

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
EMBU
ELC CASE NO. 35 OF 2014

SAMUEL NJERU PAUL.....
.....PLAINTIFF

VERSUS

FAITH MUTHONI MUGO.....1ST
RESPONDENT

SYMON MUIRURI NJUGUNA.....2ND
RESPONDENT

JUDGMENT

1. Through the Further Amended Plaintiff dated 16/2/2023, the Plaintiff seeks an order that the registration of the 1st Defendant as the owner of the land known as Kagaari/Weru/1167 (the suit land) and the subsequent transfer of that land to the 2nd Defendant was unlawful, fraudulent, illegal and void. He seeks to have ownership of the suit land revert to his name and for the 2nd Defendant's name to be deleted from the title. Additionally, he seeks to have the Deputy Registrar execute the necessary documents with regard to the registration of the Plaintiff as the owner of the suit land and for the Land Registrar Embu to dispense with the production of the original title deed over the suit land.
2. The Plaintiff's claim is that he was the registered owner of the suit land situated in Runyenjes Sub-county, Embu County

measuring approximately 19 acres. That unknown to the Plaintiff, the 1st Defendant was registered as the owner of the suit land fraudulently in 2002 without his consent and authority. When the Plaintiff learned of this in August 2006, he placed a caution against the land to restrict dealings with it. He pleaded particulars of fraud against the 1st Defendant as using unauthentic documents, forging documents including a power of attorney, failing to obtain the consent of the Land Control Board (LCB) to transfer the suit land, failing to inform the Plaintiff that his title had been discharged by the Industrial and Commercial Development Corporation (ICDC) and causing the suit land to be registered in her name. The other particulars of fraud pleaded are failing to disclose to the Plaintiff that she intended to transfer the suit property to herself and using transfer forms which had not been executed by the Plaintiff as the owner of the land to transfer the suit land to herself.

3. The 1st Defendant denied the Plaintiff's claim in the Amended Defence dated 25/2/2025 and averred that it was not true that the Plaintiff's land was fraudulently taken. She pleaded that the Plaintiff was not telling the truth by alleging forgery yet he knew that he had given her the general power of attorney to deal with the suit land in any manner the 1st Defendant wished. Further, that the Plaintiff knew that the suit land was taken by the 1st Defendant who paid the loan due and payable by the Plaintiff when the mortgagee threatened to auction the suit land. She added that the Plaintiff knew and had legally authorized the sale of the suit land.

4. The first witness who the Plaintiff called to give evidence was the land registrar, Ms. Linet Njeri Kimuhu. She produced a copy of the land register for the suit land, power of attorney dated 14/10/1996 and another one dated 12/8/2000. She also produced a copy of the transfer of land registered on 15/4/2002, together with LCB consent and the application for LCB consent. Ms. Kimuhu told the court that the current proprietor of the suit land was the 2nd Defendant. The 1st Defendant transferred the land to the 2nd Defendant. She stated that the transfer was supported by a duly executed transfer form, LCB consent and the application for consent. The transfer from the Plaintiff to the 1st Defendant indicated that it was a gift.
5. The Plaintiff gave evidence. He told the court that he recalled that in late 1996, his son-in-law Robinson Njeru Gateria asked him whether he could consider giving him the title deed over the suit land to use to secure a loan with ICDC. He had previously given him a title deed to secure another loan and after he repaid the loan, his title was returned to him. He signed the necessary documents and Robinson Njeru took the documents to the bank.
6. Sometime in 2002, Robinson went to his home in the company of the 1st Defendant and her father. The 1st Defendant's father told him that Robinson Njeru and the 1st Defendant were the ones who took the loan jointly. This caught him by surprise because initially he thought that it was just Robinson Njeru who had taken the loan from ICDC. They informed him that Robinson was unable to pay the loan. He told the 1st Defendant that if

they had applied for the loan jointly then they should agree to have the 1st Defendant clear the loan and then Robison would refund the amount the 1st Defendant used to clear the balance. They left without saying a word.

