

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC CASE NO. 44 OF 2015

PETER MWANGI KIARIE
PLAINTIFF

VERSUS

ELIJAH KIPLAGAT SANG..... **1ST**
DEFENDANT

MICAH KIPTABUT KOSGEI **2ND**
DEFENDANT

ISAAC KIPTAKAM MAGUT **3RD**
DEFENDANT

CHEPOR TABSERKA **4TH**
DEFENDANT

MONICAH JEPTOO **5TH**
DEFENDANT

METHUSELLAH KIPKURGAT **6TH**
DEFENDANT

JUDGMENT:

1. The Plaintiff's case against the Defendants was commenced vide a Plaint dated 17th February, 2015 which was amended on 9th June, 2021 and seeking the following reliefs:-
 - a) A permanent injunction restraining the defendants from interfering with, ploughing, using and/or erecting structures on that land parcel LR: No. 9360 situate in Kapsaret measuring approximately 50 acres.
 - b) An order directing the Defendants vacate the land parcel LR No. 9360 within such time as the court may direct failing which they be forcefully evicted therefrom.
 - c) Mesne profits until the Defendants vacate the land.

- d) In the alternative to (c) above the defendants be ordered to pay general damages for trespass.
 - e) Such further order as the Honourable court may deem just to grant.
 - f) Costs and interest of the suit.
2. The facts of the case as contained in the Plaint are that vide Grant issued on Eldoret Succession Cause No. 215 of 2003 the Plaintiff and one Jane Wangui Kiarie (now deceased) were appointed administrators of the estate of the late John Geoffrey Kiarie Mwangi. The plaintiff explained that he also obtained a Grant over the estate of Jane Wangui Kiarie, his Mother. The Plaintiff averred that the Grant was confirmed on 23rd September, 2008 and he and his co-administrator successfully distributed the estate to the beneficiaries apart from parcel LR No. 9360 in Kapsaret measuring 50 Acres (the suit property herein). He averred that the suit property was to be surveyed and distributed between himself and his siblings, Bernard Mugo Kiarie and Ann Murugi Kiarie.
3. The Plaintiff alleged that when the three of them went to take possession of the land, they realised that the Defendants had trespassed on the said land, erected structures and were preparing to plough it. The Plaintiff claimed that the Defendants have no proprietary interests over the suit land and occupied it in disregard of the beneficiaries proprietary rights and quiet enjoyment of the land, so they should be asked to vacate or be evicted therefrom. The Plaintiff alleged that attempts to have the Defendants vacate the suit land have been futile as the Defendants have refused and shown open hostility towards the Plaintiff.

4. The Defendants filed a joint Amended-Amended Statement of Defence and Amended Counterclaim, denying the allegations in the Plaint. They averred that even if the grant was confirmed, the administrator deliberately concealed from the court the fact that they are purchasers of part of the estate, hence the same should be revoked to accommodate them. They denied trespassing onto the land, and reiterated that they had purchased their respective portions. That they were then allowed to take possession of their portions per their sale agreements and have been farming thereon as per their agreements with the Plaintiff's co-administrator, who was the Plaintiff's mother. They further averred that they had since applied to revoke the grant issued in favour of the Plaintiff on 14th July, 2004.
5. In the Counterclaim, the Defendants averred that they purchased the suit land from Jane Wangui Kiarie, the administrator of the Estate of Geoffrey Kiarie Mwangi. They averred that the Plaintiff and his late mother advertised the land for sale through Baraka Land Company, and also approached Willy Kitur Cheruiyot & Kipkemei Tuwei to find purchasers. That the Defendants each approached the Plaintiff's mother who led them to her advocate where they were shown the title and the probate documents. That they entered into the agreements for sale of the land, and upon execution, they took possession of their respective parcels with the full knowledge of Jane Wangui Kiarie, and started farming thereon without any issues from the Plaintiff or his mother.
6. The Defendants averred that before purchase, they visited the suit land with surveyors to confirm the sizes of their portions,

and that the Plaintiff as a son of Jane Wangui and the registered owner, was aware of and approved of the transactions. They set out the sizes of their separate parcels and the consideration paid, and explained that after completion of payment, they were put into possession and started developing their parcels. They accused the Plaintiff and his mother of colluding to leave them out of the list of beneficiaries. They termed this suit an attempt to defeat the cause of justice and fairness since the administrator had committed to safeguard the Defendants proprietary rights alongside other beneficiaries of the estate.

