



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELCC NO. 449 OF 2017**

**(FORMERLY NAIROBI ELCC NO.190 OF 2011)**

**DR. NEHEMIAH KIMATHI.....1<sup>ST</sup> PLAINTIFF**

**STELLA NKATHA MWIRARIA.....2<sup>ND</sup> PLAINTIFF**

**-VERSUS-**

**GRACE WAMBUI MURIUKI.....1<sup>ST</sup> DEFENDANT**

**MARY NG'ENDO TIBA.....2<sup>ND</sup> DEFENDANT**

**JACQUELINE PAULINE WAIRIMU THARAO....3<sup>RD</sup> DEFENDANT**

**RUTH WANJIRU THARAO.....4<sup>TH</sup> DEFENDANT**

**MUNGAI MBURU.....5<sup>TH</sup> DEFENDANT**

**MARGARET NJOKI RUTHA.....6<sup>TH</sup> DEFENDANT**

**DAVID ODANGA.....7<sup>TH</sup> DEFENDANT**

**DANIEL KURIA WAWERU.....8<sup>TH</sup> DEFENDANT**

**OPONDO OTIENO PATRICK.....9<sup>TH</sup> DEFENDANT**

**GRACE KANGAI GACICI.....10<sup>TH</sup> DEFENDANT**

**SAMUEL KIARIE MBURU.....11<sup>TH</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....12<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, THIKA.....13<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The original plaintiff Hon. Daudi Mwiraria (deceased) originated this suit by way of a plaint (Multi Track) dated 4<sup>th</sup> November, 2011 against 2<sup>nd</sup>, 12<sup>th</sup> and 13<sup>th</sup> defendants and as amended on 12<sup>th</sup> June 2011 to include the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> to 11<sup>th</sup> defendants. On 21<sup>st</sup> March, 2018, the court allowed an application by way of a notice of motion dated 15<sup>th</sup> December 2015 for further amendment of the amended plaint to substitute the Deceased. Thus, by a further amended plaint dated 26<sup>th</sup> March 2018 and filed on 28<sup>th</sup> March, 2018, the present plaintiffs namely Dr. Nehemiah Kimathi (1<sup>st</sup> plaintiff) and Stella Nkatha Mwiraria (2<sup>nd</sup> plaintiff) are seeking the following orders;

a. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants whether by themselves, their

agents, their servants and/or assigns or anybody claiming through them or under them from alienating, developing, transferring, leasing, charging or in any manner whatsoever interfering with the plaintiff's quiet user and possession of LR.NO RUIRU/RUIRU EAST BLOCK 7/53.

b. A declaration that the title deeds purportedly held by the 2<sup>nd</sup> to 11<sup>th</sup> defendants are false and were fraudulently obtained or in the alternative, if the said certificates were issued by the District Lands Registrar, Thika then they are accordingly unlawful, invalid null and void and/or more specifically that:

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/298 and issued to the 3<sup>rd</sup> defendant is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/299 and held by the 4<sup>th</sup> defendants is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/300 and held by the 5<sup>th</sup> and 6<sup>th</sup> defendants is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/301 and held by the 7<sup>th</sup> defendant is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/302 and held by the 8<sup>th</sup> defendant is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/303 and held by the 9<sup>th</sup> defendant is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/304 and held by the 10<sup>th</sup> defendant is false and fake and is otherwise unlawful, invalid, null and void,

The title deed purportedly registered as LR NO. RUIRU/RUIRU EAST BLOCK 7/305 and held by the 11<sup>th</sup> defendant is false and fake and is otherwise unlawful, invalid, null and void,

c. A mandatory injunction compelling the 2<sup>nd</sup> to 10<sup>th</sup> defendants whether by themselves or their agents to forthwith deliver up for cancellation by the 12<sup>th</sup> and or 13<sup>th</sup> defendants the titles purportedly held by them, and in default of doing so the 12<sup>th</sup> and/or 13<sup>th</sup> defendant do cancel the titles within thirty (30) days of such default.

d. An order that the Commissioner of Lands do expunge references to the 1<sup>st</sup> to 10<sup>th</sup> defendants from all documents, certificates, entries and details in respect of the property from all records at the Registry of Titles and the Department of Lands and more particularly any references in respect of the false, fake, invalid and null and void documents of title purportedly held by the 2<sup>nd</sup> to 10<sup>th</sup> defendants;

e. Costs of this suit and interest thereon at court rates.

f. Such other order as it commends to the Honourable Court to issue.

