

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC CASE NUMBER E001 OF 2024
[FORMERLY CMELC 50 OF 2020]

ANN KECHI MUBICHI [legal representative of the estate of Patrick Mbichi M’Aburugua]PLAINTIFF

VERSUS

JOSHUA KIOME MWORIADEFENDANT

JUDGMENT

1. Before me is the suit commenced *vide* amended Plaintiff dated the 06.04.2023 filed by the Plaintiff. The reliefs sought at the foot thereof as hereunder:

- i. A declaration that the transfer of L R KIIRUA/NAARI/2186 from the deceased to the Defendant is illegal, fraudulent and criminal act.*
- ii. An order nullifying and/or cancelling the registration of L R number KIIRUA/NAARI/2186 to the Defendant and the same to revert to PATRICK MUBICHI AMBURUGUA [deceased].*
- iii. An order cancelling all the subdivisions registered as L. R NOS KIIRUA/NAARI/2186, 2187,2188,2189, 2190 & 2191.*
- iv. Costs of the suit.*

2. The Defendant duly entered appearance upon being served with original Plaintiff and thereafter filed a statement of defence. The statement of

defence was subsequently amended resting with the amended statement of defence and counter claim dated 14.04.2023. The defendant has sought the following reliefs at the foot of the counter claim:

- i. An order of mandatory injunction compelling the Plaintiff whether by herself, her agents, servants and/or any other persons howsoever to forthwith vacate the Defendant's Property known as Title Number KIIRUA/NAARI/2186.***
- ii. An order of permanent injunction restraining the Plaintiff whether by herself, her agents, servants and/or any other persons howsoever from entering, encroaching occupying, taking possession, constructing building any structure or in any manner interfering with the Plaintiff's right of ownership and possession of all that property known as Title Number KIIRUA/NAARI/2186.***
- iii. An eviction order to remove the Plaintiff, her agents, servants, and/or any other persons from all the property known as Title Number KIIRUA/NAARI/2186.***
- iv. General damages for trespass.***
- v. Costs of the suit.***
- vi. Any other relief which this Honourable court may deem fit to grant.***

3. Though served with the amended statement of defence and the counter claim, the Plaintiff herein [who is the defendant in the counter claim] does not appear to have filed any reply to the statement of defence and defence to the counter claim. For good measure, no such document obtains in the court file.

4. Moreover, the issue as to whether a reply to the statement of defence and defence to the counter claim was ever filed, arose during the proceedings and the Plaintiff conceded that none was filed or served. More on this issue shall be dealt with presently and in the fullness of time.

5. Briefly, the Plaintiff contends that the suit property was illegally carved out of and subdivided from the original parcel of land, namely; KIIRUA/NAARI/572 [*herein after referred to as the original parcel of land*]. In addition, it has been contended that the sub-division of the original parcel of land was undertaken on the basis of a fraudulent consent. Moreover, it has been posited that the mutation form that was relied upon to anchor the suit property was fraudulently created and executed long after the death of Patrick Mubichi M' Aburugua – deceased.

6. To this end, the Plaintiff has therefore contended that the suit property is the product of fraud and illegality and thus same should be nullified and restored back to the original parcel of land/title.

7. On the other hand, the Defendant has contended that the original parcel of land belonged to and was registered in the name of Patrick Mubichi M' Aburugua – now deceased; that the deceased entered into and executed a sale agreement in respect of a portion of the original parcel of land; the portion that was being sold measured 3 acres; the Defendant paid the entire purchase price; the purchase price was duly acknowledged by the vendor [now deceased].

8. Additionally, the Defendant has posited that upon receipt of the full purchase price, the vendor declined/failed to perform his part of the bargain; the defendant thereafter mounted a suit namely, HCC number 127 of 1998; the suit was resolved *vide* consent; the terms of the consent included transfer of the suit property to the defendant; the consent also authorized the Executive Officer of the Court to Execute the transfer document/instrument on behalf of the vendor; the Executive Officer duly executed the transfer instruments; the suit property was transferred to and registered in the name of the Defendant; and the Defendant is therefore the lawful owner of the suit property.

9. The suit beforehand was subjected to the usual pretrial directions, whereupon the parties /advocates for the parties intimated to the court that same had duly filed and exchanged their list and bundle of documents; lists of witnesses; and witness statements. Furthermore, the parties also confirmed that the suit was ready for hearing.

10. The Plaintiff's suit is premised on the evidence of one witness, namely; Ann Kechi Mubichi. The witness testified as PW1.

11. It was the testimony of the witness that same is the Plaintiff in respect of the subject matter. Moreover, the witness averred that by virtue of being the Plaintiff, same is therefore familiar/conversant with facts of the case. In addition, the witness testified that same has since filed a witness

statement dated the 07.07.2020 and which witness statement, the witness sought to adopt as her evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

12. Furthermore, the witness referenced a further witness statement dated 23.10.2024 and which statement the witness sought to adopt and rely on as further evidence in chief. Suffice it to state that the further witness statement was duly adopted and constituted as further evidence in chief of the witness.

13. The witness also adverted to the list and bundle of documents dated the 7th of July, 2020; containing 8 documents and which documents the witness sought to tender and produce before the court as exhibits. There being no objection to the production of the documents, same were produced and admitted as exhibits P1 – P8, respectively.

14. Moreover, the witness also referenced a supplementary list and bundle of documents dated the 23.10.2024, containing 12 documents. Similarly, the witness sought to tender and produce the documents as exhibits. There

being no objection, the documents were produced and admitted as exhibits P9 – P20, respectively.

15. Other than the foregoing, the witness referenced the amended Plaintiff dated 06.04.2023; and verifying affidavit annexed thereto and thereafter sought the reliefs captured thereunder.

16. On cross examination by learned counsel for the Defendant, the witness testified that Patrick Mubichi M'Aburugua [now deceased] was her husband. However, the witness clarified that she was not the only wife of the deceased. In addition, the witness averred that she had sued the deceased in respect of the suit property.