7. They alleged that the Plaintiff and his mother had undertaken in the agreement to ensure that the titles of the Defendants respective parcels were transferred to them, and that the land was not encumbered with any third party interests. The Defendants accused the Plaintiff and his mother of breach of contract and set out the particulars of the alleged breach. They further accused the Plaintiff and his mother of secretly confirming the grant without informing them of the status. They averred that they issued a third party notice to Jane Wangui Kiarie, who prior to her death, had filed a statement of Defence and Defence to Counterclaim dated 29th November, 2015 and a statement dated 31st July, 2017.
8. They averred that in her said Defence, the late Jane Wangui Kiarie had committed to refund the monies received in full. They alleged that on her passing, the Plaintiff stepped in her shoes with no need for substitution and was bound by his late mother's position, thus he was legally estopped from deviating therefrom. Owing to this, the Defendants sought the following orders:-

- (i) There be a declaration that having purchased their respective portions of the suit property as innocent purchasers for value without notice the Defendants and Interested Parties are lawful owners and are in lawful possession and occupation.
- (ii) Upon grant of prayer (i) above, an order of Specific Performance be issued directing the Plaintiff to procure the necessary consent to transfer and execute the transfer forms in favour of the Defendants and the Interested Parties for their purchased portions as per their respective Sale agreements as set out in paragraph 12(A) of the Counter-Claim and in default the Deputy Registrar of this Honourable Court to execute the documents and subsequently a permanent injunction restraining the Plaintiff, his agents, servants and/or any other person acting on his behalf from interfering with, trespassing onto, encroaching, alienating, disposing of otherwise dealing with the Defendants' portions within land parcel No. 9360.
- (iii) In the alternative to (ii) above, the Defendants and Interested Parties avers that if the Plaintiffs wishes to have them vacate the suit parcel then he should refund them the purchase price at the current market rates inclusive of the cost of improvements and developments thereon as at the date of the judgment which in any event shall not be less than the figures set out in paragraph 18(B) above.

9. The Plaintiff filed a Reply to the Defence and defence to Counterclaim dated 2nd March, 2023 denying the Defendants'

allegations save for admissions. The Plaintiff averred that the Defendants actions were illegal and contravened the Law of Succession Act for dealing with the property of a deceased person. The Plaintiff alleged that the Defendants bought the property knowing the owner was deceased and the person who sold to them had no capacity to do so, thus they were not lawful purchasers. He claimed that the Defendants' application to revoke the grant is unknown in law as the land was sold after the registered owner had died long before the transactions. He alleged that the Defence is a sham, incurably defective as it contains mere denials and blame meant to cover up illegalities, and should be struck out.

10. In his Defence to the Counterclaim, the Plaintiff denied the alleged purchase and claimed that the Defendants dealt with a person who had no authority to act without involving her co-administrator, or to disinherit the beneficiaries. He denied knowledge of the transactions and asserted that the agreements were null and void. He stated that his mother was willing to refund the purchase price, but only one Defendant accepted the offer and vacated the land. He confirmed his willingness to refund the purchase price, but the Defendants were not entitled to refund at the current market value since they are the masters of their misfortune. That they had been using the property, excavated stones and would be benefiting from their own wrongs.
11. The Plaintiff denied knowledge of the Defendants' activities, and explained that he filed suit when he realised that they had entered the suit property. He claimed that the Defendants' actions are actuated by malice, fraud and illegality, particulars

of which he pleaded thereunder. He claimed that his mother's role as an administrator did not cure the illegalities orchestrated by the Defendants, thus the doctrine of estoppel did not apply to him. He alleged that the reliefs sought by the Defendants stem from an illegality that cannot be undone by this court. He prayed that the Defendants' Joint Statement of Defence and Counterclaim be dismissed with costs and for judgment as sought in the Amended Plaintiff.