7. Two years later, he called Robinson to ask for his title, who informed him that the 1st Defendant had relocated to America and it was not possible to collect the title deed together since they had applied for the loan jointly. Robison later called him and informed him that the land had been auctioned by ICDC bank because they were unable to clear the pending loan. He asked to be supplied with the notification of sale sent by the bank because he was the registered owner of the land.
8. He sent his son Paul Mureithi to the ICDC offices in Nairobi to follow up on the matter. When his son asked for the records and information about the auction of the land, he was told that the loan had been cleared by the 1st Defendant and that she had collected the original title. He followed up the matter with the land registry and realized that the suit land had been transferred from his name to the 1st Defendant's name as a gift. He was emphatic that he did not transfer the suit land to the 1st Defendant and did not know under what fraudulent circumstances she got registered as proprietor. He maintained that the 1st Defendant fraudulently transferred the suit land to the 2nd Defendant.
9. On cross-examination, he stated that Robison Njeru, his son in-law took a loan from ICDC. He gave Robinson his title over the suit to offer as security. He was optimistic that Robinson would pay the debt. He did not know that his land could be sold if he

defaulted. He stated that Robinson paid the loan. He knew the 1st Defendant's father and not his children. The 1st Defendant did not go to tell him that they had taken a loan. The 1st Defendant further told him that Robinson was unable to pay the loan. He asked him to pay the loan for Robinson which he did not pay. He did not have any agreement with Robinson to take a loan to buy a car or lorry. He wrote a letter dated 1/8/1996 to the 1st Defendant he mentioned the ICDC and sought to know how far it had been processed. He did not understand how the 1st Defendant got the suit land. He learned that the land had been transferred between 2013 and 2014. He did not know when the caution against the suit land was removed.

10. He denied giving a power of attorney to the 1st Defendant. He did not go with his wife to Nairobi to a lawyer's office to draft the power of attorney in favour of the 1st Defendant. When he was shown the power of attorney he stated that he was not able to see well. He reported to the police that his land had been transferred but the police did not investigate the matter. He knew in 2004 that the land had been transferred. He filed suit in 2014. He added the 2nd Defendant to the suit in 2021 after he learned that the caution had been removed without his knowledge. He was not informed that the 1st Defendant had paid the loan which his son in-law defaulted in paying.

11. Paul Mureithi Samuel, the Plaintiff's son gave evidence. His parents informed him in 2004 that they had given his brother in law the title deed over the suit land to secure a loan with ICDC. When they asked his brother in law to return the title after a couple of years, he informed them that the land was

sold by the bank because he was unable to clear the loan. His parents sent him to ICDC Nairobi to confirm if the land was auctioned. At the ICDC office, he was shown the records and informed that the loan had been cleared by the 1st Defendant who collected the original title deed. When they went to the land's office, they realized that the land had been transferred from the Plaintiff to the 1st Defendant. They asked for the documents used to effect the transfer but none were produced. They were informed that the transfer to the 1st Defendant was a gift and decided to register a caution against the land.

12. On cross-examination, he told the court that he was not aware that the 1st Defendant repaid the loan taken by Robinson after he failed to pay it. He knew that the land had gone to the 1st Defendant in 2004 and assisted his father to lodge the caution against the land in 2006. The caution was removed in 2008. He maintained that the transfer of the suit land to the 1st Defendant was illegal and they reported the matter to the Commissioner of Police. He was assisting his parents who were illiterate. His mother did not go to the land board and they did not know that the land was transferred until 2002.
13. The Plaintiff's wife, Peris Gitiri Samuel gave evidence along the same lines as that of the Plaintiff. On cross-examination, she denied that her husband was to start a business with Robinson. Her husband did not inform her that he was taking a loan from ICDC. She maintained that her son in law paid the loan. She clarified the meeting they had in 2002 took place in church and not at their home. They were told that Robinson

was unable to pay the loan but they did not understand who he had taken the loan with. They did not discuss the issue of the 1st Defendant taking over the loan and her transferring the land to her name. She denied knowledge of the power of attorney or that she had been to Nairobi. The police did not tell them the outcome of the investigation. They came to learn that the caution they placed in 2006 was lifted by a court order. She did not know that the 1st Defendant repaid the loan and not her son in law.