2. Briefly, the plaintiffs' case as set out in the further amended plaintiff is that the deceased was the absolute registered proprietor of the suit land, L.R No. Ruiru/Ruiru East block 7/53. That sometimes in the year 2011, the deceased discovered that construction work was being undertaken on the suit land without his permission. He immediately caused an official search to be conducted over the suit land and the same revealed that the 1<sup>st</sup> defendant had fraudulently subdivided the suit land into L.R. Nos. 299, 299, 300, 301, 302, 303, 304 and 305 and sold the same to the 2<sup>nd</sup> to 11<sup>th</sup> defendants, thus precipitating the instant suit.

3. The defendant's case is as summarised in their respective statements of defence. The statements include the 1<sup>st</sup> defendant's defence dated 29<sup>th</sup> July, 2011, the 4<sup>th</sup> and 5<sup>th</sup> defendants' defence dated 14<sup>th</sup> and 15<sup>th</sup> November, 2014 and the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> defendants' defence statements dated 14<sup>th</sup> November, 2014. The defendants did not file and serve any amended statement of defence to the further amended plaintiff. Nonetheless, they denied the plaintiffs' claim.

4. The 2<sup>nd</sup> defendant (DW2) stated that she is the lawful absolute owner of the suit land having purchased the same from one Grace Wambui Muriuki (1<sup>st</sup> defendant). That she obtained the necessary Land Control Board consent, paid the requisite stamp duty and registration fees hence title issued in her name accordingly. That she was entitled to deal with the suit land in any manner she deemed fit and also to sell the same and the purchasers thereof were equally entitled to deal with the parcels of suit land as they deemed fit.

5. The 4<sup>th</sup> and 5<sup>th</sup> defendants averred, inter alia, that they jointly acquired title to L.R.No. Ruiru/Ruiru East Block 7/300 for consideration. That they have developed the same.

6. The 7<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants averred, inter alia, that they acquired for consideration L.R.Nos. Ruiru/Ruiru East Block 7/302,304 and

305 respectively. That they have developed the said three (3) parcels of land.

7. The plaintiffs are represented by learned counsel Nancy Atieno instructed by Ms Albert Kamunde and Company Advocates. The 2<sup>nd</sup> defendant is represented by learned counsel, Mr. Ngure Mbugua. The 3<sup>rd</sup> and 4<sup>th</sup> defendants are represented by learned counsel, Mr J.Makumi while the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants are represented by learned counsel Mr. Ndungu Githuka.

8. The 1<sup>st</sup> plaintiff (PW1) testified and relied on the statement of deceased dated 4<sup>th</sup> November, 2011 as well as his own statement dated 26<sup>th</sup> March, 2018. He further relied on a list and bundle of statements of the deceased dated 29<sup>th</sup> June, 2011 (P Exhibits 1 to 7) and grant ad litem issued in Nairobi High Court succession cause No.1258 of 2017 (P Exhibit 8) and green card or register dated 26<sup>th</sup> September, 2015 in respect of the suit land (P Exhibit 9) in support of the plaintiffs' case.

9. DW1 was Robert Mugendi Mbuba, Land Registrar, Thika (13<sup>th</sup> defendant). He stated that the register of the suit land was opened on 21<sup>st</sup> May, 1991 in the name of the Government of Kenya and it was transferred to the deceased on the same date. That on 16<sup>th</sup> May, 1995, the suit land was transferred to the 1<sup>st</sup> defendant who transferred the same to the 2<sup>nd</sup> defendant (DW2) on 5<sup>th</sup> December, 2006. Subsequently, the suit land was subdivided into L.R. Nos. Ruiru/Ruiru East Block 7/298 to 305 on 24<sup>th</sup> January, 2007.