12. The Defendants filed a Reply to Defence and Defence to Counterclaim dated 7th March, 2023 denying every allegation therein save what was expressly admitted. They reiterated the contents of the Amended-Defence and Counterclaim. They denied the allegation of fraud and illegality, as well as the particulars pleaded thereunder. The Defendants prayed for judgment in terms of the Amended-Defence and Counterclaim and a dismissal of the Plaintiff's suit.
13. A Third Party Notice was issued to Jane Wangui Kiarie, who filed a Third Party Statement of Defence and Defence to Counterclaim dated 29th November, 2015. She denied the contents of the Defendants Defence and Counterclaim. She specifically denied that the Defendants are lawful purchasers of the land or that they had taken possession of the land and are farming thereon. She claimed that the Defendants Defence and Counterclaim was fatally defective, frivolous, vexatious, bad in law and an abuse of the court process as it is marred by untruths and falsehoods. She accused the Defendants of being guilty of laches and claimed that their defence did not reveal material particulars, thus incompetent and ambiguous and ought to be struck out.

14. In response to the Counterclaim, the Third Party denied any attempt at defeating the cause of justice and fairness through this suit. She further denied making any commitment to the Defendants to safeguard their proprietary interests alongside the beneficiaries. She alleged that the orders sought cannot issue against her. Without prejudice to the foregoing, she stated that she was ready and willing to refund the purchase price of the alleged parcels of land. She still asked that the Defence and Counterclaim be dismissed with costs.

Hearing and Evidence:

The Plaintiff's Case;

15. At the hearing of the case, Peter Mwangi Kiarie testified in support of his case as PW1. PW1 testified that he was the son of Geoffrey Mwangi Kiarie who died on 31.08.2003, while his mother Jane Wangui Kiarie died in August, 2017. He testified that he obtained a grant of letters of administration over his father's estate issued in Eldoret Succession Cause No. 215 of 2003 to himself and his late mother, which he produced as PEXb1. He testified that the suit property was given to himself and his siblings. He explained that the grant had never been altered and that they had distributed the estate save for the suit property. He produced the title as PEXB2.
16. PW1 told the court that he was unaware of any objection filed in Succession Cause No. 215 of 2003. He testified that he was the administrator of his mother's estate whose grant was confirmed. He revealed that his mother had an account at Barclays Bank with KShs. 4,000,000/- that was meant to refund her clients to whom she could not transfer the property. PW1

admitted that his mother had purported to sell the suit property. He produced a Certified copy of a grant as PEXb3. PW1 testified that he was not involved in the sale of the suit property, did not receive any money for it nor attended the Land Control Board (LCB) for consent.

17. PW1 was shown his mother's witness statement and conceded that she had undertaken to refund the money received. He expressed willingness to refund the amounts paid by the Defendants. He was referred to the agreements between his mother and the 1st, 2nd, 3rd, 6th, Defendants and the 1st Interested Party, and he admitted that at the time thereof, his father's estate had already been distributed. PW1 testified that the Defendants had been excavating the land and felling trees and produced a report by NEMA as PEXb3. PW1 adopted his witness statement dated 17th February, 2015 and 23rd November, 2018 as part of his evidence-in-chief.
18. On cross-examination, PW1 testified that he was last on the suit property in 2003. He testified that the agreements were executed before an advocate. He testified that he was not party to the agreements but conceded that his mother had purported to sell to the Defendants. He admitted that he had not included the purchasers as liabilities in HC Succession Cause No. 215 of 2003 or CMC Succession Cause No. 70 of 2018. He claimed that the Defendants were not in occupation of the land at the time of distribution of his father's estate. PW1 testified that the Defendants did not do due diligence. He however admitted that the Defendants were in occupation of the suit property. He further testified that the report by NEMA showed that the

Defendants were illegally excavating the land, but he had not reported the said illegal actions to the police.

19. PW1 was re-examined and he testified that he had disclosed in Petition 215 of 2023 that there were debts in respect of this suit, but that he was not aware of any liabilities at the time of distribution. This was the end of the Plaintiff's testimony. It also marked the close of the Plaintiff's case.