17. On further cross examination, the witness averred that the suit which she had filed was challenging the implementation of a consent that had been entered into between the deceased and the Defendant herein. In addition, the witness testified that same is before the court in respect of the suit property which was carved out of the original parcel of land.

18. The witness testified that she discovered that the original parcel of land had been subdivided in the year 2019. Furthermore, the witness added that it is the Defendant herein who subdivided the original parcel of land.

19. Upon being referred to the Defendant list of documents and in particular a copy of the sale agreement, the witness averred that she has challenged the

sale agreement. In addition, the witness testified that the sale agreement was challenged *vide* Meru CMC No. 4 of 1998. Regarding the letter of consent dated 07.08.1997, the witness testified that the consent relates to the sub-division of the original parcel of land. However, the witness clarified that she is not aware of a consent that was entered into by the deceased. The witness further reiterated that she does not know whether the consent is one of the documents that was availed to her advocate.

20.Regarding whether the Executive Officer of the court executed the transfer form on behalf of her husband, the witness averred that she is not aware of any such execution. Besides, the witness testified that she is not aware whether the defendant obtained his title to the suit property on the basis of a consent judgment.

21.Upon being referred to the consent signed by the Deputy Registrar of the court, the witness averred that she has never been aware of the said consent. In addition, the witness averred that she is aware that the original parcel of land was sub divided. In any event, the witness testified that other than the suit property, the rest of the subdivisions remain in the name of the deceased.

22.Upon being asked whether she is aware that the Defendant has filed a counter claim, the witness responded in the affirmative. Moreover, the witness stated that she has also sued the Defendant. Furthermore, the witness indicated that she is not aware whether her advocate has filed a defence to the counter claim.

23.Regarding the sub division of the original parcel of land, the witness testified that she is not aware how the land was sub-divided. Moreover, the witness averred that she does not know whether the certificate of title in respect of the original parcel of land was surrendered.

24.With the foregoing testimony, the Plaintiff's case was closed.

25.The Defendant's case is premised on the evidence of five [5] witnesses. The witnesses are: Joshua Kiome Mworio, Solomon Lagat, Samuel Kariuki Mwangi, Moses Kariuki Ngera, and Jason Maingi. The witnesses testified as DW1, DW2, Dw3, Dw4 and DW5, respectively.

26.It was the testimony of DW1[Joshua Kiome Mworio] that same is the Defendant in this case. The witness further testified that he was a police officer. However, the witness added that he has since retired.

27.It was the further testimony of the witness that the by virtue of being the Defendant, same is conversant with facts of the case. In addition, the witness averred that he has since recorded and filed a witness statement dated 14.04.2023 and which statement, the witness sought to adopt and rely on as his evidence in chief. Instructively, the statement was duly adopted and constituted as the evidence in chief of the witness.

28. The witness further referenced the list and bundle of documents dated the 14.04.2023, containing 20 documents and which documents the witness sought to tender and produce before the court. However, an objection was taken to the production of assorted documents culminating into a ruling by the court. Nevertheless, the counsel for the Defendant thereafter applied to step down the witness. In addition, learned counsel for the Defendant sought and obtained witness summons to various witnesses, including: the Court Administrator; and the Land Registrar.

29. Upon resumption of this testimony, the witness reverted to the list and bundle of documents dated 14.04.2023 and sought to produce 11 documents at the foot thereof. There being no objection the documents were produced as exhibits D21- D31.

30. It was the further testimony of the witness that the deceased did not sue him. On the contrary, the witness testified that it is him who sued the deceased before the court. In addition, the witness testified that the deceased did not dispute having entered into and executed the sale agreement. Furthermore, the witness testified that the deceased did not dispute receipt of the purchase price.

31. Regarding exhibit D26, the witness testified that the document is a letter dated 09.10.1997. Furthermore, the witness averred that the letter came from his advocate and was addressed to the deceased. In particular, the witness testified that the subject matter at the foot of the letter was payments of the purchase price.

32. Additionally, the witness testified that the letter under reference [Exhibit D26] was responded to by Firm M/s. Mbaabu Inoti & Co. Advocates. The witness clarified that the letter responding to exhibit D26, has also been tendered and produced as exhibit D27. In any event, the witness averred that the letter confirmed that the deceased received the purchase price.

33. On cross examination, the witness testified that the deceased and himself entered into and executed a sale agreement. Nevertheless, the witness clarified that the wife and children of the deceased did not witness the sale agreement. The witness further testified that the deceased was paid the sum of Kshs. 100,000/= and which sum was duly acknowledged. Moreover, the witness intimated to the court that same has since produced the acknowledgement receipt before the court.

34. It was the further testimony of the witness that the balance of the purchase price was paid to John Boyi Amburugua. Nevertheless, the witness clarified that the said John Boyi Amburugua was not the vendor.

35. Regarding exhibit D4, the witness stated that document is a sale agreement between him and the deceased. Besides, the witness pointed out that the cheque relating to the sum of Kshs. 484,500/= only, was addressed to John Boyi Amburugua.

36. Upon being asked whether same is only entitled to refund of Kshs. 100,000/= from the estate of the deceased, the witness testified that same is not entitled to the said sum. On the contrary, the witness averred that the payment at the foot of the sale agreement was concluded. Moreover,

the witness reiterated that the deceased confirmed and acknowledged receipt of the balance of the purchase price.

37. Upon being referred to the plaint in respect of Meru HCC No. 127 of 1998, the witness averred that the suit was filed by himself. In addition, the witness testified that same was seeking an order to compel the deceased to transfer the portion of the land which had been sold.

38. Upon being referred to exhibit D27, the witness testified that the document is a letter from his advocates. Furthermore, the witness stated that the letter relates to the execution/signing of the transfer instruments. In addition, the witness posited that the letter confirmed that the deceased executed the sale agreement and the transfer.

39. Referred to exhibit D28, the witness testified that the document is a copy of the green card. The witness added that the green card relates to parcel number 572 and that same shows the existence of a caution that was lodged by himself [witness].

