

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC LC NO 01 OF 24**

SAMUEL WAINAINA MBURU ..... PLAINTIFF

VERSUS

SIMON CHEGE ..... 1<sup>ST</sup> DEFENDANT

DAVID MWANGI WAMUGUNDA ..... 2<sup>ND</sup> DEFENDANT

JAMES NDUGO ..... 3<sup>RD</sup> DEFENDANT

**JUDGMENT**

1. By a Complaint dated 9<sup>th</sup> January 2024, the Plaintiff sued the Defendants seeking the following orders:

a) *A declaration that the plaintiff is entitled to three point zero one (3.01) of the suit lands (three titles) herein, while the 2<sup>nd</sup> defendant is not entitled to anything.*

b) *An order by this Honourable Court directing cancellation of the 2<sup>nd</sup> defendant's title and rectifying the titles for the plaintiff and the 1<sup>st</sup> defendant through the Land Registrar Nakuru for fresh title processing and issuance in recovering of the plaintiff's lost/grabbed or defrauded land by the defendants.*

c) *A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants by themselves, their servants and/or agents from entering, remaining or interfering with the plaintiff's*

*peaceful and quiet enjoyment, possession, occupation and development of his rightful share of land in any manner whatsoever.*

*d) Mesne profits and compensation for loss of 120 grownup trees cut down and sold or used by the defendants.*

*e) Any other relief this Honourable Court deems fit, just and convenient to grant to prevent the defeat of the ends of justice.*

#### **PLAINTIFF'S CASE**

2. PW1, Samuel Wainaina Mburu, adopted his witness statement dated 9<sup>th</sup> January 2024, and stated that he was working with Simon Chege, the 1<sup>st</sup> Defendant in South Sudan from 2001 to 2015. He stated that together with the 1<sup>st</sup> and 2<sup>nd</sup> Defendant they combined efforts to purchase land parcel known as SUBUKIA/SUBUKIA BLOCK 4/7 from Monica Wanjiru Kibogo at a consideration of Kshs. 1,920,000/.
3. It was PW1's evidence that he paid his share of the contribution of Kshs 1,420,000/=, while the 1<sup>st</sup> Defendant paid Kshs 500,000/= and the 2<sup>nd</sup> Defendant did not pay any amount. He stated that he was therefore entitled to 3.01 hectares while the 1<sup>st</sup> Defendant was entitled to 0.139 hectares, and that the 2<sup>nd</sup> Defendant was entitled to none as he did not pay any money.

4. PW1 produced the documents that he had filed dated on 9<sup>th</sup> January 2024 as Pex Nos. 1 to 7. PW1 further testified that the Defendants defrauded him of the suit land and destroyed trees and cultivated the land to his detriment and urged the court to allow the prayers as per the plaint.
5. Upon cross-examination, by Mr. Oyondi, PW1 stated that he is the one who took the photographs that he produced on the suit land to show the trees that had been cut down, which he had planted in 2010. He stated that they were cut down when he was in South Sudan and did not know who bought them.
6. PW1 told the court that he reported the matter to Subukia Police Station, but the defendants were never charged with a Criminal offence. Further, he did not produce a report by an Agricultural Officer to show how many trees were cut down. He further told the court that the 2<sup>nd</sup> defendant was a land sale broker, and that he had no letter appointing Mr. Wamugunda as a broker to act on his behalf.
7. PW1 was referred to the sale agreement dated 12<sup>th</sup> September 2009, and admitted that Monica Wanjiru was the seller and David Wamugunda was the purchaser, and his name did not appear in the agreement. He testified that on that date he went to Equity Bank Kenyatta Avenue, Nakuru Branch, where he paid Monica Wanjiru Kibogo Ksh.1,920,000/=, and when he went back to the Banking hall Monica and Wamugunda, together with his sons had disappeared.
8. It was his evidence that he was defrauded at the time of execution of the agreement, and that he did not know the Advocate who drew the

agreement, which he saw in 2022, when he reported the matter at Subukia Police Station.