The Defendants' Case;

20. At the hearing of the Defence case, Michah Kiptabut the 2nd Defendant testified as DW1, and adopted his witness statement as his evidence-in-chief. DW1 testified that he had a sale agreement dated 17.4.2008. He testified that he moved to Kapseret in 2008 and met the late Jane Wangui Kiarie, who came with Nicholas Arusei, a broker with regard to sale of land which had been advertised through Baraka Land Company. He produced the advertisement as DEXb1. He testified that they went to an advocate called Mr. Chebii who showed him the title and confirmed that the land was okay. DW1 produced a copy of the title as DEXb2. DW1 testified that Jane's husband had died and she was the Administratrix of his Estate, and he produced a copy of a grant as DEXb3.
21. DW1 testified that they entered a sale agreement before his two witnesses for 5 Acres, and that upon payment of the first instalment, he was allowed to take possession, and he cleared the balance in September, 2008. The agreement for sale alongside the acknowledgments for the instalments were marked as MFI4. He testified that the land was surveyed, but the seller refused to process titles for them. He prayed that the

court orders that he gets the land he purchased. DW1 testified that Jane Wangui died and was succeeded by the Plaintiff. He acknowledged that the Plaintiff was ready to refund the money, but asserted that they wanted the land and not a refund. He also asked for costs of the suit.

22. On cross-examination, DW1 testified that Jane Wangui sold him the land, and that the Plaintiff never signed the agreement. DW1 testified that the estate had two administrators, who both ought to have signed any sale agreement. DW1 told this court that the grant was confirmed on 25.10.2006 giving the suit property to the Plaintiff and his two siblings. He reiterated that Jane Wangui refused to give them title in 2013. He testified that they did not object to the grant because they found out about it much later. He testified that Jane Wangui Kiarie did offer to pay back their money claiming to have had no capacity to sell, and was unable to transfer it to them. He admitted to having initially wanted a refund, but that he later dropped the idea. DW1 confirmed that according to the confirmed grant, Jane Wangui was not a beneficial owner of the land.

23. DW1 was re-examined and he testified that at the time they appeared before the advocate, Jane Wangui already had a confirmed grant but she did not show it to them. He testified that there is no evidence that it is the court that distributed the estate of Kiarie.

24. Methusellah Kirwa testified as DW2 and adopted his witness statement dated 26.10.2018 as his evidence-in-chief. DW2 testified that in 2006 Jane Wangui offered part of the land to him for sale. He testified that she took him to her advocate by the name Chebii, and he was showed the title and the grant

produced as PEXb2. DW2 states that they entered into an agreement for sale dated 03.09.2007, which he produced as DEXb3. He states that he then entered the land and fenced his portion. DW2 testified that in 2007, he asked the owner for his title, but she said that her children had refused, and she wanted to refund him his money. DW2 refused the refund. He asked the court to order the transfer of 2.5 Acres to him. He told the court that he had been on the land for 18 years.

25. DW2 was cross-examined and he testified that the sale agreement dated 03.09.2007 between him and Jane Wangui Kiarie, was executed before Mr. Manani. He clarified that although the agreement states that he was purchasing 5 Acres, he was seeking only the 2.5 Acres that he paid for. DW2 testified that the land is in the name of John Geoffrey Kiarie Mwangi (deceased), and his widow had obtained a grant. The witness was referred to the Certificate of Confirmation of Grant and testified that it is issued on 25.10.2006 but dated 23.09.2008. DW2 testified that at the time of the sale, he did not know that the property had already been distributed vide the Certificate of Confirmation of Grant to the Plaintiff and his siblings. He reiterated that the seller wanted to refund his money, but he wanted the market price. He admitted that he knew the Plaintiff was a co-administrator and that the Plaintiff did not sign the agreement. He also admitted to paying money to the Plaintiff's mother.

26. On re-examination, DW2 testified that the seller had informed him she would file succession and he expected to get his title. He testified that he did not know the Plaintiff was a co-

administrator of the estate. He asked the court to order the Plaintiff to get them title deeds and also asked for costs.

