



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT THIKA

ELC 630 OF 2017

HARRISON NJUGUNA MUTHIORA - PLAINTIFF

VS

JACINTA NYAKINYUA KARANJA

[Sued as the legal representative ad litem

For the Estate of the late CYRUS

JOSEPH KARANJA]

- 1ST DEFENDANT

LAND REGISTRAR, KIAMBU

- 2ND

DEFENDANT

ANN MUTHONI NDUATI

- 3RD DEFENDANT

JUDGMENT

1. Vide an amended Plaint dated 24/5/2019 the Plaintiff sued the defendants for orders that;
 - a. A permanent injunction barring the Defendants either jointly or severally acting on their own or through their agents, servants, employees or through any one instructed by them from in any way whatsoever interfering with the quiet and peaceful possession of the plaintiff on land parcel originally known as Number Ndumberi/Ting'ang'a/1673 now known as Ndumberi/Tinganga/3225 and Ndumberi/Tinganga/3526.
 - b. A declaration do issue that the disposition of the property originally known as Ndumberi/Tinganga/1673 to the 1st and 3rd

defendants jointly and severally was irregular, invalid, illegal and void ab initio.

- c. A cancellation of the entry of disposition on transfer of the original property known Ndumberi/Tinganga/1673 (“original property”) to the 1st and 3rd defendants jointly and severally and thereafter a revocation of any titles issued or subdivided carried out on the original property leading to the parcels known as Ndumberi/Tinganga/3525 and Ndumberi/Tinganga/1673 be restored or reverts back to the plaintiff as the sole absolute owner.
 - d. Costs of the suit and interest be provided for
2. The Plaintiff avers that he was the owner of the suit land, which has now been subdivided into two parcels, namely Ndumberi/Tinganga/3525 and Ndumberi/Tinganga/3526. That the 1st Defendant lent him monies on diverse dates amounting to Kshs 2,534,000/- [loan], for which, on 14/7/2016, they executed a memorandum of understanding [MOU] confirming that the suit land would stand as security for the loan and agreed to a joint registration of the title on 14/7/2016.
 3. Particulars of irregular disposal of the suit land between the 1st and 3rd Defendant were pleaded under paragraph 8E of the Plaint.
 4. It was stated that the Plaintiff wishes to repay the loan. He asserts that he never transferred the land to Ann Muthoni Nduati, nor agreed to the 1st Defendant's subdivision of the land into two parts [Ndumberi/Tinganga/3525 and 3526], nor to the transfer of one part to the 1st Defendant, which he considers illegal and unlawful.
 5. By way of an amended defence and counterclaim, the 1st Defendant denied the Plaintiffs' claim and contended that the estate of Cyrus Joseph Karanja is the lawful and legitimate owner of the original parcel of land Ndumberi/Tinganga/1673, now subdivided into two

portions, namely parcels Ndumberi/Tinganga/3525 and Ndumberi/Tinganga/3526.

6. It is admitted by the 1st Defendant that, despite demand, the Plaintiff has refused and neglected to repay the loan advanced to him by the 1st Defendant.
7. That the 1st Defendant purchased the suit land from the 3rd Defendant. That the registration of the title in the joint names of the Plaintiff was fraudulent. That the purchase of the land was distinct and separate from the loan advanced to the Plaintiff.
8. That the partitioning of the original title into two portions was in accordance with the court order issued in Misc No 30 of 2017-Kiambu, and that the partition was carried out in a transparent and lawful manner in line with the provisions of the law.
9. In his counterclaim, the 1st Defendant averred that he entered into a sale agreement with the 3rd Defendant for the purchase of the suit land for Kshs 1.5 Million, which agreement was witnessed by the Plaintiff and his wife. However, the registration of the transfer in his name was hampered by a restriction lodged by the Plaintiff on the register, ostensibly to prevent any dealings with the land by the 3rd Defendant. He further averred that he was coerced by the Plaintiff to effect a joint registration between them as a condition for the removal of the restriction, despite the fact that he had acquired the land solely from the 3rd Defendant. He further averred that the Plaintiff did not contribute to the purchase of the said land.
10. Particulars of fraud was pleaded under para 15 of the Counterclaim. The particulars as cited as follows;
 - a. The Plaintiff registered a restriction without any cause and refused to remove the same when asked to do so by CYRUS JOSEPH KARANJA.