40. As concerns the suit property, the witness testified that same is aware that the suit property arose from original parcel of land. However, the witness averred that he is not aware whether the suit property was created in 1998. Regarding, the death of the deceased, the witness testified that the deceased died on the 1st of June, 2017. In any event, the witness added that by the time the deceased died, the cases were still pending in court.

41. It was the further testimony of the witness that the cases were subsequently consolidated. Moreover, the witness stated that the consolidated case were thereafter dismissed on the 17.11.2015. In addition, the witness testified that by the time the consolidated cases were dismissed, the deceased was still alive.

42. Upon being referred to the order made by Hon. Justice Lenaola – Judge [as he then was] the witness testified that the order stayed the implementation of the consent pending the hearing and determination of the consolidated suit. However, the witness clarified that the consolidated suit[s] were never heard. On the contrary, the witness clarified that after the suits were transferred to the Chief Magistrate’s court, same were ultimately dismissed for want of prosecution.

43. It was the testimony of the witness that same relied on the consent order to transfer the suit property to his name. Additionally, the witness averred that the transfer of the suit property followed the registration of the mutation in respect of the original parcel of land. To this end, the witness referenced exhibit D28.

44. While still under cross examination, the witness testified that same is aware that a mutation form must be lodged for registration. Furthermore, the witness averred that a mutation form must also be paid for. Moreover, the witness testified that the suit property was registered in the year 2019.

45. The witness further testified that by the time the deceased died, the original parcel of land was still registered in the name of the deceased.

Nevertheless, the witness added that same went to the Land Control Board on the 21/02/2019 and that the Land Control Board consent was duly issued.

46.Regarding the transfer instruments, the witness averred that same was presented for registration on the 27.02.2019. In addition, the witness testified that the transfer instrument was duly registered on the same date. However, the witness admitted that the register of the original parcel of land showed that there was a caution registered/entered on the 10.11.1994; restriction entered on 18/07/1996; and another restriction entered on the 10.09.1997.

47.On further cross examination, the witness testified that same has since been charged with a criminal offence including forgery and obtaining registration by false pretense. The witness testified that the criminal proceedings are still ongoing. In addition, it was the testimony of the witness that a forensic document examiner has since testified in the criminal case. Besides, the witness averred that the document examiner indicated/stated that the signatures of the deceased were forged.

48.It was the further testimony of the Witness that same filed a suit against the deceased. The witness pointed out that the suit was Meru HCC 127 of 1998. To this end, the witness referenced exhibit D23. Besides the witness clarified that the original parcel of land was subdivided in 1998.

49.Regarding the question of extraction of the decree, the witness testified that same did not extract the decree arising from the consent.

Furthermore, the witness testified that he did not serve a notice to show cause upon the family of the deceased. The witness also clarified that he did not take out or serve citation on the family of the deceased.

50. The 2nd witness who testified on behalf of the Defendant was Solomon Lagat. Same testified as DW2.

51. It was the testimony of the witness that same is an employee of the judiciary, currently stationed at Meru. The witness further averred that the same is the court administrator. In addition, the witness posited that he was served with witness summons to attend court and to produce various records pertaining to: Meru HCC 127 of 1998, Meru CMCC 408 of 1996; Meru HCC Miscellaneous Number 83 of 1999 and Meru CMC 437 of 2005.

52. Regarding Meru HCC 127 of 1998, the witness confirmed that he has brought the entire court file. Furthermore, the witness referenced a letter dated 29.04.1999 but received in court on 20.05.1999 and thereafter stated that the letter in question bears several notations. The witness added that the notations were directed to the Chief Magistrate to sign.

53. It was the further testimony of the witness that there was a consent judgement that was endorsed on the court record on 20.05.1999. Furthermore, the witness further clarified that the consent judgment was issued on the 14.06.1999. Moreover, the witness averred that same has also brought a copy of the transfer form in respect to the suit property. In particular, the witness testified that the transfer form was drawn; executed

and attested. The witness added that the transfer form was witnessed by an advocate, namely; Mr. Ken Muruki Muketa.

54.Regarding the execution by court, the witness testified that the transfer form was signed/executed by the Executive Officer on behalf of the court. Thereafter, the Witness sought to tender and produce before the court the entire court file in respect of Meru HCC 127 of 1998. There being no objection, the court file was produced and admitted as exhibit D22. Additionally, the rest of the documents including copy of the consent, copy of the letter dated 29.04.1999; and the transfer form were produced as exhibit D8, D9 and D10, respectively.

55.Other than the foregoing, the witness referenced another file namely, Meru CMC 172 of 2014. The witness testified that the Plaintiff in the said case was Ann Kechi Mubichi, while the defendant was Joshua Kiome Mworio. The witness clarified that the file contains the plaint. Furthermore, the witness also referenced CMC 437 of 2005. In this respect, the witness pointed out that the plaintiff in the said file was Joshua Kiome Mworio while the defendant was Patrick Amburugua.

56.Additionally, the witness testified that there is an order which was made and which forms part of Meru CMCC No. 172 of 2014. The witness pointed out that the order was made on the 17.11.2015. Moreover, the witness added that the order dismissed the suit for want of prosecution. Thereafter the witness produced the court file in respect of Meru CMC 172 of 2014 as exhibit D23.

57. On cross examination by learned counsel for the Plaintiff, the witness testified that even though he has brought the entire court file in respect of Meru HCC Miscellaneous number 83 of 1999 same has not seen a copy of the extracted order.

58. Nevertheless, the witness clarified that he has seen the ruling of Hon. Justice Onyancha – judge [now retired]. The witness stated that the order is dated 03.12.2003.

59. It was the further testimony of the witness that there are other orders that were made in respect of the said files. The witness referenced the orders made by Justice Lenaola – Judge as he then was and Justice Lesitt- Judge; as she then was. In sum, the witness averred that the orders of justice Lesit – judge [as she then was] directed the files to be transferred to the lower court and to be heard and disposed of by the Chief Magistrate. In addition, the witness posited that the consolidated files were lumped together in Meru CMC number 172 of 2014.