27. The Defendants then called Monica Jeptoo, who testified as DW3 and adopted her statement dated 26.10.2018 as her evidence-in-chief. She testified that she was the wife to the late Joshua Kiprotich Cheremek. She testified that her husband had purchased land from Jane Wangui for KShs. 610,000/-. DW3 produced a sale agreement dated 11.06.2007 as DEXb3. She told this court that after purchase, they moved into the land where they remain to date. She denied that they are trespassers. She pointed out that the Plaintiff had not reported them or demanded any money. She asked that the Plaintiff's case be dismissed with costs and that he be directed to give them title deeds.
28. Under cross-examination, DW3 admitted that she was not present when the agreement was made. She explained that from the agreement and acknowledgment note, her husband had paid a total of KSh. 550,000/-. She added that nothing in the agreement states that the seller was receiving the money on behalf of her family. DW3 states that she was aware the land belonged to Geoffrey Kiarie, but was not aware of the Succession cause and the confirmed grant. She confirmed that by the time they purchased the land, it had been given to the Plaintiff and his siblings, who did not sign the sale agreement. DW3 was unaware that the seller had called the purchasers to refund their money. She could not tell if they had filed a case against the seller's estate.

29. When she was re-examined, DW3 testified that they wanted the land and not a refund. She asked the court to direct that they be issued with their titles.
30. Thereafter, the Defendants called Isaac Magut to testify as DW4. He also adopted his witness statement dated 28.05.2015 as his evidence-in-chief. He testified that he purchased land that had been advertised for sale after meeting the owner. He testified that the seller took him to her advocate, Mr. Chebii, who confirmed that the land had all the documents and showed him the title and the grant. DW4 said that they entered into an agreement for sale prepared by the advocate and he produced the agreement as DEXb4. DW4 testified that after he paid KShs. 720,000/- for the land, he was shown the land which he took possession of, developed it, and is still in occupation. He told the court that the seller did not inform him of any objections from her children. He thus asked the court to order that they be given title to the land as well as costs of the suit.
31. On cross-examination, DW4 testified that he never conducted a search before purchase. He testified that the land is in the name of the late John Geoffrey Kiarie Mwangi and that his wife, Jane Wangui, was the one who advertised the land. He testified that the deceased's children were not present during the sale. He testified that his agreement dated 22.07.2008 was signed by Jane Wangui Kiarie, and he was unaware that at the time, the land had already been distributed. He confirmed that he had appeared before Jane Wangui before her death, and they had discussed the issue of refund of his money.
32. When he was re-examined, DW4 testified that Jane Wangui had told them that the land belonged to her late husband, but had

asked them to clear their payments after which she could take them to the LCB. He testified that Jane Wangui had not told him why she wanted to refund the money, nor revealed that the land belonged to her children.

33. The 5th Defendant, Chepor Tapserka testified as DW5 and adopted his witness statement dated 28.04.2015 as his evidence-in-chief. He testified that he was introduced to Jane Wangui by a broker named Elias. He explained that he sold his land in Kitale and came to buy his portion of the suit property. DW5 testified that Jane and her daughter took him to advocate Chebii, who showed him the title to the land. That Chebii Advocate prepared a sale agreement, which he and Jane signed and the advocate witnessed it. He testified that he had two agreements for 5 Acres each, although one of them is lost. He testified that after payment, he took possession of the land, on which he lives with his family to date. DW5 stated that he went to the advocate's office 6-7 times, and each time he was accompanied by the seller and her daughter. He asked the court to assist him obtain title to his land and produced his agreement as DEXb6. He also asked for costs of the suit.

34. On cross-examination, DW5 testified that his agreement was signed on 21.08.2008. He explained that he first purchased 5 Acres, and later purchased another 5 Acres. DW5 told the court that although the seller's daughter was present, she did not sign the agreement. He clarified that he paid money to Chebii Advocate who handed it to the Seller, the Plaintiff's mother. He testified that he could not read or write, but said that the title shown to him by the seller was in the name of Jane Wangui. He also admitted that Jane Wangui approached him wanting to

refund his purchase price but he refused. He said that he was unaware the land had been transmitted to Jane's children. He conceded that he had not verified ownership of the land before purchase. He complained that Jane Wangui did not process his title before she died.

35. On re-examination, DW5 reiterated that he had sold his land in Kitale to buy the suit land. That Jane Wangui promised to give him title, but later wanted to refund the money, which he refused. Further, that an Indian wanted to buy the land and that is why Jane wanted to refund the money.