- b. The Plaintiff coerced and/or blackmailed and tricked CYRUS JOSEPH KARANJA to have his name on the register as a joint owner while he was well aware that he had no proprietary or registrable interests over the suit property.
 - c. The Plaintiff unlawfully sneaked his name in the register while he was well aware that he had not contributed towards the purchase of the suit property from Anne Muthoni.
 - d. The Plaintiff sought to unjustly enrich himself by sneaking in his name the register whereas he had no proprietary or registrable interests in the suit property.
 - e. The Plaintiff demanded inclusion of his name in the register a condition for removal of a restriction which had no basis in law.
 - f. The Plaintiff knowingly exerted undue pressure and/or influence upon CYRUS JOSEPH KARANJA by refusing to remove the restriction.
 - g. The Plaintiff took advantage of CYRUS JOSEPH KARANJA'S illiteracy.
11. That the Plaintiff agreed to the partition of the land and signed the forms for the application to the land control board, which was granted. Thereafter, the 1st Defendant caused the subdivision to be carried out in accordance with the court orders issued by a Kiambu court. The Plaintiff was informed and involved in all stages of the partitioning exercise. The Plaintiff therefore has no right or interest in parcel 3526, as it was not procured fraudulently, nor was the purchase price contributed.
12. Reasons wherefore the 1st Defendant has sought orders against the Plaintiff as follows;
- a. A declaration that the Estate of CYRUS JOSEPH KARANJA is the lawful and legitimate owner of land parcel NDUMBERI/TINGANGA/3525 & NDUMBERI/TINGANGA/3526.

- b. An Order do issue cancelling title number NDUMBERI/TINGA/3526 in the name of the Plaintiff.
 - c. An Order do issue directing the 2nd Defendant to issue a title for the title Number NDUMBERI/TINGANGA/3526 in the name of CYRUS JOSEPH KARANJA.
 - d. An Order directing the Plaintiff together with his agents, employees, servants or any person acting under his authority or his family members to vacate and remove any developments and improvements on land parcels NDUMBERI/TINGANGA/3525 & NDUMBERI/TINGANGA/3526 protection Act and the Plaintiff be refunded any outstanding amounts.
 - e. Costs of this suit.
13. On 15/11/22, the case against the 3rd Defendant was withdrawn by the Plaintiff.
 14. At the hearing, Harrison Njuguna Muthiora testified and relied on his witness statement dated 20/2/2020 in evidence in chief. He produced documents marked as PEX No 1-7 in support of his case.
 15. He stated that he inherited the suit land from his late mother in 1996. That he has lived on the land with his family ever since and that he has substantially developed the suit land.
 16. He stated that the 1st Defendant advanced Kshs 2,534,000/- to him for business purposes on various occasions. On 14th July 2016, a Memorandum of Understanding [MOU] was executed between the parties to specify the amount owed and the terms of repayment. To secure the repayment of the debt and to cover bank borrowing for a joint business venture, the title was registered jointly in the names of the Plaintiff and the 1st Defendant.
 17. On 24 /3/2017, the first defendant requested the repayment of Kshs 8,463,560 through their legal representatives, Jakikimba & Lagat Advocates, for the outstanding debt. An attempt was made to

engage with the 1st defendant regarding the repayment; however, the 1st defendant was uncooperative.

18. That despite his protestations, the land was subdivided into two portions with the help of the District Surveyor and the OCS Kiambu and the area chief, without his consent or knowledge.
19. He stated that he is willing to refund the monies borrowed to the 1st Defendant to save his family land. He also stated that he was unaware of the suit in Kiambu, which allowed the subdivision of the land and ordered the Executive officer to execute the documents to effect the partitioning of the suit land into two portions.
20. In further testimony, he stated that he had borrowed Kshs 1.5 Million from the 3rd Defendant and, upon default, the land was registered in her name. He also stated that he lodged a restriction on the title to prevent any dealings with the land by the 3rd Defendant. He further stated that the 1st Defendant repaid Kshs 1.5 Million to the 3rd Defendant on his behalf, upon which the title was released to him to pave the way for the joint registration of the same in the joint names of the Plaintiff and the 1st Defendant as per the MOU and to secure the repayment of the money lent to him by the 1st Defendant.
21. Francis Ndungu testified as PW2 and stated that he is the son of the Plaintiff and lives on the suit land with his family. He relied on his witness statement dated 23/6/22. He knew the 1st Defendant as a family friend. He was not involved in the transactions on the suit land and only learnt of the dispute over it in 2017.
22. Simon Maina Muiruri introduced himself as a registered valuer since 1996. On the Plaintiff's instructions, he valued the original land at Kshs 30 Million and produced the valuation report in support of his evidence. He was not aware that the suit land had been subdivided into two portions.
23. Jacinta Nyakinyua Karanja testified and relied on her witness statement dated 11/11/2022 in evidence in chief. She produced