60. Regarding, the transfer form, the witness testified that same was signed/executed by the Executive officer on 15/02/2019. However, the witness testified that the transfer was executed on the basis of the consent order. Nevertheless, the witness stated that he has not seen any attached certified copy of the consent Judgment.

61. The third [3rd] witness who testified on behalf of the defendant was Samuel Kariuki Mwangi the witness testified as DW3.

62. It was the testimony of the witness that the same is the county land registrar – Meru County. Furthermore, the witness testified that same received witness summons to attend court and produce copies of the application for the land control board consent relating to LR number KIIRUA /NAARI/2186.

63. The witness confirmed that he has brought forth a copy of the application for consent; copy of the letter of consent; copy of the transfer instrument; and copy of the valuation report in respect of the suit property.

64. Thereafter, the witness sought to tender and produce the named documents as exhibits. There being no objection, the documents were produced as exhibits D 8a, 8b, 9, and 10, respectively.

65. On cross examination by learned counsel for the plaintiff, the witness averred that before one can apply for Land Control Board Consent, the person must obtain a certificate of official search. In respect of the subject matter, the witness confirmed that same has a copy of the certificate of official search. The witness clarified that the search is dated 20.02.2019.

66. It was the further testimony of the witness that a letter of consent was duly issued and signed. The witness added that the letter of consent was in respect of LR Number KIIRUA/NARII/2186. Moreover, the witness testified that the suit property was thereafter registered in the name of the Defendant.

67. Additionally, the witness testified that the transfer form which was presented for registration was accompanied by an order issued by the High Court at Meru. The witness clarified that a copy of the certified consent

order is before the court. Furthermore, the witness testified that the consent which allowed the transfer was not defective.

68. The next witness was Moses Kiriki Ngera. The witness testified as DW4.

69. It was the testimony of the witness that he is a retired teacher. Furthermore, the witness averred that he was familiar/conversant with Patrick Amburuuga – now deceased. In addition, the witness posited that he has since recorded and filed a witness statement. To this end, the witness referenced the statement dated 17.12.2024 and thereafter sought to adopt the same as his evidence in chief. suffice it to state that the witness statement was duly adopted as the evidence in chief of the witness.

70. On cross examination by the learned counsel for the Plaintiff, the witness averred that he is the one who introduced the defendant to the deceased as pertains to the purchase of the suit land. However, the witness clarified that he did not witness the execution of the sale agreement.

71. It was the further testimony of the witness that the entire purchase price was paid to Patrick Amburugua. However, upon being referred to exhibit D6, the witness stated that the document is a copy of the cheque in the name of one John Boyi Amburugua. Moreover, the witness testified that he has never seen the defendant use the suit land.

72. The last witness who testified on behalf of the defendant was Jason Maingi Mworira. The witness testified as DW5.

73. It was the testimony of the witness that same is a retired police officer. In addition, the witness averred that he was previously the County Criminal Investigations officer – Kirinyaga County.

74. Moreover, the witness averred that same has since recorded and filed a witness statement. The witness alluded to the witness statement dated 07.01.2025 and which statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

75. Regarding exhibit D4, the witness pointed out that same is a copy of the sale agreement dated the 21.08.1997. Furthermore, the witness added that he was a witness to the sale agreement.

76. On cross examination by learned counsel for the defendant, the witness averred that same was present during the execution and witnessing of the sale agreement. In addition, the witness stated that he was also present during the negotiations. Nevertheless, the witness clarified that he did not meet the plaintiff or her children during the negotiations or the signing of the sale agreement.

77. Upon being referred to the acknowledgement and the cheque, the witness stated that the payments at the foot of the cheque related to the balance of the purchase price. In any event, the witness clarified that he was informed that the entire purchase price was paid to and acknowledged by the deceased. However, the witness added that the information pertaining

to payment of the balance of the purchase price was passed to him by the Defendant.

78. With the foregoing testimony, the defendant's case was closed.

79. Following the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court issued direction[s] pertaining to the filing and exchange of the written submissions. In addition, the court also prescribed the timelines.

80. The plaintiff filed written submissions dated 12/01/2026; and wherein the same has highlighted four [4] key issues. The issues highlighted by the plaintiff are: The failure to pay the entire purchase price vitiates the sale agreement/contract; the consent that was relied upon was invalid and non-existent; the land which was purportedly being consented was *non-existent*; the transaction leading to the transfer and registration of the suit property in favour of the defendant was undertaken after the death of the deceased and thus same is illegal and fraudulent.

81. The Defendant filed written submissions dated the 19.01.2026 and wherein same has highlighted and canvassed four [4] key issues. The issues highlighted by the defendant are: Whether the defendant lawfully acquired the suit property; whether the plaintiff has proved fraud to the required standard; what is the legal effect of a valid and unchallenged consent judgment; what is the legal effect of failure to file a defence to the counter claim; and whether the defendant is entitled to the reliefs sought.

82. Having reviewed the pleadings filed by the parties; the evidence tendered [*both oral and documentary*]; and upon consideration of the written submissions on record, I come to the conclusion that the determination of the subject matter [dispute] turns on three key issues. The issues are: Whether the plaintiff has established and proved her claim to the requisite standard or otherwise; Whether the defendant has proved the claims at the foot of the counter claim or otherwise; and what reliefs [if at all] ought to issue.

83. Regarding the first issue, it is imperative to recall and reiterate that the plaintiff approached the court contending that the defendant herein illegally, unlawfully and fraudulently undertook the sub-division of the original parcel of land and thereafter sub-divided same into six portions. Furthermore, the Plaintiff also contended that the subdivision was taken on the basis of a fraudulent mutation signed by the District Surveyor on the 10.09.1997.

84. Additionally, the Plaintiff contended that same got wind of the intention of Patrick Mubichi Amburugua [deceased] of trying to alienate of the original parcel of land and thereafter same filed a suit against the deceased. To this end, the plaintiff contended that as a result of the suit filed by herself, namely; Meru CMCC 408 of 1996, a restriction was issued and endorsed against the register of the original parcel of land. Furthermore, the plaintiff posited that because of the restriction the mutation dated 10.09.1997 could not have been registered.

