**Judgment delivered virtually through Microsoft Teams
Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant.

Mr. Mulandi for Plaintiff.

Mrs. Kyule holding brief for Mr. Ayieko for Defendant.