documents marked as DEX No 1-10 in support of her defence and counterclaim.

24. She stated that she is the widow of Cyrus Joseph Karanja, who died in 2021. She is aware that her husband purchased the land from Ann Nduati under a sale agreement dated 19/4/2016 and paid the entire purchase price of Kshs 1.5 Million. She also mentioned that the plaintiff introduced Ann Nduati to Cyrus Karanja. Furthermore, she confirmed that Karanja was not coerced into having the land registered in the joint names of the parties, even though the plaintiff never contributed to the purchase. However, because of his illiteracy, good-naturedness, and loathing of confrontation, he agreed to register the title in the joint names.
25. In 2017, the Plaintiff signed the application form for the partition of the land, which culminated in the subdivision by the Kiambu County Surveyor. Later, the Plaintiff failed to participate, forcing Karanja to obtain a court order mandating the Registrar of the court to execute the necessary documents on 8/6/2017, leading to registration of the two titles.
26. That Karanja lent Kshs 2,534,000/- to the Plaintiff, which the Plaintiff has refused to repay. The loan arrangement and the purchase of the land were therefore separate and distinct transactions. The Plaintiff's registration as a joint owner was fraudulent, as he did not contribute to the acquisition of the property.
27. In addition to her oral testimony, the witness stated that she was not involved in the transaction between Ann Muthoni Nduati and her husband. She was unaware of how Nduati acquired the land from the plaintiff. She also did not know that the transaction between Nduati and her husband had been contested by the plaintiff. She further indicated that her husband was not coerced into registering the property in the joint names of the plaintiff and himself. He never contested the joint registration of the land; instead, he filed a case in

Kiambu seeking the partitioning of the land into two portions. She was not involved in this case either. She was also unaware of the Land Control Board consents approving the partition of the land. She maintained that there are no transfer documents supporting the transfer of land from Karanja to Nduati and from Nduati to her late husband.

28. After being shown copies of the sale agreement and the green card, she stated that she did not know how the transactions were carried out, but admitted that the Plaintiff owed her husband the sum of Kshs 2.5 Million. She stated that the title was security for the monies owed to her husband and that there was no indication that the land was to be shared. She also stated that she was unaware that the transaction was a con. She added that her husband lent money to the Plaintiff to bail him out, as they were close family friends.
29. Parties filed written submissions, which I have read and considered. Neither of the defendants filed written submissions.
30. Having considered the pleadings, the evidence adduced at the trial, the written submissions and all the materials placed before me, the issues that fall for determination are as follows.
 - a. Whether the 1st Defendant has proven fraud in the manner in which the title was registered in the joint names of the Plaintiff and the 1st Defendant.
 - b. What was the intention of the parties in registering the subject land in the joint names of the Plaintiff and the 1st Defendant?
 - c. Is the 1st Defendant is entitled to payment of the loan advanced to the Plaintiff
 - d. Costs of the suit and the counterclaim.
31. It is not in dispute that the suit land traces its ancestry to the Plaintiff's family. It was registered in the name of Rebecca Wanjiru Muthiora in 1989. The Plaintiff led evidence that, upon her mother's

death in 1996, he inherited the suit land and that a title was registered in his name. All was quiet for a period of two decades thereafter.