10. DW2 (the 2<sup>nd</sup> defendant) stated that she bought the suit land from the 1<sup>st</sup> defendant in the year 2006. She relied on her statement dated 29<sup>th</sup> July, 2011 and her list of documents of even date (2<sup>nd</sup> D Exhibits 1 to 7).

11. DW3, (mother of the 3<sup>rd</sup> defendant) relied on her statement dated 9<sup>th</sup> July, 2018 and her list of documents dated 16<sup>th</sup> August, 2011 (3<sup>rd</sup> and 4<sup>th</sup> D Exhibits 1 to 5). She stated, inter alia, that the suit land belonged to DW2 who signed the 3<sup>rd</sup> and 4<sup>th</sup> D Exhibits 1 to 5.

12. DW4 (the 5<sup>th</sup> defendant) stated that he was husband of the 10<sup>th</sup> defendant and he relied on a list of statement dated 6<sup>th</sup> November, 2018. That 6<sup>th</sup> defendant and himself jointly bought L.R. No. Ruiru/ Ruiru East Block 7/300. He relied on their joint index of documents dated 6<sup>th</sup> November, 2018 (5<sup>th</sup> and 6<sup>th</sup> D Exhibits 1 to 5).

13. DW5 (the 8<sup>th</sup> defendant) testified and relied on his statement dated 12<sup>th</sup> September, 2011. He stated that she bought LR No. Ruiru/Ruiru East Block 7/300 from DW2. He also relied on his list index of documents dated 12<sup>th</sup> September, 2011 (8<sup>th</sup> D Exhibits 1 to 8).

14. DW 6 (10<sup>th</sup> defendant) testified that she bought L.R. No. Ruiru/Ruiru East Block 7/304 from DW2 and she erected an incomplete house thereon. She relied on her statement dated 12<sup>th</sup> September, 2011 and her list of documents of even date (10<sup>th</sup> D Exhibits 1 to 15).

15. DW7 (11<sup>th</sup> defendant) testified that he bought L.R. No.Ruiru/Ruiru East Block7/307 from DW2 and has built a five bed roomed bungalow on the land. He relied on his statement dated 12<sup>th</sup> September, 2011 as well as his index of documents of even date (11<sup>th</sup> defendant Exhibits 1 to 11).

16. Learned counsel for the plaintiff filed submissions dated 30<sup>th</sup> November, 2018 wherein he identified four (4) condensed issues for determination and cited sections of the law including sections 26 and 76 of the Land Registration Act, 2016 (2012). In support of the submissions counsel relied on authorities, inter alia, **Elijah Makori Nyangwara-vs-Stephen Mungai Njuguna and another (2013) eKLR**, Esther Ndegi Njiru and another-vs-Leonard Gatei (2014) eKLR, **West End Butchery Limited-vs-Arthi Highway Developers Limited and 6 others (2012) eKLR** and **Martha Wambui Muchiri-vs-Kanairo Miriti and 4 others (2018) eKLR**.

17. Learned counsel for the 2<sup>nd</sup> defendant filed submissions dated 5<sup>th</sup> December, 2018 whereby he framed and analysed two (2) issues for determination. He urged the court to find that DW2 bought part of the suit land in good faith for valuable consideration without any knowledge of the alleged fraud in this suit.

18. In his submissions dated 4<sup>th</sup> December, 2018, learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> defendants, framed and analysed three (3) issues for determination including whether the titles to L.R. No. Ruiru/Ruiru East Block 7/298-299 were acquired fraudulently and the effect of the 3<sup>rd</sup> and 4<sup>th</sup> defendants' titles thereof. He submitted that the deceased passed a good title to the 1<sup>st</sup> defendant who in turn passed a good title to DW2 who subsequently passed a good title to the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

19. Counsel cited section 2 of the Law Reform Act (Cap 26), section 26 of the Land Registration Act,2016 (2012), Order 2 rule 10 of the Civil Procedure Rules, 2010 and section 107 of the Evidence Act (Cap 80), in support of his submissions. He also relied on authorities, inter alia, **Roman Karl Hintz-vs-Mwangombe Mwakima (1984) eKLR** on the capacity of the 12<sup>th</sup> plaintiff to institute the suit on behalf of the deceased and **Joseph Muriithi Njeru-vs-Mary Wanjiru Njuguna and another (2018) eKLR** regarding bonafide purchaser doctrine.