36. The 1st Defendant, Elijah Kiplangat Sang testified as DW6. He adopted his witness statement dated 08.07.2024 as his evidence-in-chief. He testified that he first bought a 2-Acre portion of the suit land from one Josiah Kiptanui Mutai, who had bought his land on 21.08.2007. That he then bought a second portion on 17.04.2008 and a third one on 26.09.2008 both from Jane Kiarie. He explained that the land was advertised for sale by a company who had caused it to be surveyed. He said that the seller took him to Chebii Advocate where he was shown a copy of the title and grant. DW6 produced the agreement and acknowledgment of monies as DEXb 8(a) and (b). He asserted that he paid the purchase price to Jane before her daughter and Chebii Advocate who witnessed it. He stated that he asked Jane where her son was, and she told him that he was putting up an estate in Thika, and that is why they were selling the land. He asked the court to direct that he be issued with title.

37. On cross-examination, he testified that the estate had two administrators but the Plaintiff did not sign the agreement as a co-administrator, nor received any part of the purchase price.

He stated that he never saw any authority from the court allowing Jane Kiarie to sell the land. He told the court that having seen Jane's daughter, he assumed that the family had agreed. He conceded that he never conducted a search and that he left it for the advocate to do so. He explained that he bought from Jane because she was the administrator, and he was not aware that at the time, it had been distributed to the beneficiaries. DW6 was referred to the Certificate of Confirmation of Grant and he testified that it showed the people to who the land had been distributed, and Jane was not one of them. He explained that Jane told him she would pass the money to Peter who was carrying out development in Thika, but he could not confirm if she did so. DW6 testified that he purchased 4.5 Acres and the rest from a third party.

38. On re-examination, DW6 testified that after he completed payments, Chebii Advocates asked them to pay a further KShs. 25,000/-. He confirmed that he knew the land belonged to the family.
39. John Kibiwot Biiy was called to testify as DW7 and adopted his witness statement dated 26.10.2018. He told this court that the Defendants were his neighbours. He testified that he also knew the Plaintiff's family, and stated that they had subdivided the land and advertised it for sale after their father died. DW7 testified that the first to buy was Joshua Chelemei and others also came to buy. He testified that he has never heard of any dispute between the Plaintiff's family and the buyers until 2015, when he heard that they wanted to refund the money to the purchasers. He confirmed that the purchasers are still on the land.

40. DW7 was cross-examined by Mr. Kimani and he testified that Jane went to him and asked him to look for buyers. He testified that the family of the deceased had three children, the Plaintiff, Anna and Mugo. He clarified that he was not party to any of the sale agreements. He told the court that in 2015, he heard that the Plaintiff wanted to refund the money. He also did not know the registered owner of the land.
41. On re-examination, DW7 testified that the land was advertised for sale and the family was staying together. He testified that as a village elder, he had never heard the family dispute that they were not selling the land.
42. Thereafter, the Defendants called Willy Kitur Cheruiyot to testify as DW8. He adopted his witness statement dated 26.10.2018 as his evidence-in-chief. He knew John Kiarie, his wife and some of their children as they were from his neighbourhood. He explained that the family advertised their land for sale and people from different places bought the land. He testified that he never heard that the seller wanted the land back.
43. DW8 testified that Jane Wangui, the widow of John Kiarie, is the one who told them they were selling the land 2 years after her husband died. He testified that he had by that time only heard of the Plaintiff, but did not know him. DW8 testified that he was not involved in any of the sales. DW8 was not cross-examined.
44. The last witness to testify in support of the Defendants' case was Barnabas Kipkoech Magut. He was marked as DW9 and adopted his witness statement dated 26.10.2018 as his evidence-in-chief. He testified that he is the brother of Isaac Magut, the 3rd Defendant. He testified that he was informed by one Mr. Arusei that Jane Wangui was selling land, and he went

to see it as his brother wanted to buy land. He testified that he was taken by a broker to Advocate Chebii to ask about the owner and he was shown the land and title thereto, and then signed a sale agreement. He testified that they paid Jane for the land in the presence of her daughter. That after paying, they took possession of the land and they remain on the land to date.