9. PW1 admitted that he did not sue Monica Wanjiru Kibogo and that he gave Wamugunda Kshs.420,000/= to pay to Monica Kibogo, which money he had withdrawn from his Bank account.
10. It was PW1's evidence that he paid Kshs.1million via bank transfer and Kshs.920,000/= in cash. That he paid the whole amount and that Simon had given him a banker's cheque from Standard Chartered Bank. PW1 further stated that he had a bank statement which indicates the transaction and that Kshs.500,000/= was not for the land. He also confirmed that he did not have an acknowledgment for Kshs.420,000/= from Mr. Wamugunda.
11. PW1 testified that he came back in 2022, from South Sudan and found out that the land had been divided into 3 and got the titles of the subdivisions from his wife.
12. On re-examination by Mr. Mwangi, PW1 stated that he is the one who paid the whole purchase price and was not aware of the agreement dated 12<sup>th</sup> September 2009, as he was not a party to it. Further, that he did not sign any document in respect of the parcel of land known as Subukia Block 4/17.

### **DEFENDANTS' CASE**

13. DW1 David Mwangi Wamugunda, the 2<sup>nd</sup> Defendant, adopted his statement dated 4<sup>th</sup> April 2024, as his evidence in chief, and stated that

he is a pastor and businessman. He also produced the documents in his list of documents as Dex No. 1 to 12 and stated that he met Simon Chege in 1998, the 1<sup>st</sup> Defendant in Olkalou. He further stated that he met Mr. Mburu (the plaintiff) in August 2009 in Olkalou, who was introduced to him by Simon Chege. It was his testimony that he had gotten a parcel of land, namely, Subukia/Block 4/17, which he wanted to purchase, but the owner wanted to sell the whole parcel of land but he did not have the whole purchase price.

14. It was his evidence that Mr. Chege introduced him to the Plaintiff who would purchase part of the land whereby each one of them was to contribute Kshs.640,000/= totaling Kshs.1,920,000/=. He stated that they assembled in Njuguna Ndungu Advocates' office together with the seller, who requested them to give her Kshs.420,000/= to enable her refund Kshs.180,000 to a person who had earlier bought part of the land.
15. DW1 further testified that he gave the seller Kshs.420,000/= and the Plaintiff who had money in the Bank transferred Kshs.1million vide Bankers cheque including a bankers cheque for Kshs.500,000/= and thereafter an agreement was drafted between DW1 and the seller because Simon and Chege were working in South Sudan. DW1 also stated that the seller was to transfer the whole parcel of land into his name, and a title deed of the whole parcel of land was registered in DW1's name.
16. According to DW1, he was to subdivide the land into 3 equal parts, whereby he was to be on the extreme part of the land and Simon was to

occupy the middle portion and Samuel the other extreme end. Further, for the transfers to be effected, they were to produce the ID cards, PIN certificates, Passport- size photographs and they were to sign transfer forms before Advocate Njuguna to enable him process the transfer into their names. He stated that the two signed the transfer forms in the presence of an Advocate when they came back after 3 months.

17. DW1 testified that he called a Mr. Birundu who was working at the Lands Office and told him that a Mr. Samuel Mburu was coming to pick up the titles, of which he picked the 3 titles and brought DW1 his title deed to his house accompanied by his wife. He also went to Chege's house and gave him his title.
18. It was DW1's evidence that the plaintiff built a house in 2013, dug a well and the wife was staying on the parcel of land. He stated that the three title deeds are genuine and were procured procedurally.
19. Upon cross-examination by Mr. Mwangi, DW1 stated that he had been a Pastor since 1992 and that he was summoned to Subukia Police Station where he was accused of defrauding the plaintiff. He stated that he talked to Mr. Burundi who was working at the Lands office, whom he had never met and the Plaintiff picked the titles on their behalf. He further stated that they bought the land together, but did not have an agreement that they were to pay Kshs.640,000/= each for the purchase of the land. He confirmed that he knew the Plaintiff's wife as Mama Mburu and that he had copies of the bankers' cheques.

20. Upon re-examination by Mr. Oyondi, DW1 stated that it was not in dispute that he was summoned to Subukia Police Station and that he recorded a statement. It was his testimony that he was to subdivide the parcel of land into 3 portions for the 3 of them.
21. DW2, Simon Chege Kariuki, also adopted his witness statement dated 16<sup>th</sup> April 2024, which he adopted as his evidence in chief and stated that he met Simon Mburu in Lokichogio in the year 2000. He stated that the Plaintiff was doing business while he was working with an NGO. Further, David Wamugunda is the one who got the suit land who wanted to purchase a small portion but the owner wanted to sell the whole parcel so he asked DW2 if he could look for someone whom they could buy the parcel together.
22. DW2 testified that he called Mburu (the plaintiff), a friend with whom they had been working in South Sudan. He stated that they met and agreed to share the land equally by paying Kshs.640,000/= each. He also testified that they went to the Advocate the 3 of them and that he had Kshs.640,000/= cash, Wamugunda also had cash, and Mr. Mburu had his money in the bank.
23. According to DW2, Wamugunda gave the seller Kshs.420,000/= and the Plaintiff their money in cash who bought the bankers cheque of Kshs.1million and another for Kshs.500,000/= which were mention at clause 3(a) in the sale agreement, cheque Nos.039980 and 039979.
24. He stated that it is not true that the plaintiff paid the whole purchase price., and stated that he did not know about the amount of Kshs.500,000

