



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 48 OF 2020

JOSEPH WAMWALA MURUTU.....
.....PLAINTIFF

=VERSUS=

ROBERT MAINA MWANGI (Being sued as the
Administrator of the Estate of
Francis Mwangi Ndungu)
.....DEFENDANT
AND

ROBERT MAINA MWANGI (Suing as the Administrator
of
The estate of Francis Mwangi Ndungu...PLAINTIFF IN
THE COUNTERCLAIM

= VERSUS=

JOSEPH WAMALWA MURUTU....1ST DEFENDANT IN THE
COUNTERCLAIM

NAIROBI CITY COUNTY.....2ND DEFENDANT IN THE
COUNTERCLAIM

DIRECTOR OF SURVEY.....3RD DEFENDANT IN THE
COUNTERCLAIM

CHIEF LAND REGISTRAR.....4TH DEFENDANT IN
THE COUNTERCLAIM

**THE ATTORNEY GENERAL.....5TH DEFNDANT IN THE
COUNTERCLAIM**

JUDGMENT

1. By an amended Plaint dated 12th April 2022, the Plaintiff seeks the following orders:
 - a) The Defendant be compelled to desist from proceeding with the said farming activities within the Plaintiff's suit properties and interfering with his quiet and peaceful ownership and enjoyment of his legally owned suit property.***
 - b) Costs of the suit.***
 - c) Interest on (b) above at court rates.***

2. The Defendant filed an amended statement of defence and Counterclaim dated 19th April 2024, denying the Plaintiff's claim. In the counterclaim, the Defendant seeks the following orders:
 - a) An order declaring the Late Francis Mwangi Ndungu (Deceased) as the legal and legitimate owner of the parcel of land known as Dandora Light Industries - Block G Plot No. H5 in the 2nd Defendant's records and further formerly known as L.R. No. 27217 and now known as L.R. No. 11344/2403 and delineated in deed plan No. 408623 in the records of the 3rd Defendant.***

b) An order declaring the Letter of Allotment dated 18th February 1982 and issued to the 1st Defendant as null and void for all purposes of the law.

c) An order declaring the Certificate of Lease dated 13th March 2017 issued to the 1st Defendant and registered as I.R No. 188360/1 in the records of the 4th Defendant as null and void for all purposes of the law.

d) An order directing the 2nd Defendant to issue a certificate of lease to the Plaintiff (as the administrator of the Estate of Francis Mwangi Ndungu (Deceased) over the parcel of land known as Dandora Light Industries - Block G Plot No. H5 in the 2nd Defendant's records and further formerly known as L.R. No L.R. No 22217 and now known as L.R No. 11344/2403 and delineated on Deed Plan No 408623 in the records of the 3rd Defendant.

e) An order directing the 3rd Defendant to issue the Plaintiff (as the administrator of the Estate of the late Francis Mwangi Ndungu (Deceased)) with a certified copy of the deed plan No. 408623 and facilitate in any necessary way the issuance of a certificate of lease over the property to the Plaintiff.

f) A mandatory injunction compelling the 1st Defendant either by himself, its agents, servants, and/or employees, or any other person whatsoever to yield vacant possession of the suit property to the Plaintiff.

g) A permanent injunction restraining the 1st Defendant, by himself, his agents, servants, and/or employees, or any other person whatsoever, from selling, transferring, trespassing, entering, or interfering in any way whatsoever with the Plaintiff's possession of the suit property.

h) General and exemplary damages for fraud.

i) Costs of the suit.

3. The 2nd Defendant in the counterclaim filed a statement of defence dated 18th July 2023, denying the Plaintiff's suit in the counterclaim and urging the court to dismiss it with costs.
4. The Defendant/Plaintiff in the counterclaim filed a reply to the 2nd Defendant's defence dated 27th March 2024 and urged the court to allow the counterclaim as prayed.
5. The Plaintiff filed a reply to the amended defence and defence to the counterclaim dated 8th June 2022, urging the court to dismiss the counterclaim with costs.