32. What followed was the genesis of the current dispute in court, which has generated two versions. The two versions of events form the dispute before the court. The court is therefore called upon to adjudicate the issues set out above.
33. According to the Plaintiff, he secured a loan of Kshs 1.5 Million from a businesswoman in the neighbourhood, Ann Wanjiku Nduati. It would appear that the suit land was transferred to the lender, Ms Nduati, perhaps to guarantee the loan or as security for it, and was registered on 14/3/2016.
34. Unable to repay the loan and being apprehensive of losing the land, the Plaintiff turned to his friend namely Cyrus Joseph Karanja, the 1st Defendant, for help. The Plaintiff averred that the 1st Defendant agreed to help him, and he immediately introduced him to Ms Nduati to kick off discussions about redeeming the property by paying off the loan. The 1st Defendant paid the sum of Kshs 2.1 Million to Ann Nduati in satisfaction of the loan.
35. A week later, on 21/3/2016, the plaintiff caused the registration of a restriction on the suit land to prevent the lender from carrying out any dealings that would jeopardise his ownership or keep the property out of his reach pending the repayment of the loan.
36. In addition, the Plaintiff also requested help in the form of business loans in a business that they managed together with the 1st Defendant. The 1st Defendant obliged his friend to the tune of Kshs 2,533,000/-, which was payable on or before 19/4/2016.
37. On 29/4/2016, an agreement was entered into between Ann Muthoni Nduati and the 1st Defendant for the sale and transfer of the suit land to the 1st Defendant for Kshs 1.5 Million. The sale agreement was witnessed by the Plaintiff and his wife.

38. It would appear that the Plaintiff failed to pay the sums to the 1st Defendant within the deadline. To secure the said financial arrangements, the parties entered into the MOU dated 14/7/2016. On the same date, the restriction was lifted to pave the way for the registration of the suit land in the joint names of the Plaintiff and the 1st Defendant.
39. It is therefore the Plaintiffs' contention that the sale agreement between the 1st Defendant and Ms. Nduati was executed to redeem the property on his behalf. The purchase price of Kshs 1.5 Million stated in the agreement of sale was the amount borrowed from Ms. Nduati, not the value of the land. Furthermore, the joint registration of the land in their names served as additional security for the funds advanced to him, pending repayment. The parties' intention was not to effect an outright sale.
40. The 1st Defendant, on the other hand, contends that he purchased the land from Ms Nduati under a sale agreement dated 29/4/2016, which was witnessed by the Plaintiff and his wife. He admits that the Plaintiff introduced him to Ms Nduati.
41. With respect to the joint registration of the title in the names of the Plaintiff and the 1st Defendant, the 1st Defendant alleged that the Plaintiff took advantage of his illiteracy and good-naturedness to sneak himself onto the title register, even though he did not contribute to the purchase of the suit land. That the actions of the Plaintiff are fraudulent and illegal, and therefore the title belongs to him wholly. He sought the cancellation and reversion of plot No. 3526 and the refund of the sum of Kshs. 2,535,000/- advanced to the Plaintiff.
42. According to the 1st Defendant, the Plaintiff signed the application for the partition of the land but later became uncooperative in the subdivision of the title into two portions and in registering each portion in the name of each one of the contestants.

He therefore obtained orders from the court for the subdivision and the execution of the documents necessary to effect the partition, leading to the registration of the two titles namely plots No. 3525 and 3526, in the names of the 1st Defendant and the Plaintiff, respectively.

43. The Plaintiff, on the other hand, has denied any involvement in the subdivisions and the partitioning of the land into two titles, contending that the land belongs to him and that the joint registration did not confer title or any interest in the name of the 1st Defendant.

Whether the 1st Defendant has proven fraud in the manner in which the title was registered in the joint names of the Plaintiff and the 1st Defendant.

44. The answer to this question lies in examining whether the 1st Defendant has proved the particulars of fraud pleaded in para 15 of its counterclaim. He who alleges must prove.

45. The principles underpinning the standard of proof in civil cases is on a balance of probability. It is now settled that he who alleges must prove. **Sections 107 and 109** of the Evidence Act, Cap 80 Laws of Kenya provide as follows: -

“107. Whoever desires any Court to give judgment as to any legal right or liability dependent on facts which he asserts must prove that those facts exist.”

109. The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that proof of the fact shall lie on any particular person.”

46. The burden therefore lies with both parties in this case as they both assert ownership claims in respect to the suit land. The court is being called upon to determine who, between the Plaintiff and the Defendant, is the rightful owner of the land.