that the plaintiff claimed that he gave him for another purpose. It was DW2's evidence that after payment of the purchase price at the bank, they all went back to the Advocate's office, where they signed the transfer forms. Thereafter later the Plaintiff went to his house and handed over the title to him.

25. Upon cross-examination by Mr. Mwangi, DW2 stated that they were all present in the Advocate's office when the agreement was drafted, together with the seller, and that they had agreed that only Wamugunda's name would appear in the agreement. The seller was given a bankers cheque for 1.5 million.
26. DW2 stated that the plaintiff's land has trees, and that he did not cut trees on the plaintiff's plot. It is not true that they processed the titles without involving him.
27. Upon re-examination by Mr. Oyondi, DW2 stated that they did not defraud the Plaintiff and that they could never have cut the Plaintiff's trees because they could never enter his plot.

### **PLAINTIFF'S SUBMISSIONS**

28. Counsel for the Plaintiff filed submissions dated 27<sup>th</sup> November 2025, and identified the following issues for determination:
  - a) ***Whether the Plaintiff has established a beneficial interest in the suit land based on contribution.***
  - b) ***Whether the subdivision and issuance of titles to the Defendants was fraudulent, illegal or unprocedural under Section 26 (1) of the LRA.***

*c) Whether the Plaintiff is entitled to rectification of the register under Section 80 of the LRA.*

*d) Whether the 3<sup>rd</sup> Defendant committed trespass, and whether the Plaintiff is entitled to a permanent injunction and mesne profits.*

29. Counsel submitted that the plaintiff tendered evidence that supported his claim that the Defendants defrauded him of the suit land after paying the whole purchase price. Counsel submitted that from the evidence there was no proof that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants paid any amount.
30. Counsel relied on Section 26(1) of the Land Registration Act, on indefeasibility of title, which can be impeached on the grounds of fraud and misrepresentation, and relied on the case of **Munguti v Mutisya & 11 others; Riamet & 3 others (Interested Parties) (Environment & Land Case 481 of 2015) [2024] KEELC 3409 (KLR), Peter Nyaga Kairu v Esther Wanjiku Njau & 5 others [2019] eKLR.**
31. Counsel also urged the court to find that there was a constructive trust created in favour of the Plaintiff having contributed the bulk of the purchase price and the 1<sup>st</sup> Defendant a smaller contribution and that the 2<sup>nd</sup> Defendant did not contribute any money. Counsel relied on the case of **Rwigi v Karuthu & another (Environment & Land Case E011 of 2022) [2025] KEELC 747 (KLR) (20 February 2025) (Judgment).**
32. On the issue of trespass, destruction of trees, injunction and compensation, counsel submitted that the Plaintiff had proved that the 3<sup>rd</sup>

Defendant committed acts of trespass on the plaintiff's parcel of land. Counsel urged the court to grant the orders as prayed in the plaint.

### **DEFENDANTS'SUBMISSIONS**

33. Counsel for the Defendants filed submissions dated 18<sup>th</sup> December 2025 and identified the issue as to whether the Plaintiff is entitled to the reliefs sought in the Plaint.
34. Counsel relied on Section 107 of the Evidence Act and the case of **Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another [2004] eKLR**, and submitted that the Plaintiff has not proved that he contributed Kshs. 1,420,000/= as claimed in the Plaint. Counsel submitted that the Plaintiff claimed that he paid Kshs. 1,420,000/= out of the Kshs. 1,920,000/= of the purchase price while the 1<sup>st</sup> Defendant paid the balance of Kshs. 500,000/= which he contradicted himself upon cross-examination where he stated that he had contributed the entire amount of Kshs. 1,920, 000/=.
35. Mr. Oyondi also faulted the Plaintiff for stating that the 1<sup>st</sup> Defendant deposited a cheque of Kshs. 500,000/= which he claimed was not for the land transaction but for something else. It was counsel's submission that the 2<sup>nd</sup> Defendant explained in his testimony that his contribution and the 1<sup>st</sup> Defendants were a total of Kshs. 1,280,000/ which they had in cash, was handed over kshs. 420, 000/= to the vendor Monica and Kshs. 860,000/= to the Plaintiff, who was supposed to pay the Vendor Kshs 1,500,000/= being an amount of Kshs. 860,000/= and the Plaintiff's Kshs. 640,000/=.