THE PLAINTIFF'S CASE

6. The Plaintiff Joseph Wamalwa Murutu testified as PW1 and called one witness in support of his case. He adopted his witness statement dated 12th April 2022 as his evidence in chief. He also produced the documents in his list dated 4th March 2020 as PEX 1 - 6 and the documents in the supplementary list as PEX 6 -8.
7. PW1 testified that he is the registered owner of the suit property, where he operates Kings Celebration Worship Centre. He further testified that the Defendant trespassed on the suit property and began farming. Despite several warnings from the Area Chief and the OCS Kinyago Police Station, the Defendant persisted in his unlawful acts and now claims ownership of the suit property through Succession Cause H.C No. 2374 of 2003.
8. He explained that despite being required by the Chief Njiru Area and the OCS Kinyago Police Station to produce ownership documents, the Defendant failed to do so and presented them only after he filed the suit, raising questions about their validity. In conclusion, he urged the court to grant the orders sought in the plaint and dismiss the counterclaim with costs.
9. In cross-examination, he stated that he applied for the suit property in 1992, and that he was 14 years old at that time. He later reversed his testimony, stating that he had applied to be allocated the land in 2014 and that his application letter had been lost.

10. He confirmed that in his further affidavit dated 5/3/2021, he stated that he applied to be allocated the land on 13/03/2017 and added that his letter of allotment was backdated to 1992 for audit purposes. He denied having executed an agreement with the Defendant before the Chief, Kariobangi South.
11. He denied that the signature appearing on the agreement dated 12th January 2015 between Kings Celebration Worship Centre and the Defendant was his. He clarified that although the allotment letter indicates he paid Kshs. 253,740/, he had paid only Kshs. 5000/-. He confirmed that the map of the suit property shows that L.R. No. 27217 had been cancelled. He denied the allegations of grabbing the Defendant's land.
12. On re-examination, he reiterated his evidence as stated above
13. PW2 Patrick Murigi Thuo adopted his undated witness statement as his evidence in chief. He informed the Court that he had known the Plaintiff for a long time because he had been in occupation of the suit property.
14. He testified that the Defendant filed Succession Cause No. 2374 of 2003 to gain access to the suit property, despite being aware that the Plaintiff had already established his ownership.
15. He further testified that the Defendant had, at one point, sold the land to Stephen Kanyiri for Kshs. 9 million, who withdrew from the transaction after discovering that the

- documentation was forged. He stated that the property was subsequently sold to Mr. Muiruri for 12 million, who, upon realising that the documents were forged, withdrew from the transaction.
16. He further stated that the Defendant's alleged payment of Kshs. 50,000 for rates was fraudulent because it was not remitted to the proper office but was instead shared among the Interested Parties. He maintained that when the parties appeared before the chief, the Defendant had no documents to confirm ownership of the suit property, whereas the Plaintiff had the proper ownership documents and was in possession of the suit property.
 17. On cross-examination, he testified that he did not know when the Plaintiff applied to be allocated the suit property.
 18. He denied attending any meeting or endorsing the plot as belonging to the Defendant. However, he confirmed that the agreement dated 12th May 2015 bearing his name and signature stipulated that the Plaintiff was to be paid Kshs 1,200,000/-.
 19. The Defendant, Robert Maina Mwangi, testified as DW1 and called three witnesses in support of his case. He adopted his witness statement dated 19th April 2022 as his evidence in chief. He produced the documents in his list dated 19th April 2022 in support of his case.
 20. DW1 informed the court that his late father, Francis Mwangi Ndungu, was the bona fide and registered owner

- of the suit property. That upon his death, he was issued letters of administration, which were confirmed on 30th November 2011. He further testified that the suit property was initially allocated to Beatrice Nduta Kiarie by a letter of allotment dated 24th September 1992 and later sold to Francis Mwangi Ndungu by a sale agreement dated 16th August 1995. He explained that after his late father paid the purchase price, Beatrice Nduta Kiarie transferred the suit property to him, and he was subsequently issued a letter of allotment dated 18th February 1997.
21. He maintained that his late father took possession of the suit property, applied for permission to fence the plot, and remained there until his death on 20th March, 2003.
 22. He went on to state that in 2006, he leased the property to the Plaintiff to safeguard it from land grabbing, which was rampant in the area. He further stated that he agreed with the Plaintiff that he would erect temporary structures and pay a monthly rent of Kshs 3000/=, which he defaulted on, but he did not pursue the matter because he was taking care of the property.
 23. He informed the Court that on 12th January, 2015, he entered into an agreement with the Plaintiff's church, whereby it was agreed that he would pay the Plaintiff Kshs 1,200,000/= as compensation for safeguarding the suit property and constructing a perimeter wall around it, while the Plaintiff would remove all structures from the property.