20. Learned counsel for the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants filed submissions dated 6<sup>th</sup> December, 2018 wherein he urged the court to dismiss the plaintiff's case for want of proof to the required standards. That the court do award damages to his clients and order the removal of the cautions entered by the deceased and which subsist against the defendants' titles.

21. Counsel made reference to sections 26(1) and 80 of the Land Registration Act, 2016 (2012) in respect of the certificate of title issued by the Registrar upon a registered land and an order for rectification of the register by the court. He relied on authorities including **Independent Electoral and Boundaries Commission and another-vs-Stephen Mutinda and 3 others (2014) eKLR** that parties are bound by their pleadings which in turn limits the issues upon which a trial court make a pronouncement and **Abiero-vs-Thabiti Finance company Limited and another (2001) KLR 508** on award of damages to a wronged plaintiff.

22. I have anxiously studied the entire pleadings, evidence of PW1, DW1, DW2, DW3, DW4, DW5, DW6 and DW7 as well as the rival written submissions together with the authorities relied upon therein by counsel for the respective parties in this matter. I take into account the plaintiffs' issues for determination dated 25<sup>th</sup> February, 2013 and issues for determination in the plaintiff's submissions, the 2<sup>nd</sup> defendants' submissions and the 3<sup>rd</sup> and 4<sup>th</sup> defendants' submissions. Bearing in mind the foregoing issues and being guided by the decision of the Court of Appeal in the case of **Galaxy paints Company Limited-vs-Falcon Grounds Limited (2000) 2EA 385**; the issues for determination boil down to whether;

- a. The 1<sup>st</sup> plaintiff has the capacity to institute this suit on behalf of the deceased.
- b. The issuance of title for the suit land and its subsequent subdivision to the 2<sup>nd</sup> defendant (DW2) then to 11<sup>th</sup> defendants by the defendants was of fraudulent and illegal.
- c. The parties in this suit are entitled to the orders sought in their respective pleadings.

23. On the 1<sup>st</sup> issue, the 3<sup>rd</sup> and 4<sup>th</sup> defendants contended that based on section 2(3) of the Law Reform Act (Cap 26) and the decision in **Roman Hintz case** (supra), the 1<sup>st</sup> plaintiff (PW1) lacks the capacity to bring this matter before the court for and on behalf of the deceased. That (PW1) is not a spouse or a child or a parent of the deceased.

24. The plaintiffs submitted that they substituted the deceased pursuant to an order of the court dated 25<sup>th</sup> March 2018 and upon consent of counsel for the respective parties herein. That they are the legal representatives of the estate of the deceased as per grant ad litem in Nairobi High Court succession case No.1258 of 2017 (P Exhibit 8) which has not been challenged or at all.

25. The estate of the deceased person is vested in the legal representative; see **Trouistik Union International and Another -vs- Mbeyu and another (1993) eKLR**.

26. In the case of **Omari Kaburu-vs-Industrial and Commercial Bank Development Corporation (2007) eKLR**, Wanjiru Karanja J(as the then was) held thus;

**“The law is that the grant is what clothes a person with locus standi to stand in and sue on behalf of the estate of the deceased.”**

27. Similarly, in the case of **Republic-vs-Attorney General axparte John Mugo (2013) eKLR** on the role of legal representative, H. Ongundi J held that;

**“.....And a legal representative is a person who has been issued letters of grant. This is provided under section 82 (a) of the law of succession Act.....”**

28. On the 21<sup>st</sup> March, 2018 the court allowed an unopposed application by way of notice of motion dated 15<sup>th</sup> December, 2015 for leave to further amend the plaintiffs' amended plaint. Accordingly, a further amended plaint dated 26<sup>th</sup> March, 2018 was deemed duly filed on 28<sup>th</sup> March, 2018. By virtue of section 2(3) (a) of the Law Reform of Act (Cap 26), P Exhibit 8 and court order of 21<sup>st</sup> March, 2018 and issued on 28<sup>th</sup> March, 2018 which remain unchallenged, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs have Locus Standi to sue for and on behalf of the estate of the deceased.