85. It was the further contention by the Plaintiff that the Defendant herein and the deceased [Patrick Mubichi Amburugua] entered into a bogus consent

judgment and wherein the deceased undertook to transfer the suit property to the defendant; and directing the land registrar to vacate and discharge all the restrictions and cautions that had been endorsed against the original parcel of land.

86. Flowing from the foregoing contention, the plaintiff has contended that the subdivision of the original parcel of land; the mutation that was relied upon; the consent order; the transfer form; and ultimately the certificate of title issued to the defendant are tainted with fraud and illegality. The plaintiff has thereafter supplied the particulars of fraud at the foot of paragraph 14 of the amended plaint.

87. I beg to state that having highlighted fraud and illegality, it was incumbent upon the plaintiff to tender and place before the court plausible; cogent; concrete; compelling; and credible evidence to buttress the assertions of fraud and illegality. Moreover, the evidence tendered has to prove the plea of fraud to the requisite standard.

88. It is important to underscore that matters concerning fraud are serious and grave. The matters of fraud bear a quasi – criminal element and therefore proof of fraud must be demonstrated to a standard higher than the balance of probabilities. The standard of proof in matters pertaining fraud was expounded upon by the Court of Appeal in the case of **Kuria Kiarie & 2 others v Sammy Magera [2018] KECA 467 (KLR)**.

89. The court stated thus:

“The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh

Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) 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 distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau [2015] eKLR* expressed itself as follows;-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

90. Has the plaintiff proved and established fraud? The Plaintiff contended that it is the defendant who caused the subdivision of the original parcel of land. In addition, the plaintiff contended that the impugned subdivision was undertaken on the basis of a mutation form signed by the District Surveyor on the 10.09.1997.

91. Insofar as the Plaintiff, contended that the mutation was fraudulent, it was incumbent upon the plaintiff to demonstrate that the signature contained thereunder and which is attributed to Patrick M. M Amburugua [now deceased] was forged. The plaintiff herein did not advert to or attack the authenticity of the signature of [sic] her deceased husband.

92. In the absence of any contest as pertains to the authenticity of the signature of Patrick M' Amburugua, it is apparent that the signature is conceded to.

93. Furthermore, it is important to recall that the mutation form alluded to is the one that brought forth and birthed the various numbers including the suit property, which was highlighted at the foot of the consent entered into on the 29.04.1999; and subsequently, extracted on the 14.06.1999. [See exhibit D19 and 20 respectively].

94. To my mind, the deceased was privy to and well aware of the subdivision of the original parcel of land and that is how the number of the suit property was factored into the consent letter dated 29.04.1999 and whose authenticity has not been impugned. Yet again, even though the letter dated 29.04.1999 bears the signature attributed to Patrick M' Amburugua, the Plaintiff did not challenge the said signature.

95. In my humble view, it is the plaintiff who was propagating fraud and illegality and seeking to impeach the transfer of the suit property, and hence same was bound to place before the court evidence to show fraud. Suffice it to state that the plaintiff did not tender any forensic documents

examination report to show/demonstrate that the signature on the mutation form was a forgery.

96. The failure to tender evidence challenging the authenticity of the said signature, negates the Plaintiff's claim. Instructively, fraud cannot be proven on the basis of speculation, inference, innuendos, or hypothesis. Simply put, credible evidence was required.

97. In the case of **Doshi v Chemutut & 7 others [2025] KECA 776 (KLR)** the Court of Appeal underscored the manner of proving fraud and the nature of evidence to be tendered.

98. The court stated thus:

*“Apart from the omission to plead fraud, nor particulars of fraud against the named defendants, Mr. & Mrs. Walker, were provided. In the often-cited decision of this Court in the case of Vijay Morjaria v Nansingh Madhusingh Dabar & Another [2000] eKLR, Tunoi, JA. stated that: “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.**”*

42. In the same vein, the Court in the case of Kinyanjui Kamau v George Kamau Njoroge [2015] eKLR reiterated that: “It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo v Ndolo [2008] 1 KLR (G&F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof

required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

99. The other aspect of the Plaintiff's complaint and which underpins the contention of fraud relates to the transfer of the suit property to the defendant. It has been contended that the defendant caused the suit property to be transferred and registered in his name illegally.

100. The elements underpinning the contention are: the suit property was transferred to the defendant long after the death of the deceased; the deceased did not execute the transfer form; and the transfer was undertaken without notice to or involvement of the estate of the deceased.

101. Even though the Plaintiff is contending that the transfer in favour of the defendant was informed by fraud, the plaintiff herself concedes that there was a consent judgement [which she terms bogus consent judgement] entered into between the deceased and the defendant. The plaintiff also concedes that the terms of the said consent judgment included: transfer of the suit property to the defendant; removal of all the cautions, restrictions and inhibitions on the title of the original parcel of land.

102. It is also common ground and evidence abound that the plaintiff herein filed a suit namely; Meru CMCC 408 of 1996 [which was later consolidated together with Meru CMCC 172 of 2014]. The purpose of filing the said suit was stated as to avert the dealings of Patrick Mubichi Amuburugua [now Deceased] with the original parcel of land.

103. It is also on record that Hon. Justice Lenaola – Judge [as he then was] issued orders staying the implementation of the consent judgment pending the hearing and determination of the suit which were later consolidated under Meru CMCC 172 of 2014. For good measure, the orders of Hon. Justice Leanola [now Supreme Court Judge] were issued pending the determination of the suit. However, it is common ground that the consolidated suit[s] were dismissed *vide* orders made of 17th of November, 2015.

104. I beg to state that upon the dismissal of Meru CMCC Number 172 of 2014 [which act constituted determination] the consent order which was entered into between Patrick M’Amburugua and the defendant remained *in situ*. Notably, the terms of the consent judgment were never reviewed, rescinded, superseded and or varied.