14. The Plaintiff produced copies of the powers of the attorney, letter dated 29/2/2014, caution registered on 30/8/2006, letter dated 25/8/2006 addressed to the Commissioner of Police and court order issued on 23/10/2014 restricting dealings with the suit land. He also produced copies of the land register and agreement dated 2/1/1997 on the ICDC loan between Robinson and the 1st Defendant.
15. The 1st Defendant gave evidence. She told the court that she was the registered owner of the suit land, which she sold to the 2nd Defendant. She obtained the title deed in 2000 and the Plaintiff filed this suit 14 years later. The Plaintiff was aware that the title deed was in her name. She did not obtain the title by fraud as the Plaintiff alleged. She maintained that she followed the due process in having the suit land registered in her name. That on 12/8/2000, the Plaintiff donated a power of attorney to her.
16. She told the court that on 31/10/1996, she and the Plaintiff charged Gaturi/Githimu/2209 together with the suit land to ICDC to secure a loan of Kshs. 600,000/=, which she claimed

they shared equally. She also claimed that the Plaintiff and Robinson shared the Plaintiff's portion. She stated that the Plaintiff and his son in law defaulted in repaying the loan and she repaid the loan together with interest totalling Kshs. 1,346,061. She gave a breakdown of the payments made between 27/6/1997 and 8/5/2002.

17. According to her, her portion of the loan and interest was Kshs. 451,200 and the Plaintiff's was 894,861. She claimed that she paid the Plaintiff's share. Robinson wrote to her over the unpaid loan on 25/10/1998 while the Plaintiff wrote a letter dated 1/8/1996. She claimed that the applicant instructed her to get a buyer to help clear the loan by which time she had fully repaid her portion. When she failed to get a buyer, they agreed that the land would be transferred to her and that she would clear the loan. She cleared the Plaintiff's portion because her own land would have been sold because the two parcels of land were charged to secure the loan.
18. She maintained that the police investigated the Plaintiff's complaint but found no wrongdoing on her part. The Plaintiff's son placed a caution against the suit land, which was removed through a court order. According to her, the Plaintiff should have sued the land registrar as a necessary party to these proceedings. She stated that there were other suits relating to the suit land, that is Kerugoya HCCC No. 877 of 2014 and Embu HCCC No. 167 of 2006 where the Plaintiff should have sought the reliefs he now seeks.
19. The 1st Defendant produced copies of the charge over the two parcels of land, agreement on the loan repayment, power of

attorney, receipts issued by ICDC on the loan repayment, bank statements for the loan account, demand letters issued by ICDC and other correspondence. She also tendered in evidence the 1st Plaintiff's letter dated 1/8/1996 written in Kiambu and translated to English and the plaints filed in Embu CMCCC No. 267 of 2008 and Kerugoya ELC No. 87 of 2014.

20. On cross examination, the 1st Defendant stated that the suit property was not transferred to her as a gift although the green card stated as much. She explained that it was to repay the loan which she and Robinson took from ICDC. She stated that the Plaintiff took a loan from ICDC. She later stated that she took the loan on behalf of the Plaintiff and Robinson Gateria. She got the power of attorney to secure the loan. ICDC disbursed funds to her through her bank account. She stated that the monies were spent by her Robinson and the Plaintiff.
21. She maintained that Robinson was unable to repay the loan and ICDC issued demand letters. Robinson was not known by ICDC. She stated that she forwarded the demand letters to Plaintiff. She told the court that the ICDC loan was to be paid by the three of them. She stated that the agreement to have the suit land transferred to her name was oral between her and the Plaintiff. She could not recall the date when they entered into that agreement. She urged that the Plaintiff and his wife were present when they agreed that the land would be transferred to her. She conceded that there was no record to show that such a meeting took place.