24. He explained that in 2014, he began the process of obtaining the title by paying the outstanding ground rent of Kshs 5000/= and the stand premium. Subsequently, the County Land Surveyor wrote to the Director of Surveys and forwarded a deed plan for the suit property, which had been allocated Land Reference No. 27217. However, the process stalled for reasons unknown to him.
25. That while he was following up on the sealing and signing of the deed plan, the Plaintiff colluded with officers from the Director of Survey and Nairobi City County to defraud him of his land. That on 22nd November 2016, the Director of Survey unilaterally cancelled Land Reference No. 27217 without his knowledge or consent and assigned the property Land Reference No. 1,13344/2403, which was used to process Deed Plan No. 408623 and later the Plaintiff's Certificate of Lease.
26. He further testified that on 20th February, 2020, an agreement between him and the Plaintiff was executed before the Chief of Kariobangi South Location, in which the Plaintiff acknowledged his ownership of the suit property and requested payment of Kshs. 3,500,000 as compensation for taking care of the plot, a request he did not agree to. He further stated that he reported the fraudulent activities to the Directorate of Criminal Investigations (DCI) and that the matter is pending investigation.

27. He maintained that the letter of allotment issued to the Plaintiff is fraudulent because the Plaintiff was born in 1978 and was only 14 years old when the suit property was allocated to him. He further asserted that the Plaintiff did not present receipts for payments to the Nairobi City Council in 1992, which were required to be made within 30 days.
28. He explained that in his further affidavit sworn on 5th March 2021, the Plaintiff admitted that he applied for ownership of the land on 13th March 2017 and that his letter of allotment was backdated to 1992, which is prima facie evidence of collusion between the Plaintiff and Nairobi City Council officials. He maintained that the Nairobi City Commission, which is alleged to have issued the letter of allotment in 2017, did not exist at that time, having been disbanded by the 2010 Constitution. He urged the court to revert the property to him and dismiss the Plaintiff's suit with costs.
29. On cross-examination, he testified that the property belonged to his late father. He also clarified that he did not pay the Plaintiff Kshs 1,200,000/=.
30. He testified that the certificate of confirmation of grant does not include the suit property because it had not been assigned a land reference number. He confirmed that he had paid a total of Kshs 55,000/= for the standard premium and ground rent, and reiterated that the property belongs to him.

31. On re-examination, he testified that the suit property was transferred to him in his capacity as the administrator.
32. DW2 Florence Gatumbi Mwololo adopted her witness statement dated 25th October 2023, as her evidence in chief. She testified that the deceased was her father-in-law and the bona fide owner of the suit property.
33. She further testified that in 2006, the Defendant leased the property to the Plaintiff to protect it from land grabbers. It was orally agreed that the Plaintiff would construct temporary structures and pay a monthly rent of Kshs 3000/-, but the Plaintiff defaulted on the payments. However, the Defendant was not keen on recovering the rent, as his main focus was safeguarding his property from land grabbers.
34. She further testified that on 12th January 2015, the Plaintiff entered into an agreement with the Defendant, which stipulated that the Plaintiff was to receive Kshs 1,200,000/= as compensation for protecting and developing a perimeter wall around the suit property.
35. She further testified that in 2014, the Defendant began the process of acquiring the title to the property, but was unsuccessful because the Plaintiff had fraudulently obtained it. She urged the court to cancel the Plaintiff's title and grant it to the Defendant.
36. On cross-examination, she testified that she had no proof of her marriage to the late Jackson Ndungu Mwangi. She further testified that her later husband and late father-in-

law showed her the agreement regarding the suit property. She stated that she met the Plaintiff at Kinyango Police Station, where he agreed to relinquish the suit property.