47. It is now settled law that fraud is a serious allegation which, procedurally, must be pleaded and proved to a standard above the balance of probabilities but not beyond reasonable doubt. At page 427 of Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition, quoting with approval the cases of Wallingford v Mutual Society (1880) 5 App. Cas. 685 at 697, 701, 709; Garden Neptune V Occident [1989] 1 Lloyd's Rep. 305, 308; Lawrence V Lord Norreys (1880) 15 App. Cas. 210 at 221; and Davy V Garrett (1878) 7 ch. D. 473 at 489, it is stated that:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged. The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (()). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice”.

48. As regards standard of proof in respect to a charge of fraud, the law is quite clear. In R.G. Patel v. Lalji Makanji(1957) EA 314 the former Court of Appeal for Eastern Africa stated thus:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

49. In the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, 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.”

50. The charge of fraud and illegality are so serious that when proven, the consequences are dire, as can be seen in the provisions of Section 80 of the Land Registration Act, which allow the Court to 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.

51. The 1st Defendant has made accusations of fraud, ranging from an ulterior motive in lodging the restriction on the title, to coercion to register the title in the name of the Plaintiff as a condition to remove the restriction.

52. Coercion and or undue influence is one of the grounds of vitiating a contract. Where an allegation of a coercion and undue influence is pleaded, it is upon the person alleging to prove.

53. The legal concept on duress has been defined by **Halsburys Laws of England 4th Edition Volume 9** as:

“The compulsion under which a person acts through fear of personal suffering, whereas undue influence has been defined as the conscientious use by one person of power possessed by him over another to induce the other enter into a contract.”

54. In the case of **Pao On Vs Lau Yiu [1978] 3 All ER 65**, the Privy Council said at page 78:

“Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree that in a contractual situation commercial pressure is not enough. There must be present some fact on which could in law be regarded as a coercion of his will, so as to vitiate his consent.
.....

In determining whether there was a coercion of will such that there be no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised; and whether after entering the contract he took steps to avoid it”.

55. In the case of **Astley v Reynolds [1731] 2 Stra 915, 93 ER 939**, the Court held that the compulsion had to be such that the party was deprived of “his freedom of exercising his will.” It would appear that American law, also, now recognizes that a contract may be avoided on the ground of economic duress. See **Williston on Contracts** (3rd Edn, 1970 Chapter 47). The commercial pressure alleged to constitute such duress must, however, be such that the victim:-(i) must have entered the contract against his will; (ii) must have had no alternative course open to him and (iii) must have been confronted with coercive acts by the party exerting the pressure. This holding was upheld by the Court of Appeal in the case of **Kenya Commercial Bank Limited & another v Samuel Kamau Macharia & 2 others [2008] eKLR**.

56. DW1 led evidence and stated as follows;
“ that her husband was not coerced into registering the property in the joint names of the plaintiff and himself. He never contested the joint registration of the land; instead, he filed a

case in Kiambu seeking the partitioning of the land into two portions. She was not involved in this case either. She was also unaware of the LCB Consents approving the partition of the land. She maintained that there are no transfer documents supporting the transfer of land from Karanja to Nduati and from Nduati to her late husband.

57. She further clarified and admitted that the Plaintiff owed her husband the sum of Kshs 2.5 Million. She stated that the title was security for the monies owed to her husband and that there was no indication that the land was to be shared. She also stated that she was unaware that the transaction was a con. She further stated that her husband lent money to the Plaintiff to bail him out, as they were close family friends.

58. It is evident from the record that the 1st Defendant initiated the subdivision of the land into two portions. There is no evidence that the plaintiff was involved in this arrangement. The 1st Defendant's motivation appears to have been his understanding that he held the land as security pending repayment of the monies he had advanced to the plaintiff. If he had purchased the land outright, it would be untenable for him to have initiated the process of subdividing and partitioning the land for the plaintiff, who, as claimed, did not contribute any funds towards it.

59. Concerning the restriction, no evidence has been submitted to the court indicating that the Plaintiff utilized it as leverage to unlawfully include his name in the title. Conversely, the Plaintiff demonstrated prudence in protecting his land from transfer by the lender pending the settlement of the loan. The fact that the Plaintiff and his wife witnessed the sale agreement immediately afterwards depicts a transaction between trusted acquaintances; one in need and the other willing to assist. I assert this because the purchase price matches the amount the Plaintiff borrowed. The land spans 2.11 acres, and the Plaintiff appraised it at more than Kshs 1.5 Million.