29. Regarding the 2<sup>nd</sup> issue, I am aware that “fraud” is a generic term embracing all multifarious means which human beings devise and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and include all surprise trick, winning, dissembling and any unfair way by which another is cleared; see **Abiero case** (supra).

30. It is trite law that fraud must be specifically pleaded and particulars of fraud alleged must be stated and on the face of the pleadings; **Ndolo-vs-Ndolo (2008) iKLR (G&F) 742**.

31. The plaintiffs assert that the deceased was the absolute registered proprietor of the suit land and he never sold the suit land to anyone. That the acts of the 1<sup>st</sup> to 13<sup>th</sup> defendants are fraudulent and they pleaded fraud at paragraph 9 of the further amended plaint dated 26<sup>th</sup> March 2018. The said particulars generally relate to the 1<sup>st</sup> to 13<sup>th</sup> defendants and in particular that the forged documents were prepared by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and not 3<sup>rd</sup> to 11<sup>th</sup> defendants.

32. I note the statement dated 26<sup>th</sup> March 2018 of PW1 which was adopted together with the statement dated 4<sup>th</sup> November, 2011 of the deceased as the plaintiffs' evidence examination in documentation in chief, PW1 stated, inter alia;

**“My late brother was the registered owner of L.R.No Ruiru/ Ruiru East Block 7/53. I have its title deed issued on 21<sup>st</sup> May, 1991 (P Exhibit1).”**

33. During a cross-examination, PW1 stated that there were no encumbrances on the titles issued to 3<sup>rd</sup> and 4<sup>th</sup> defendants and that P Exhibit 1 was issued on 21<sup>st</sup> May 1991. That there has been a sequence of events pertaining to the title deed to the suit land as per P Exhibit 9 which shows the 1<sup>st</sup> defendant as its registered owner after the deceased whose statement does not deny sale of the suit land to the 2<sup>nd</sup> defendants (DW2).

34. According to DW1, the register of the suit land was opened on 21<sup>st</sup> May, 1991 in the name of the Government of the Republic of Kenya and it was transferred to the deceased and title issued accordingly on the same date. That the Chief Land Registrar placed a restriction on the suit land on 15<sup>th</sup> July, 1991, but removed same. He told the court that the register shows that the suit land was transferred from the deceased to the 1<sup>st</sup> defendant on 16<sup>th</sup> May, 1995. He could not identify or avail P Exhibit 9 to show the transfer of the suit land from the Government of the Republic of Kenya to the deceased and subsequently to the 1<sup>st</sup> defendant.

35. In cross-examination, DW1 confirmed that P Exhibit 9 was a true record evidencing transfer and issuance of the title deed in respect of the suit land. He made reference to and identified 2<sup>nd</sup> D Exhibits 1,2,3,5,6 and 7 and further testified that;

**“I have been a Land Registrar for three years now. I have not detected any fraud caused by the 2<sup>nd</sup> defendant.” (Emphasis added).**

36. In further cross-examination, DW1 stated that there was no parallel title to the 2<sup>nd</sup> defendants’ title as confirmed by P Exhibit 9. That he had no title of PW1 and no report of its loss or fraud had been made to their office for action under section 79 of the Land Registration Act, 2016 (2012). That there have been instances of missing parcel files from Land Registry. However, entries in register including P Exhibit 9 could not be invalidated by the loss of other documents.