22. That they attended the LCB with the Plaintiff and his wife was also present. She did not have any documents to show that they were present. ICDC released the title to her when she cleared the loan. She transferred the suit land while these proceedings were pending. She stated that the Plaintiff knew that she had transferred the suit land to the 2nd Defendant. She did not communicate that to the Plaintiff, she only communicated to Robinson.
23. She sold the suit land to the 2nd Defendant for Kshs. 900,000/= but did not have the documents in court. She maintained that she did not transfer the suit land to conceal fraud. The consideration was shown as Kshs. 1,500,000/=. She claimed that she took possession of the land in 2000 or 2002. She did not chase away the Plaintiff's workers from the suit land. Her understanding of the second power of attorney dated 12/8/2000 was to enable her sell the suit land and recover her money. Meshack Okoth Obura Advocate drew the power of attorney, she resided at Nairobi at the time. She was emphatic that the Plaintiff signed the power of attorney and that his wife was there.
24. On re-examination, she stated that the Plaintiff was not well known to her then changed to say that she knew him. She maintained that the Plaintiff travelled to Nairobi with his wife for purposes of executing the power of the attorney. She claimed that she transferred the suit land to the 2nd Defendant before she was served the suit papers. She told the court that she visited the Plaintiff and his wife with Robinson in 2002 to

discuss the transfer of the suit land and that Peter Njeru Mugo also attended the meeting.

25. The 2nd Defendant gave evidence. He told the court that he was the registered proprietor of the suit land which he acquired for value after doing due diligence. He was issued a title deed in 2014. He maintained that the suit was an afterthought and was filed after he had obtained the title deed.
26. On cross-examination, he stated that he paid around Kshs. 1,620,000/= between 2009 and 2014 when he got his title. He did not produce the sale agreement. He stated that there was broker fees which pushed up the figure from the 1,500,000/=. They entered into the sale agreement at Mr. Momanyi Advocate's office. He claimed that he had developed the suit land but did not provide evidence of the development. When he processed his title in October 2014 he did not know that this suit had been filed in March 2014. He claimed that he took possession of the land in 2014.
27. The court directed parties to file submissions, which it has considered. The Plaintiff submitted that he entrusted the title deed over the suit land to his son in law, Robinson Njeru, for purposes of securing a loan with ICDC. That unknown to him, the 1st Defendant became a joint borrower with Robinson and when the loan fell into arrears, the 1st Defendant paid off the loan. The Plaintiff submitted that the 1st Defendant should have recovered the amount due from Robinson and not from the Plaintiff.

28. The Plaintiff maintained that he did not execute any transfer in favour of the 1st Defendant nor did he consent to such transfer. That in the absence of a transfer executed by the Plaintiff, the only logical influence is that the registration of the 1st Defendant as proprietor of the suit land was done through forgery, misrepresentation and fraud.
29. The Plaintiff contended that the power of attorney which he donated was specific and limited to charging the suit land as security for the loan but did not extend to the transfer of ownership. According to the Plaintiff, the 1st Defendant's action of transferring the suit property to the 2nd Defendant during the pendency of this suit depicted fraud and was in disregard of the doctrine of *lis pendens*. The Plaintiff relied on Section 26 (1) of the Land Registration Act and pointed out that a title can be impeached on grounds of fraud or misrepresentation as well as it having being acquired illegally, unprocedurally or through a corrupt scheme. The Plaintiff cited **Arthi Highway Developers Limited v West End Butchery Ltd. & 6 Other [2015] eKLR.**
30. The Plaintiffs submitted that the registration of the 1st Defendant as proprietor of the suit land was fraudulent and unlawful. The Plaintiff invited the court to rectify the register by cancelling the Defendants' titles and restore the suit land to the Plaintiff.
31. The Plaintiff submitted that the transfer of the suit land by the 1st Defendant to the 2nd Defendant did not confer a good title upon the 2nd Defendant. The Plaintiff relied on **Munyu Maina v Hiram Gathiha Main [2013] eKLR** and urged that the 1st

Defendant did not pass a good title that he could pass to the 2nd Defendant. The Plaintiff argued that he had proved his case on a balance of probabilities and demonstrated how the 1st Defendant fraudulently procured registration of the suit land in her name. He urged the court to grant the reliefs sought in the plaint.