60. Considering the uncontested valuation of Kshs 30 Million in 2020 and the extrapolation to 2016, the court determines that the value was greater than Kshs 1.5 million and concurs with the Plaintiff that the amount of Kshs 1.5 million pertains to borrowing, rather than a sale.
61. The court finds that coercion, duress, and fraud was not proven by the 1st Defendant.

What was the intention of the parties in registering the suit land in the joint names of the Plaintiff and the 1st Defendant?

62. Having established that fraud and illegality were not substantiated by the 1st Defendant, the court will now proceed to examine the intentions of the parties involved. The initial reference point is the Memorandum of Understanding (MOU) dated 14/7/2016, which mentions a meeting between the parties on 9/6/2016.
63. In the aforementioned Memorandum of Understanding (MOU), the Plaintiff acknowledges that, as a result of his default, the suit land was registered in the name of Ms. Nduati, the lender. It is also evident that the relationship between the 1st Defendant and the Plaintiff was that of a lender and a borrower, and that the transfer of the title deed to the joint names was intended to secure the loan advanced by the 1st Defendant to the Plaintiff. The outstanding balance of Kshs 2,534,000/-, as admitted by DW1, was due within 120 days of 19/4/2016. This indicates that the arrangement was designed as a stopgap measure before the parties pursued a bank loan and used the land as collateral.
64. The MOU further provided for default as follows;
“That Harrison Njuguna Muthiora undertakes to pay the said money, failure to which the 1st Defendant will be at liberty to

seek legal means to recover the monies together with such interest and damages as may be applicable.”

65. The court finds that the demand letter dated 24/3/2017, issued by the 1st Defendant's lawyers, was made pursuant to the above clause. The 1st Defendant is therefore not candid when he pleads that the land was his.

66. The court therefore finds that the parties' intention was to secure the repayment of a loan, not an outright sale or purchase.

67. The Court determines that the land was unlawfully registered in the joint names of the Plaintiff and the 1st Defendant.

Is the 1st Defendant is entitled to payment of the loan advanced to the Plaintiff

68. The Plaintiff led evidence and admitted that he has not paid the 1st Defendant the loan. Equally, the 1st Defendant has sought orders compelling the refund of Kshs 2,534,000/-.

69. The Plaintiff has submitted that, given that the cause of action arose in 2016, the recovery of the monies is now time-barred because the amendment to the counterclaim was made on 15/2/2024, a period of 8 years later.

70. According to the provisions of Section 4 of the Limitation of Actions Act, a cause of action based on contract must be initiated within six years. It should be noted that this claim was added through the amendments of 15/2/2024. The monies were lent in 2016. Seeking to recover the sums arising from a 2016 cause of action, eight years later, is untenable. The claim is therefore barred by the doctrine of time bar and is regarded as a stale claim in this case.

71. For reasons wherefore the court makes the following orders;

- a) The 1st Defendant counterclaim fails.
- b) The Plaintiffs' case succeeds

- c) A permanent injunction barring the defendants either jointly or severally acting on their own or through their agents, servants, employees or through any one instructed by them from in any way whatsoever interfering with the quiet and peaceful possession of the plaintiff on land parcel originally known as Number Ndumberi/Ting'ang'a/1673 now known as Ndumberi/Tinganga/3225 and Ndumberi/Tinganga/3526.
- d) A declaration do issue that the disposition of the property originally known as Ndumberi/Tinganga/1673 to the Plaintiff and the 1st defendant jointly and severally was irregular, invalid, illegal and void ab initio.
- e) A cancellation of the entry of disposition on transfer of the original property known Ndumberi/Tinganga/1673 ("original property") to the Plaintiff and the 1st defendant jointly and severally and thereafter a revocation of any titles issued or subdivided carried out on the original property leading to the parcels known as Ndumberi/Tinganga/3525 and Ndumberi/Tinganga/1673 be restored or reverts back to the plaintiff as the sole absolute owner.
- f) Costs shall be in favour of the Plaintiff.

72. Orders accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MARCH 2026 THROUGH MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr Mathenge for the Plaintiff
2. N/A for the 1st Defendant
3. CA- Ms Yvette

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