36. According to counsel, Monica Kibogo's statement which was produced as Pex No 2, explained in detail how the Plaintiff, and the two defendants entered into a sale agreement and how they paid the money. Further, the 2<sup>nd</sup> defendant's statement at the DCI Subukia which was produced as Dex No 10, clarified the issue of the transaction and the payment.
37. Counsel also urged the court to consider the Plaintiff's demeanor during his testimony, as an untruthful witness as he claimed that he only came to know about the sale agreement which he produced as Pex No 1 in 2022 at Subukia Police Station. His contradictory claim that he had paid the entire purchase price but pleaded in the plaint that the 2<sup>nd</sup> Defendant had Kshs. 500,000/=. He also pleaded that he neither signed the transfer forms nor called an expert witness to prove that the signatures were not his.
38. Counsel relied on the case of **Mary Wanjiku Gachigi v Ruth Muthoni Kamau[2003] eKLR**, where the court held that the court should take note or be sensitive to the demeanor of a witness or witnesses in order to make a finding on the credibility of the witness or witnesses as the case may be. Counsel urged the court to find that the Plaintiff has failed to prove that he contributed the entire purchase price.
39. On the issue as to whether the Plaintiff is entitled to an order of cancellation and rectification of the titles, counsel submitted that fraud must be specifically pleaded and proved and relied on the case of **Central Kenya Ltd v Trust Bank Limited & 4 others [1996] KECA 197 (KLR)**. It was counsel's submission that statements

from the DCI Subukia show that the Plaintiff gave out all the relevant documents freely and signed the transfer forms.

40. Additionally, that the Plaintiff did not produce any forensic evidence or expert to prove that the signatures on the transfer forms were not his. Counsel cited the case of **In re Estate of George Mudeny Kadima alias James George Mudeny Kadima (Deceased) (Succession Appeal E002 of 2024) [2025] KEHC 15284 (KLR)**, where the court observed that, *“the Appellants did not tender before the court any expert report or forensic evidence to support the allegation that the 1<sup>st</sup> Appellant’s signature or ID Number was forged,”* and submitted that further that the Plaintiff did not enjoin the Land Registrar as a Defendant or an Interested Party.
41. On the issue whether the Plaintiff is entitled to mesne profits, and compensation of 120 trees allegedly cut by the defendants, counsel relied on Section 2 of the Civil Procedure Act on the definition of mesne profits, and submitted that the Plaintiff admitted that he did not know when the trees were cut, and could not tell who had cut them. Further, he did not file a report by an Agricultural Officer to confirm the allegations of the trees that were cut.
42. Mr. Oyondi submitted that mesne profits are special damages and relied on the case of **Karanja Mbugua & another vs. Marybin Holding Co. Ltd [2014] eKLR**, and urged the court to find that the Plaintiff has not

proved that he is entitled to mesne profits. Counsel therefore urged the court to dismiss the Plaintiff's case with costs to the Defendants.

### **ANALYSIS AND DETERMINATION**

43. The issues for determination are as follows:
- a) Whether the Plaintiff paid the entire purchase price to the suit parcel of land.*
  - b) Whether fraudulently transferred the suit land, and whether he has proved that he is entitled to an order of cancellation and rectification of the register.*
  - c) Whether the plaintiff has proved his claim for mesne profits, general damages for trespass.*
  - d) Whether the court should issue an order of a permanent injunction against the defendants from interfering with the suit land.*
44. This is a case where three men came together, agreed to pull their resources/money together, and purchase the suit parcel of land to divide in equal shares. It is on record that the Plaintiff and the 1<sup>st</sup> Defendant met in Ol Kalou and was later introduced to the 2<sup>nd</sup> Defendant.
45. The 2<sup>nd</sup> Defendant was looking for land to purchase, later identified the suit parcel, which the owner was selling as a block but he did not have enough money to buy the whole parcel, so he informed the 1<sup>st</sup> Defendant who invited the Plaintiff and they agreed to purchase and share equally.