105. It is not lost on me that the plaintiff herein had sought to challenge the said judgment and hence it was incumbent upon her to ensure that the consent judgement was indeed set aside. However, the evidence on record show that the consent judgment and which was duly adopted and thereafter extracted on the 14.04.1999, remained in existence and operative. The dismissal of the consolidated suit[s] did not kill the Consent. It remained alive.

106. To my mind, the consent judgment created contractual obligations on the parties thereto. Unless same was set aside, the terms of the consent

judgment were sufficient to facilitate the transfer and registration of the suit property in favour of the Defendant.

107. The legal implications of a consent judgment were highlighted by the Court of Appeal in the case of **Flora N. Wasike v Destimo Wamboko [1985] KECA 149 (KLR)**.

108. The Court of Appeal stated as hereunder:

*“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in **J M Mwakio v Kenya Commercial Bank Ltd Civil Appeals 28 of 1982 and 69 of 1983**. In **Purcell v F C Trigell Ltd [1970] 2 All ER 671, Winn LJ said at 676;***

“It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here

that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.

109. I find and hold that the consent that was duly extracted and sealed by the court in terms of exhibit D20, remained valid, effective and effectual. Same was therefore capable of underpinning the transfer. In addition, the consent judgment and the execution of same, was not affected by the death of Patrick Mubichi M'Amurugua.

110. The consent judgment survived the death in terms of Order 24 Rule 10 of the Civil Procedure Rules, 2010; which provides that execution proceedings are not subject to abatement.

111. The final aspect that has been propagated by the Plaintiff to impugn the transfer and registration of the suit property in favour of the defendant touches on and concerns failure to pay the consideration/purchase price. Despite this contention, the Defendant herein tendered and produced various document confirming that the purchase price was duly paid to Patrick M'Amurugua. In particular, the Defendant referenced exhibit D26 and D 27, respectively. For good measure exhibit D27 is the letter dated 29.11.1997 by M/s. Mbabau Inoti on behalf of Patrick M'Amurugua [the vendor] and wherein the vendor confirmed the transaction.

112. In addition, the defendant also tendered and produced before the court Exhibit D 5 and D6 respectively which are acknowledgement by the vendor. Quite clearly, the vendor who was a teacher by profession, would not have been making the acknowledgement without receipt of the money.

113. It is also worthy to recall that the vendor [Patrick M'Amburugua entered into and executed a consent letter and wherein he conceded the transfer of the suit property. Surely, the deceased could not have entered into and executed the said consent letter prior to and before receipt of the full purchase price.

114. In any event, the defendant herein, had expressly stated at the foot of paragraph four of the plaint *vide* Meru HCCC 127 of the 1998; that the purchase price was fully paid. The deceased conceded to that averment when he entered into the consent dated 29.04.1999 and which was adopted on 20.05.1999 and thereafter extracted on the 14.06.1999 [See exhibit D20].

115. From the foregoing discussion, I am afraid that the plaintiff has neither established the plea of fraud and illegality. Moreover, it is important to underscore that the plaintiff herein could only succeed on the strength of her case and not [sic] the weakness of the defence.

116. In the case of **Caroget Investment Limited v Aster Holdings Limited & 4 others [2019] KECA 79 (KLR)** the court of appeal highlighted the legal principle in the following terms:

“Put differently, a claimant will succeed on the strength of his own case and not on the weakness of the opponent’s case, save to add that the standard of proof in a case for declaration of title is on a preponderance of evidence.”

117. Turning to the second issue, namely, whether the defendant has proven/established the claims at the foot of the counter claim. The crux/gravamen of the defendant’s counter claim is to effect that same entered into a lawful sale agreement with one Patrick M’Amburugua [now deceased]. The sale agreement was reduced into writing and executed by the parties on the 21.08.1997. The purchase price was agreed upon and there after paid to the deceased or on his instructions. The acknowledgement of receipt was drawn by and executed in front of an advocate.

118. Additionally, the defendant has posited that the despite paying the entire purchase price, the vendor failed/neglected to perform his part of the bargain. Thereafter, the defendant filed Meru HCC 127 of 1998 and which suit was disposed of *vide* consent. The implementation of the consent was suspended pending the hearing of the suits which were later consolidated under Meru CMC 172 of 2014. However, the suit namely; Meru CMCC 172 of 2014 was dismissed for want of prosecution.

119. Furthermore, the defendant has asserted that following the dismissal of Meru CMCC 172 of 2014 [the consolidated suits], same reverted to court and activated the terms of the consent judgment endorsed on the court record on the 20.05.1999 and whose terms had not been varied. In addition, the defendant posited that pursuant to the consent, the

application for Land Control Board Consent and the Transfer Form were duly executed by the Executive Officer of the Court.

120. It is instructive to note that DW2 [Solomon Lagat] testified before the court and confirmed to the court that there was a consent judgment forming part of the record in respect of Meru HCC 127 of 1998. In addition, the witness also confirmed that there was a copy of the duly executed application for consent and transfer form. The application for Land Control Board Consent; the consent; and the transfer form were produced as Exhibit D8a , 8b, 9 and 10, respectively. Moreover, the entire court file in respect of Meru HCC Number 127 of 1998 was produced as Exhibit D22.

121. I have reviewed the documents which form part of the court record and I have confirmed for myself that the documents under reference are authentic and valid. In any event, it is worthy to point out that neither the plaintiff nor his counsel has sought to impeach the said documents. For good measure the validity, propriety and authenticity of the said documents can only be challenged either in Meru HCC 127 of 1998 or in Meru CMCC 172 of 2014 [the latter wherein the suits were consolidated].

122. It is also important to underscore that the validity of the consent judgment; the application for land control board consent; the consent and the transfer form, which was executed by the executive officer of the court cannot be challenged *vide* the instant suit. To my mind, such and

endeavor would constitute a collateral attack on the lawful proceedings undertaken by the court in a different file.

123. Flowing from the foregoing, it is my finding and holding that the transfer and registration of the suit property, in the name of the defendant is premised and anchored on lawful court proceedings; and orders, which have never been set aside and/or varied.