37. DW2, stated that by 2<sup>nd</sup> defendant Exhibits 1 to 7, she bought the suit land from the 1<sup>st</sup> defendant, subdivided the same and transferred portions of it through due diligence and beyond suspicion. She maintained that in doing so she followed the laid down procedure. Her testimony was supported by DW3, DW4, DW5, DW6 and DW7 all who claimed that they are bonafide purchasers for value for their respective portions of the suit land.

38. The plaintiffs contended that title deeds purportedly held by the 2<sup>nd</sup>, 3<sup>rd</sup> to 11<sup>th</sup> defendants are false and were fraudulently obtained. It is the onerous duty upon a registered proprietor to go beyond the instrument of title and prove the legality of how he or she acquired the title and show that the acquisition was legal, formal and free from any encumbrances as held by the Court of Appeal in the case of **Munyu Maina-vs-Hiram Gathiha Maina (2013) eKLR.**

39. In the instant suit, DW2 has proved by way of 2<sup>nd</sup> Defendant Exhibits 1 to 7 that she acquired the title to the suit land from 1<sup>st</sup> defendant legally, formally and free from any encumbrances as confirmed by DW1 and even PW1. Moreover, by 3<sup>rd</sup> and 4<sup>th</sup> D Exhibits 1 to 5, 5<sup>th</sup> and 6<sup>th</sup> D Exhibits 1 to 5, 6<sup>th</sup>, 8<sup>th</sup> D Exhibits 1 to 11, it is quite clear that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants acquired titles to their respective portions of the suit land through a procedure which was legal, formal and free from any encumbrances as recognized in **Munyu Maina case (Ibid).**

40. As already noted at paragraphs 29, 30 and 31 herein above, the plaintiffs did not specifically plead and particularize fraud against the 1<sup>st</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> defendants on the face of their further amended plaint. DW2 did confirm that she bought the suit land from the 1<sup>st</sup> defendant, subdivided and transferred the same to the purchasers who obtained titles thereof through the prescribed procedure thus the acquisition of ownership of their respective portions of land was lawful, formal and free from any encumbrances whatsoever.

41. Moreover, whereas I consider P Exhibit 1 to 9, there is no evidence produced by PW1 to show that the 1<sup>st</sup> to 11<sup>th</sup> defendants acquired titles to the suit land or any part thereof by fraud. The 1<sup>st</sup>, 9<sup>th</sup> and 12<sup>th</sup> defendants did not file any statement of defence and the 7<sup>th</sup> defendant failed to adduce evidence herein. Nonetheless, in the case of **Kirugi and another-vs-Kabiya and 3 others (1987) KLR 347**, the Court of Appeal stated that the burden was always on the plaintiff to prove his case on the balance of probabilities and that such burden is not lessened even if the case was heard by way of formal proof.

42. It is evident that the 2<sup>nd</sup> defendant (DW2) purchased the suit land from the 1<sup>st</sup> defendant and obtained all the necessary documents in the form of 2<sup>nd</sup> D Exhibits 1 to 7. Subsequently, she subdivided and transferred the land to bonafide purchasers for value who have invested heavily on the suit land; see **Kuria Greens Limited-vs-Registrar of Titles and another (2011) eKLR.**

43. The upshot is that the plaintiff’s case has not been proved on a balance of probabilities against the 1<sup>st</sup> to 13<sup>th</sup> defendants. This suit is therefore bound to fail.

44. Wherefore, I dismiss the plaintiffs’ case with costs to the defendants.

**SIGNED and Dated at Migori this 8<sup>th</sup> day of May, 2019**

**G.M.A ONG’ONDO**

**JUDGE**

**Signed,Dated and Delivered at Thika this 14<sup>th</sup> Day of JUNE 2019**

**L.N GACHERU**

**JUDGE**

**In the presence of :-**

1. M/s Musyoka holding brief for Kamunde for plaintiff
2. M/s Olouch holding brief for Mr. Ngure for 3<sup>rd</sup> defendant.
3. Mr. Kere holding brief for Mr. Makumi for 3<sup>rd</sup> and 4<sup>th</sup> defendants
4. Mr. Githuka for 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> 10<sup>th</sup> and 11<sup>th</sup> defendants
5. Lucy – Court Assistant