32. The 1st Defendant submitted that the Plaintiff donated two powers of attorney, and that the powers of attorney were not questioned or dislodged. That if the Plaintiff had not executed those powers of attorney, he would have reported the forgery to the police. She maintained that the Plaintiff allowed her to dispose of the suit land and repay the loan. She was emphatic that the power of attorney dated 12/8/2000 gave her authority to deal with and dispose of the land but when she could not find a buyer, she opted to purchase the land.
33. The 1st Defendant asserted that the Plaintiff was aware of the transaction, which was why he did nothing from 2004. Further, that the caution he had registered against the land was lifted vide a court order. The 1st Defendant maintained that the Plaintiff was aware of the removal of the caution. The 1st Defendant pointed out that the Plaintiff wrote the letter dated 25/8/2006 to the Commissioner of Police complaining about the transfer of the suit land. She explained that she was not charged with forgery or any other criminal offence.
34. The 1st Defendant maintained that the meeting which took place with the Plaintiff in 2002 was to discuss the sale of the suit land by the 1st Defendant to clear the outstanding loan.

She maintained that the suit land was properly transferred to her name and subsequently to the 2nd Defendant.

35. The 2nd Defendant submitted that he was registered as the owner of the suit land on 22/10/2014 and was joined to this proceedings in 2024. He maintained that when he bought the suit land, there were no encumbrances registered against the land. He argued that he was a purchaser for value without notice. He relied on **Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** on the definition of a bona fide purchaser as one who buys something for value without notice of another's claim to the property and without notice of any defect in the seller's title; or one who pays valuable consideration for property in good faith without notice of prior adverse claims. The 2nd Defendant relied on **Katende v Haridar & Comp[any Ltd [2008] 2 EA 173** in support of the argument that he is a bona fide purchaser for value.
36. The main issues for determination are whether the 1st Defendant fraudulently transferred the suit land to her name and whether the transfer of the suit land by the 1st Defendant to the 2nd Defendant conferred a valid title on the 2nd Defendant.
37. The genesis of this dispute is that the Plaintiff gave his title deed to his son in law, Robinson, to secure a loan from ICDC. The 1st Defendant took the loan from ICDC and offered the title over the suit land and Gaturi/ Githimu/2209 as security. The charge document indicates the borrowers as Faith Muthoni Mugo and Samuel Njeru. The loan sum was Kshs. 600,000/=.

Only Faith Muthoni Mugo executed the charge, which mentions the power of attorney registered as No. 60/96 of 14/10/1996. The charge was registered on 18/11/1996.

38. The 1st Defendant stated in her testimony that the loan sum was shared between her and the Plaintiff. However, the agreement on the repayment of the ICDC loan between Robinson and the 1st Defendant mentioned that on 02/01/1997 the two of them shared the loan equally, that is Kshs. 300,000/= . The 1st Defendant operated the bank account through which the loan sum was paid and the repayments were made. The agreement stated that it was understood by all concerned that the title over the suit land was used to secure the portion of the loan which Robinson took. There is no evidence to show that the Plaintiff was given part of the loan proceeds.
39. The 1st Defendant did not adduce any evidence to prove that the Plaintiff received part of the loan proceeds. The court notes that the Plaintiff's letter dated 1/8/1996 to the 1st Defendant which inquired about the progress of ICDC loan was written before the loan was advanced. From that letter it is apparent that the Plaintiff was kept in the dark about the loan. It is also apparent from Robinson's letter dated 25/10/1998 to the 1st Defendant that she travelled out of the country after taking the ICDC loan.
40. The 1st Defendant filed Embu CMCCC No. 267 of 2008 seeking to have the caution which the Plaintiff registered against the suit land removed. She only tendered a copy of the plaint in evidence. It is not clear whether the Plaintiff was served with

the suit papers and if he participated in those proceedings. It is also not clear how that matter was determined and when the determination was made.