124. Before departing from this issue, there is an aspect that merit mention and a short deliberation. The aspect herein touches on and concerns failure to file a statement of defence to the counter claim. To start with, the defendant filed counter claim and hence it was incumbent upon the plaintiff [defendant in the counter claim] to file a statement of defence thereto.

125. It is also important to point out that whereas a party can join issues on the last filed pleadings, there can never be joinder of Issue[s] in respect of a counter claim. Notably, a counter claim is a cross suit and where a party is served, same is enjoined, nay bound to file a defence or a denial thereto. The provisions of **Order 7 Rule 3 of Civil Procedure Rules** are apt.

126. The provisions of Order 7 Rule 3 of the Civil Procedure Rules stipulates thus:

“A defendant in a suit may set-off, or set-up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and whether it is for a liquidated or unliquidated amount, and such set-off or counterclaim shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit, both on the original and on the cross-claim; but the Court may on the application of the plaintiff before trial, if in the opinion of the court such set-off or counterclaim cannot be conveniently disposed of in the pending suit, or ought not to be allowed, refuse permission to defendant to avail himself thereof.’

127. The provisions of **Order 2 Rule 12 of the Civil Procedure Rules** are equally instructive and succinct. For good measure, the said provisions stipulate thus:

Denial by joinder of issue [Order 2, rule 12]

(1) If there is no reply to a defence, there is a joinder of issue on that defence

.(2) Subject to subrule (3)—

(a) there is at the close of pleadings a joinder of issue on the pleading last filed; and

(b) a party may in his pleading expressly join issue on the immediately preceding pleading

.(3) There can be no joinder of issue on a plaint or counterclaim

.(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is a joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

128. Back to the subject matter. I pointed out at the onset that I was unable to trace or discern a reply to defence and defence to the counter claim. Additionally, the issue of whether or not a defence to the counter claim was filed was also raised with the plaintiff [Pw1], but same was evasive. In any event, the plaintiff stated that she would leave the issue to her counsel.

129. The plaintiff stated as hereunder while under cross examination by the learned counsel for the defendant:

I am aware that the defendant has sued me. I have also sued him. I don't know whether there is a defence to the counter claim. I wish to leave the issue to my advocate.

130. On his part the defendant testified and stated that he had not been served with any defence to the counter claim. The defendant was emphatic. The defendant stated thus

“ I have filed a counterclaim. I have never been served with any defence to the counter claim.”

131. One would have expected learned counsel for the plaintiff to clarify the position. However, the learned counsel has remained silent and mute. The connotation is that no defence was filed to the counter claim.

132. In a *nutshell*, it is my finding and holding that the failure to file a defence to the counter claim denotes that the plaintiff [defendant in the counter claim] was conceding to the counter claim. The failure amounts to admission.

133. Next is the issue what reliefs [if any] ought to be granted. The Plaintiff has sought various reliefs at the foot of the amended claim. The plaintiff has sought a declaration that the transfer of the suit property in favor of the defendant was illegal, unlawful and fraudulent. However, while discussing issue number one [1], I found and held that the impugned transfer is premised on lawful court orders and a consent judgment which has neither been set aside nor rescinded. In this regard, I am afraid that the plea of declaration is founded on misapprehension.

134. Regarding an order nullifying the transfer and registration of the suit property in the name of the defendant, I beg to state that the order for nullification cannot be granted either in the manner sought or at all. In any event, there is no gainsaying that the grant of such an order would be tantamount to setting aside or varying the consent judgment which was issued before the High Court.

135. Without belaboring the point, I beg to highlight that this court cannot superintend the orders issued before the high court. Such an endeavor would amount to sitting on appeal on the decision of the high court. It is unacceptable. If done, it shall amount to a judicial absurdity. Such endeavor must be eschewed.

136. In the case of **Kenya Hotel Properties Limited v Attorney General & 5 others** [2022] KESC 62 (KLR) the Supreme Court highlighted the legal position and the attendant principle in the following terms:

55. We need to emphasize and reiterate that Mutunga CJ did not in any way state that the High Court may in any way, purport to overturn or order final decisions issued by higher courts than itself to start de novo, especially on appeals that have been finally concluded by the highest court at the time. Furthermore, the concurrence by Mutunga SCJ cannot override the judgment by the majority, despite what the appellant chooses to submit. As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves.'

137. Turning to the counter claim, the defendant has sought an order of eviction, mandatory injunction; permanent injunction and general damages for trespass.

138. Regarding the Prayer for eviction, I beg to state that the registered owner of the land is bestowed with statutory rights and privileges, including exclusive occupation, possession and use. It thus means that where a third party is in occupation of the land then such occupation violates the possessory rights of the title holder.

139. Where there is such violation the title holder is entitled to an order of evection. In the case of **Waas Enterprises Limited v City Council Of**

Nairobi & another [2014] KEELC 605 (KLR the court [per Gitumbi J] stated as here under:

“As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land

“It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land. The 2nd defendant had no right to the suit land. She must therefore vacate the suit land and hand over possession to the plaintiff. It is my opinion that the 1st defendant should ensure that the 2nd defendant has vacated the suit land and hands over vacant possession of the suit land to the plaintiff within a period of 30 days from the date hereof.”

140. Regarding the prayer for permanent injunction, I beg to state that it is a critical ingredient in protecting the right of a title holder. Absent an order of permanent injunction, the possessory rights of the title holder shall be overrun by the intruders. In this regard, a permanent injunction would suffice to protect the rights of the defendant. [**See Moya Drift Farm Limited versus Theuri [1973] EA ; Mohasson Kenya Limited versus the Land Registrar – Kajiado [2017] eKLR ; and Embakasi Properties Limited versus Commissioner of Lands and others [2019] eKLR]**

141. Finally, the defendant sought for general damages for trespass. It suffices to state a title holder who has been deprived of the right to occupy, possess and use the designated property is entitled to recompense.

Such recompense comprise[s] of either general damages for trespass, or *mense profits*.