37. DW3 Dickson Ndungu adopted his witness statement dated 25th March 2024 as his evidence in chief. He informed the court that he was a son in law of the late Francis Mwangi.
38. In cross-examination, he testified that he had no evidence to show that the Plaintiff had consented to relinquish the suit property.
39. Jane Muthoni Waigwa, the Chief of Kariobangi South, testified that the agreement dated 20th February 2020 was executed in her office and in her presence.
40. On cross-examination, she testified that on 28th February 2020, the Plaintiff submitted ownership documents, but the Defendant did not.
41. On re-examination, she testified that the follow-up document was not signed by both parties.

THE 2ND DEFENDANT IN THE COUNTERCLAIM CASE

42. The 2nd Defendant in the counterclaim called one witness in support of its defence. DW2 Samson Kungu Ndungu, an Administrative Officer in the Urban Development and Planning Office, adopted his witness statement dated 4th September 2024 as his evidence in chief. He informed the court that Plot No H5 Dandora Light Industrial Block Block

- G(the suit property herein) was allocated to the Plaintiff by the 2nd Defendant.
43. He further testified that the letter dated 4th September 2017, confirming that Plot No. H5 belongs to the Plaintiff in the counterclaim, was revoked by the letter dated 2nd February, 2023.
44. On cross-examination, he reiterated his evidence in chief. He confirmed that Joseph Murutu was 14 years old in 1992. He explained that he backdated the allotment letter to align the suit property with other plots in the scheme and for auditing purposes. He further stated that the Plaintiff received a letter of allotment, signed in 2016 by the Town Clerk, Zipporah Wandera. He stated that Zipporah Wandera left the Council in 1998 and was deceased by the time the letter of allotment was issued to the Plaintiff. He maintained that the plots were allocated in 1992. He further stated that the Nairobi City Commission, which issued the allotment, did not exist in 2016. He further stated that the allotment letter shows that it was signed by the town clerk, Zippora Wandera, but that the office of the town clerk did not exist at the time.
45. After the hearing concluded, the parties agreed to file and exchange written submissions.

THE PLAINTIFF/ 1ST DEFENDANT IN THE COUNTERCLAIM SUBMISSIONS

46. The Plaintiff filed his submissions dated 8th September 2025.
47. On behalf of the Plaintiff, Counsel outlined the following issues for the Court's determination:
- a. Whether due process was followed by the Plaintiff in the acquisition of the suit property*
 - b. Whether the Defendant in the main suit has proved his allegations of the suit property being part of the Estate under his Administratorship*
 - c. Whether the Plaintiff in the main suit is entitled to the prayers sought.*
48. Regarding the first issue, Counsel submitted that the letter of allotment, the numerous documents produced, and DW2's evidence confirmed that the Plaintiff in the main suit is the owner of the suit property. It was further submitted that DW2 confirmed that backdating the letter of allotment was procedural and was intended to ensure that the same properties fall under the same scheme for identification and ease of auditing.
49. Regarding the second issue, Counsel submitted that the suit property was not included in the confirmed grant and therefore was not part of the Defendant's father's estate. It was further submitted that the Defendant cannot be both the administrator and the sole proprietor of the suit property at the same time. Counsel further submitted that the payment of KShs 228,000 is questionable because the receipt shows different timings. It was further submitted

- that the payment receipts purportedly prepared by Beatrice Kiarie Nduta are fraudulent, as the serial numbers do not follow a continuous sequence.
50. Counsel maintained that the Defendant contradicted himself by stating that his father had sought permission to fence the suit property, yet he also claimed that they had executed an agreement to compensate the Plaintiff for constructing a perimeter wall.
 51. Regarding the final issue, Counsel submitted that, the Plaintiff is entitled to the orders sought based on the evidence tendered.
 52. In conclusion, Counsel urged the court to dismiss the counterclaim with costs.