41. The 1st Defendant only produced bank statements for 30th April 1997 to 30th June 1997 and 31st October 1998 and 31 December 1998. As at 31/12/1998 the outstanding loan was Kshs. 970,282.05. If indeed the loan sum of Kshs. 600,000/= was shared equally between the 1st Defendant and Robinson, then they ought to have shared the burden of repaying the loan equally. The 1st Defendant gave a breakdown of the loan repayments she made to ICDC of Kshs. 1,346,061/=. She stated that her portion of the loan and interest was Kshs. 451,200/= and the Plaintiff's portion was Kshs. 894,861. She did not explain how these figures were arrived at or how the apportionment of the liability was done. This is relevant in light of the fact that the Plaintiff did not receive part of the loan monies which the 1st Respondent stated was shared equally between her and Robinson.
42. The Plaintiff testified that he did not go to Nairobi to prepare the power of attorney while disputing the power of attorney dated 12/8/2000 drawn by Meshack Okoth Obura & Co. Advocates.
43. The 1st Defendant did not produce evidence of the agreement she purported to have reached with the Plaintiff to have the suit land sold. There is no evidence that she notified the Plaintiff that she had repaid the loan and that ICDC had discharged the suit land and handed over the title deed to her.

Equally, she did not inform the Plaintiff that she was going to transfer the suit land to her name.

44. The transfer of land form which the land registrar produced indicates that the Plaintiff signed it as transferor and that was in consideration of a gift. The transfer is indicated to have been drawn by Samuel Njeru of P. O. Box 14839-00100. The Plaintiff maintained that he did not execute any transfer for the suit land.
45. On the face of it, it would look like the 1st Defendant executed the transfer for both the transferee and the transferor. The transfer does not mention that a power of attorney was the basis for the transfer. The application for LCB consent is dated 10/02/2002, the same date that the LCB consent was granted. In the ordinary course of business, LCB consent is not granted on the same day that the application is made.
46. The application for LCB consent was only executed by the 1st Defendant and the seller's part is blank. This lends credence to the Plaintiff's assertion that he did not attend the LCB or obtain consent to transfer the suit land to the 1st Defendant. The application indicates that the transfer was by way of gift but the LCB consent gives the consideration as Kshs. 200,000/=.
47. In the absence of evidence to show that the Plaintiff granted the 1st Defendant consent and authority to transfer the suit land or that he consented to the transfer of that land, the court is inclined to conclude from the facts and the documents tendered in support of the transaction, that the 1st Defendant fraudulently transferred the suit land to her name without the

Plaintiff's consent and authority. Since the 1st Defendant's ownership of the suit land has been found wanting, it follows that the 1st Defendant did not pass on a good title to the 2nd Defendant. The 1st Defendant transferred the suit land on 22/10/2014 during the pendency of this suit, presumably to defeat the Plaintiff's suit.

48. The Plaintiff has proved his claim on a balance of probabilities. The court grants prayers (a) to (d) of the Amended Plaint dated 16/2/2023. The 1st Defendant will pay the Plaintiff's costs for the suit.

Delivered virtually at Bungoma this 3rd day of February 2026.

**K. BOR
JUDGE**

In the presence of: -

Ms. W. Kamochu holding brief for Ms. M. Ndeke for the Plaintiff
Mr. Momanyi Gichuki for the 1st defendant and holding brief for
Mr. Mogusu for the 2nd Defendant