142. In respect of the instant matter, the defendant indeed sought for general damages. However, in the course of the submissions, the learned counsel for Defendant failed to submit on the question of quantum of damages [if any] payable. It is prudent that where a party has sought general damages for trespass, like in the instant case, the party concerned ought to make submissions on quantum. In addition, such a party is obliged to make propositions as pertains to the award of damages. Such propositions, would be helpful to the court in exercising its discretion in accordance with the law.

143. Nevertheless, it is not lost on me that the discretion to assess and award general damages rests with the court. To this end, a court of law cannot forsake its discretion or jurisdiction to assess and award general damages merely because a party has failed to submit on the quantum. Such a situation shall be tantamount to dereliction of judicial duty and constitutional mandate. I am not minded to do so.

144. In the case of **Bhagwani Singh Calsi versus National Housing Corporation [2017] eKLR**, the court [Per Lady Justice Millicent Odeny , Judge] stated thus:

‘it is trite law that trespass to land is actionable per se. The plaintiff prayed for general damages for the loss occasioned by the defendant who had encroached on his land. Having determined that the defendant is a trespasser, it follows that it should pay damages. It is at the discretion of the court to assess the reasonable damages to be awarded to the plaintiff. The court can take into account, among other things, the length of time of the illegal occupation, nature of the trespass and whatever the trespasser was doing on the land. The discretion must however be exercised judiciously to meet the ends of justice.

145. Bearing the foregoing in mind, I now proceed to exercise my discretion, in assessing the general damages. Firstly, the defendant got registered as the owner of the suit property in the year 2019. Despite being registered as the proprietor of the suit property, the defendant has never benefited from the statutory rights and privileges attendant to such registration. [See the provisions of **Sections 24 and 25 of the Land Registration Act, 2012**].

146. Secondly, the Principles that are to be applied while exercising discretion to assess and award general damages for trespass have crystalized overtime. In the case of **Kenya Power & Lighting Company Ltd v Ringera & 2 others (Civil Appeal E247 & E248 of 2020 (Consolidated)) [2022] KECA 104 (KLR)**, the Court of Appeal revisited the principles.

147. The Court stated thus:

“38 . The principles both parties have relied upon in their invitation for the Court to decide either way are those enunciated by the predecessor of this Court and either crystallized or restated by this Court which we find prudent to distill and replicate as hereunder;

i) *Harlsburys Laws of England 4th Edition Vol. 45 at para 26 pg 1503, namely, the owner of the land is entitled to nominal damages where there is no actual damage occasioned to the owner by the trespass, such amounts as will compensate the owner for loss of use resulting from the damage caused by the trespass, reasonable damages are payable where the trespasser has made use of the owner’s land, exemplary damages are payable where the trespassers conduct towards the owner is not only oppressive but also cynical and carried out in deliberate disregard of the right of the owner of the land with the object of making a gain by his/her unlawful conduct, general damages may be increased where the trespass is accompanied by aggravating circumstances to the detriment of the owner of the land.*

[ii]Duncan Nderitu Ndegwa vs. Kenya Pipeline Company limited & Another [2013] eKLR - damages payable for trespass are the amount of diminution in value or the loss of reinstatement of the land with the overriding principle being to put the claimant in the position he was in prior to the infliction of harm.

iii)Philip Ayaya Aluchio vs. Crispinus Ngayo [2014] eKLR, - the measure of damages for trespass is the difference in the value of the plaintiffs’ property immediately before and immediately after the trespass or the cost of restoration whichever is less.

148. In view of what I have alluded to in the preceding paragraphs, I am minded to and do hereby assess and award general damages in the sum of Kshs. 3,000,000/= only, to and in favour of the defendant. I am alive to the size of the land which has been trespassed onto; the duration of trespass; the nature and extent of trespass; and the infringements of the proprietary rights.

CONCLUSION:

149. From the analysis in the body of the Judgment, it must have become apparent that the Plaintiff has failed to prove her case on a balance of probabilities. In this regard, the Plaintiff's suit is meritless.

150. On the contrary, the Defendant has been able to justify the root of his title. In particular, the defendant has demonstrated that the certificate of title held by him stems from a consent Judgment; lawful court orders; and instruments of conveyance duly executed by/on behalf of the court. Moreover, the Defendant has proven that the consent Judgment and the consequential orders have not been set aside.

151. Consequently, and in the premises, I am persuaded that the defendant has proved his case to the requisite standard. The counter claim is therefore meritorious.

FINAL ORDERS

152. The final orders that commend themselves to the court are:
- a. *The Plaintiff's suit be and is hereby dismissed.*
 - b. *Judgment be and is hereby entered in favour of the Defendant [counter claimer] as hereunder:*
 - i. *The Plaintiff is ordered to vacate L R NO. KIIRUA/NAARI/2186 and grant vacant possession to the Defendant/counter claimer within 90 days from the date hereof.*
 - ii. *In default by the Plaintiff to vacate and hand over vacant possession in terms of clause [i] above, the defendant shall be at liberty to levy eviction against the plaintiff. In this regard, an eviction order shall issue.*
 - iii. *There be and is hereby issued an order of permanent injunction to restrain the Plaintiff either by herself, agents, servants and or employees from entering upon, remaining on, dealing with or in any other manner interfering with the rights of the Defendant over and in respect of L R NO. KIIRUA/NAARI/2186.*
 - iv. *General damages be and is hereby awarded to the defendant in the sum of Kshs. 3,000,000/= only.*
 - v. *The award of general damages in terms of clause [iv] above shall attract interest at court rates [14% per annum] from the date of judgment until payment in full.*

c. Costs of the suit be and are hereby awarded to the Defendant.

d. The Defendant is also awarded costs of the counter claim.

e. The costs in terms of [c] and [d] shall be agreed upon and in default, taxed in the conventional manner.

f. Any other relief not expressly granted is hereby declined.

153. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY
OF FEBRUARY, 2026.**

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:-

Hussein - Court Assistant

Mr. Otieno Opiyo holding brief for Mr. Mwirigi Kaburu for the Plaintiff

Joel Mutuma for the Defendant/Counter Claimer