THE DEFENDANT/PLAINTIFF IN THE COUNTERCLAIM SUBMISSIONS

53. The Defendant filed his submissions dated 19th September 2025
54. On behalf of the Defendant, Counsel outlined the following issues for the Court's determination:
 - a) *Were Joseph Wamalwa Murutu's allotment letter dated 18th February 1992 and certificate of lease dated 13th March 2017 issued fraudulently and illegally?*
 - b) *Is the Defendant/Plaintiff in the counterclaim the bona fide owner of the suit property?*
 - c) *Is the Defendant/Plaintiff in the counterclaim entitled to the prayers sought in the counterclaim?*

55. Regarding the first issue, Counsel submitted that the allotment letter and the certificate of lease issued to the Plaintiff are null and void. Counsel further submitted that the letter of allotment was issued on 18th February 1992, when the Plaintiff was 14 years old and lacked the capacity to enter into a contract or consent to any transaction. It was submitted that in his further affidavit sworn on 5th March 2021, the Plaintiff stated that he applied for the land in 2017, but the allotment was backdated to 1992. Counsel submitted that DW2 also admitted the fraudulent backdating. Counsel further submitted that Hon. Justice Okongo, in his ruling delivered on 21st October 2021, found that the letter of allotment was prima facie fraudulent.
56. Counsel submitted that the Plaintiff admitted he had paid only Kshs 5000/-, not Kshs 253,740, as stated in the letter of allotment. It was further submitted that the Director of Survey failed to appear in court to explain the fraudulent cancellation of the map.
57. Regarding the second issue, Counsel submitted that the Defendant/Plaintiff in the counterclaim demonstrated that Francis Mwangi Ndungu had acquired the suit property and therefore it was not available for allocation to the Plaintiff in 2017. To support this point, reliance was placed on the case of **Rukaya Ali Mohamed v David Gikonyo Nambacha & another, Kisumu HCCC No. 9 of 2004, which was quoted with approval in the case of**

- Torotich Misoi Mereng v Mohammed Ali & another (2017) KEELC 1222 (KLR).** It was further submitted that no evidence was presented to show that the allotment letter issued to Francis Mwangi Ndungu had been revoked.
58. Counsel submitted that the 2nd Defendant in the counterclaim received payments from the Plaintiff in the counterclaim for the suit property and even permitted him to fence the property.
59. Counsel further submitted that the 2nd Defendant in the counterclaim was involved in the fraud committed by the 1st, 2nd, and 3rd Defendants in the counterclaim.
60. Counsel argued that the agreements dated 12th January 2015 and 20th February 2020, executed by the Plaintiff in the main suit, the Plaintiff in the counterclaim, and other witnesses, clearly establish that the suit property is owned by Francis Mwangi Ndungu.
61. Counsel further argued that the Plaintiff in the main suit has no valid title and that his trespass claim is unfounded. In conclusion, Counsel urged the court to dismiss the Plaintiff's suit and allow the counterclaim as prayed.

ANALYSIS AND DETERMINATION

62. Having considered the pleadings, the evidence on record, and the parties' submissions, the following issues arise for determination:
- a) Whether the Plaintiff is entitled to the orders sought in the plaint; and*

b) Whether the Defendant is entitled to the orders sought in the counterclaim.

63. The dispute between the parties herein revolves around the ownership of the suit property. The Plaintiff's claim of ownership is based on the letter of allotment dated 18th February 1992 and the certificate of lease dated 13th March 2017. The Defendant maintained that the letter of allotment issued to the Plaintiff was fraudulent because the Plaintiff was 14 years old at the time of the allotment.
64. At this juncture, this court is called upon to determine whether the letter of allotment and the certificate of lease issued to the Plaintiff are valid. It is not in dispute that the Plaintiff was born in 1978. It is also not in dispute that the Plaintiff was 14 years old in 1992. DW2 also confirmed that the Plaintiff was 14 years old at the time of the allotment.
65. A letter of allotment creates contractual obligations that require acceptance and compliance with the stated conditions. A minor lacks the legal capacity to enter into binding contractual obligations in his own name. No evidence was presented to show that the allotment to the Plaintiff was made through a guardian or trustee.
66. The letter of allotment dated 18th February 1992 issued to the Plaintiff by the Nairobi City Commission was signed by the Town Clerk, Zipporah Wandera. In his testimony in court he testified that he was allocated the property in 2014. The Plaintiff in his further affidavit confirmed that

he applied for ownership of the land on 13th March 2017. He stated that the letter of allotment was backdated to 1992 so as not to create a gap in the audit and accounts offices. DW2 confirmed that Zipporah Wandera was deceased at the time the letter of allotment was issued to the Plaintiff and that the Nairobi City Commission no longer existed, having been disbanded. The Defendant informed the court that the office ceased to exist with the promulgation of the Constitution. In **Republic v Nairobi City County ex parte Outdoor Advertising Association of Kenya (2014) eKLR**, the court held that once a statutory body is dissolved, any action purportedly taken in its name thereafter is a nullity in law. The letter of allotment is invalid for lack of legal capacity and for being issued by a non-existent entity.