46. The Plaintiff and the 1<sup>st</sup> Defendant were working in South Sudan by then and when they were back in Kenya they went to an Advocate's office who drew the agreement, between the vendor and the 2<sup>nd</sup> defendant and she was paid the full purchase price.
47. It is on record that the transaction went on without a hitch up to the issuance of the titles in the Plaintiff's and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' names. It is also on record that the Plaintiff is the one who picked the three titles and presented them to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. It is not clear what changed the Plaintiff's mind to state that he had paid the entire purchase price.
48. From the evidence on record on the payment of the purchase price, the Plaintiff gave contradictory evidence on how much he actually paid. He stated that the 1<sup>st</sup> Defendant deposited a cheque of Kshs. 500,000/= which he claimed was not for the land transaction but for something else, but from the 2<sup>nd</sup> Defendant's testimony, it is clear that his contribution and the 1<sup>st</sup> Defendant's were a total of Kshs. 1,280,000/= and handed over Kshs. 420, 000/= to the vendor Monica and Kshs.860,000/= to the Plaintiff, who was supposed to pay the Vendor Kshs 1,500,000/= being an amount of Kshs. 860,000/= and the Plaintiff's Kshs. 640,000/=. The Plaintiff did not clear the air on these allegations.
49. It is also astounding how a person can pay a substantial amount of money, which was allegedly over Kshs 1 Million for the purchase of land to people he had just met, draw an agreement in a different person's name and you are the one purportedly producing the money without safeguarding your interest. The plaintiff's position does not add up at all.

50. When the Plaintiff realized that the vendor and the Defendants had disappeared on the date of the execution after payment of the money, what steps did he take? Did he report the matter to the Police? This transaction took place in September 2009, and the Plaintiff reported the same in May 2022 at Subukia DCI whereby there was no evidence that any investigation was carried out to find the Defendants culpable to be charged in court with forgery.
51. The 2<sup>nd</sup> Defendant's testimony gives a plausible explanation as to how the transaction took place from the start to when the titles were issued to the Plaintiff and the Defendants in equal portions as per their contributions. I find that the Plaintiff and the defendants paid their equal shares of the contribution to purchase the suit land; hence they were issued with the titles as per their entitlement.
52. The Plaintiff also alleged that the Defendants fraudulently transferred the suit parcel of land, and claimed that he did not sign the transfer documents. The Plaintiff gave evidence that he was working in South Sudan at the time they entered into the transaction.
53. It is trite that fraud must be specifically pleaded and proved. It was incumbent upon the Plaintiff to prove how the Defendants fraudulently transferred the suit land. Firstly, the Plaintiff failed to prove that he paid the entire purchase price as he had alleged by giving contradictory evidence.

54. In a case where a party alleges fraud, it is not enough to list some activities against a defendant to show that fraud was committed. A party must also specifically prove that the person who is alleged to have done so, committed the fraudulent activities and that it led to the loss that the party is claiming. It has to be attributed to the defendant.
55. The Plaintiff claimed that he did not sign the transfer forms, the application for consent for subdivision but treated the matter casually by not tendering the relevant forensic evidence on the signatures, and any investigations into the matter. Reporting the matter to the DCI after the titles had been issued without any investigation or report of the outcome of the investigation was moot.
56. In the Court of Appeal case of **Vijay Morjaria Vs Nansingh, Madhusingh Darbar & another [2000] eKLR**, the court held that:  
*“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act 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.”*
57. The Plaintiff did not meet this threshold of proof that the Defendants fraudulently transferred the suit land. It follows that an order of cancellation or rectification cannot issue as the Defendants rightfully and

legally acted in the transaction where the three acquired titles for their respective portions as per their contributions.

58. Having found that the Defendants acted legally as per the agreement they had in the purchase of their respective portions that they contributed to, the Plaintiff is therefore not entitled to mesne profits which is a special damage that must be specifically pleaded and proved.
59. The Plaintiff claimed that the Defendants destroyed his trees, which he had planted in 2010, but he told the court that he did not know who had cut down the trees. This is also intriguing because all this time he had been given his portion of the land and planted trees, built a house, taken occupation but he feigns ignorance that he was not aware that the Defendants had taken their equal portions of the suit land.
60. Ultimately, I find that the Plaintiff has failed to prove his case on a balance of probabilities, and is therefore dismissed with costs to the defendants.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 25<sup>TH</sup> DAY OF FEBRUARY 2026.**

**M. A. ODENY**

**JUDGE**