67. The Defendant alleged that the Plaintiff acquired the suit property through fraud. He pleaded particulars of fraud against the 1st, 2nd, and 3rd Defendants in the counterclaim.
68. It is trite law that allegations of fraud must be specifically pleaded and proved.
69. In **Vijay Morjaria vs Nansing Madhusingh Darbar & Others [2000] eKLR (Civil Appeal No 106 of 2000)**, Tunoi JA stated as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the***

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

70. Similarly, in **Kinyanjui Kamau vs George Kamau [2015] eKLR**, the Court of Appeal held that:

“...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...”

71. Although the standard of proof is not beyond a reasonable doubt, it is higher than proof on a balance of probabilities.
72. In Civil cases, the standard of proof is on a balance of probabilities. Section 107 (1) and (2) of the Evidence Act provides that:
- 107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.***
73. It is clear from the above provisions that the burden of proof is on the party alleging the existence of a fact which he wants the Court to believe.
74. In the counterclaim, the Defendant set out the particulars of fraud in paragraph 12. He averred that the Plaintiff/the 1st Defendant in the counterclaim fraudulently obtained the letter of allotment dated 18th February 1992 from the 2nd Defendant, which did not exist in 2017, and also conspired with the 3rd Defendant to obtain the cancellation of L.R. NO. 27212.
75. Regarding the 2nd Defendant in the counterclaim, he

contended that in 2017, the 2nd Defendant fraudulently backdated the letter of allotment issued by the City Commission on 18th February 1992 and thereafter issued a certificate of lease to the 1st Defendant in the counterclaim. DW2 admitted having backdated the allotment letter. He argued that this was done to align the suit property with other properties in the area and to generate revenue for the County.

76. A letter of allotment is an offer that must be issued by a legally existing and competent authority at the time stated. A document whose date does not reflect its true issuance is not merely irregular but fraudulent. It creates a false root of the title and renders all subsequent transactions founded on it illegal. The admission that the letter of allotment was backdated is fatal to the Plaintiff's claim. In light of the foregoing, I find that the letter of allotment dated 18th February 1992 is null and void.
77. The Defendant seeks a declaration that the suit property belongs to his late father. In this regard, he produced a letter of allotment dated 18th February 1997 issued to Francis Mwangi Ndungu, along with receipts showing payment of the rates and stand premium. He also produced an agreement dated 12th January 2015 between himself and Kings Celebration

Worship Centre, which stipulated that he would pay the church operated by the Plaintiff Kshs 1,200,000/= as compensation for safeguarding the Defendant's property and developing the perimeter wall (the suit property herein), and in return, the church was to remove the structures on the suit property. Although the Plaintiff denied that the signature appearing on the agreement was his, he did not tender any expert evidence to disprove its authenticity. His witness confirmed that his name and signature appeared on the agreement. In the absence of credible evidence impeaching the agreement, this court is satisfied that the Plaintiff executed the agreement.

78. The Defendant testified that the suit property was allocated L.R. No. 27217. He produced letters dated 4th November 2015 and 3rd June 2016, forwarding the deed plan for L.R. NO. 27217 for Dandora Light Industries, Block G, to the Director of Survey for checking and sealing. He also produced a deed plan for L.R. No. 27217. He maintained that the 3rd Defendant fraudulently cancelled L.R. No. 27217, processed Deed Plan No. 408623, and allocated the land a new reference number, namely 11344/2403. No evidence was presented to explain how the land reference number and the deed plan were altered.
79. The Director of Surveys' failure to attend court and

explain the circumstances under which the land reference number and deed plan number were altered or to rebut the allegations of fraud leaves a critical evidentiary gap in the chain of title.

80. Where documentary evidence shows that the County surveyor duly forwarded the deed plan for a specific land reference number, and subsequent records reflect a different reference or deed plan number without explanation, the burden shifts to the custodian of the survey records to clarify the discrepancy. In the absence of such testimony, the unexplained alteration raises a presumption of irregularity and undermines the integrity of the survey process.
81. In light of the foregoing, this court finds that the Defendant/Plaintiff in the counterclaim has proved fraud and illegality on the part of the 1st, 2nd, and 3rd Defendants. Based on the foregoing, this Court is satisfied that the Certificate of title held by the Plaintiff/1st Defendant in the counterclaim was procured fraudulently.
82. Section 26(1) of the Land Registration protects title except where it is obtained by fraud, misrepresentation, or illegality, or through a corrupt

scheme.

83. In **Munyu Maina v Hiram Gathiha Maina (2013) eKLR**, the court held that when a registered proprietor's root of title is challenged, it is not enough to merely produce the title deed. The proprietor must demonstrate the legality of how he acquired the title.
84. In the present case, the Plaintiff in the main suit failed to prove the root of his title. Consequently, the certificate of lease is impeachable, as it has been shown to have been fraudulently obtained.
85. Having found that the Certificate of Lease held by the Plaintiff in the main suit was procured by fraud, the court must then determine whether the said title can be cancelled.

Section 80(1) of the **Land Registration Act** comes into play herein. It provides:

“Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

86. The protection afforded to registered proprietors under Section 26(1) of the Land Registration Act does not extend to titles obtained through fraud or illegality. Having found that

the Plaintiff fraudulently acquired his title, I find that he is not entitled to the orders sought in the plaint. Fraud vitiates everything, and any title founded on fraud collapses. Consequently, the certificate of lease founded on a backdated letter of allotment is impeachable and liable to cancellation. I also find that the Defendant has proved that the suit property belongs to his late father.

87. The Defendant requested both general and exemplary damages for fraud. Concerning general damages, the Defendant failed to present any evidence of financial loss, loss of use, or any measurable damage directly resulting from the fraud and is therefore not entitled to the same. For exemplary damages, these are granted when the defendant's behaviour is oppressive, arbitrary, or intended to secure profit beyond any rightful compensation. Although fraud was proven, the Defendant did not present evidence to show that the Plaintiff derived a profit in a manner that would justify punitive measures beyond the cancellation of the title.
88. The Defendant seeks both a mandatory and permanent injunction compelling the Plaintiff to hand over vacant possession and restraining him, his agents, or anyone claiming under him from selling, transferring, trespassing, entering, or interfering with the property. Having found that the Plaintiff's title was tainted by fraud and has been cancelled, and that the late Francis Mwangi Ndungu is the lawful owner, I find that the Plaintiff's continued interference

is unlawful. Consequently, the Defendant has met the threshold for the grant of the injunctions.

89. The reliefs regarding the issuance of a certificate of lease to the Defendant as a legal representative of the estate of Francis Mwangi Ndungu and the issuance of a deed plan are administrative in nature, and I decline to grant them. The Defendant may pursue these separately in accordance with the law.
90. In light of the foregoing, this court makes the following orders:

a) The Plaintiff's suit is hereby dismissed.

b) A declaration is hereby issued that the late Francis Mwangi Ndungu(deceased) is the legal and legitimate owner of the parcel of land known as Dandora Light Industries - Block G Plot No. H5 in the 2nd Defendant's records and further formerly known as L.R No. 27217 and now known as I.R No. 11344/2403 and delineated in deed plan No. 408623 in the records of the 3rd Defendant.

c) The Certificate of Lease dated 13th March 2017 issued to the 1st Defendant and registered as I.R No. 188360/1 in the records of the 4th Defendant as null and void for all purposes of the law and is hereby cancelled.

d) A mandatory injunction is hereby issued compelling the 1st Defendant, either by

himself, its agents, servants, and/or employees, or any other person whatsoever, to yield vacant possession of the suit property to the Plaintiff.

e) A permanent injunction restraining the 1st Defendant, by himself, his agents, servants, and/or employees, or any other person whatsoever, from selling, transferring, trespassing, entering, or interfering in any way whatsoever with the Plaintiff's possession of the suit property.

f) The Defendant/Plaintiff in the counterclaim is awarded costs of the suit and the counterclaim.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF FEBRUARY, 2026.

.....
HON. T. MURIGI
JUDGE

IN THE PRESENCE OF:

Khaduli for the Plaintiff