45. On cross-examination, DW9 testified that they started the process in 2005 but the agreement was signed in the year 2008. He admitted that Jane did not show them a title in her name, and they did not do a search at the lands office to confirm ownership. He testified that when they bought the land at the Advocate's office, only the seller's daughter was there, but her sons were not there. He told the court that the agreement was between Jane and them.
46. DW9 testified that they paid the money to Chebii Advocate who handed it over to Jane Wangui. That according to entry no. 5 on the title, the entire suit property was given to the Plaintiff and his siblings, and Jane's name was not on the title. DW9 testified that the Grant was made on 25.10.2006 while they bought in 2008. He confirmed that they bought from Jane, and that they never saw the Plaintiff. He asserted that they are claiming title to the land they bought from Jane.
47. Upon re-examination, DW9 testified that at the time of purchase, they did not know it had been given to other people. He added that Chebii Advocate told them that there was a process to be done for them to get their titles. This marked the end of DW9's testimony and the Defendants' closed their case.

Submissions:

48. At the close of the Defendants' case, the court directed the parties to file their final written submissions. In compliance, the Plaintiff filed his submissions dated 4th February, 2026. The Defendants also filed their submissions dated 24th February, 2026.

Analysis and Determination:

49. This court has carefully considered the pleadings filed herein, the witness testimonies and the evidence adduced in court. The court has also considered the submissions of the parties, and the issues set out below fall for consideration;

(a) Whether the sale agreements in respect of the suit parcel were valid?

(b) Whether the defendants are innocent purchasers for valuable consideration without notice?

(c) Whether the Defendants are trespassers on the suit land;

(d) Whether the defendants are entitled to orders sought in the Counterclaim;

(e) Who shall bear the costs of this suit?

(a) Whether the sale agreements in respect of the suit parcel were valid?

50. In this suit, the Plaintiff sued the Defendants claiming trespass on the part of the Defendants. The Defendants however responded that they had purchased their respective portions from one Jane Wangui Kiarie (deceased). On this claim, the Plaintiff countered that the said seller, not being the registered owner, had no capacity to sell the land to the Defendants. He

denied signing the agreements as a co-administrator and that the Seller did not obtain his authority or leave of the court to dispose of the land. The first issue for determination therefore, is whether the agreements made between the Defendants and the late Jane Wangui Kiarie are valid.

51. Under law, one of the necessary requirements of a contract is that the parties must have the requisite capacity to transact. For a sale of land to be valid, the parties to the same must have the requisite capacity to transact in regard to such land. Therefore, before a person sells land, they must be the owners thereof, or have the authority of the owner to sell, for them to pass good title to whoever will purchase such land.
52. In the present suit, the Plaintiff has claimed that the Defendants did not bother to ascertain whether the seller had been authorised by court to dispose the land at the time they purchased their portions of land. The Plaintiff claimed that the Defendants' actions constituted intermeddling which is expressly prohibited under Section 45(1) of the Law of Succession Act Cap 160 Laws of Kenya which provides that:-

Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

53. Under section 45 above, no party can have capacity to deal with the land of a deceased person unless they have a grant of representation appointing them as a representative of that

estate. Where a party deals with such property in the absence of a grant, their actions amount to intermeddling.

54. However, Section 45 must be read with Section 82 of the Law of Succession Act which empowers an administrator of estate to sell all or any of the assets of an estate vested in them. Moreso, under Proviso (b)(ii) of Section 82, no immovable property shall be sold before confirmation of the grant. This court respectfully notes the case of **Re Estate of M' Ajogi M' Ikiugu (Deceased) (2017) eKLR**, where the court stated as follows:-

“Courts have said time and again- and I will not be tired of stating it again- that, under section 82(b) (ii) of the law of Succession Act, sale of immovable property of the estate before confirmation of grant is prohibited. Again, under section 55 of the Law of Succession Act, the law has placed restriction on distribution of any capital assets of the estate before confirmation of grant. Therefore, no person shall have any power or legal authority or capacity to sell immovable property of the deceased before confirmation of grant. As such, any such attempted sale of immovable property of the estate before confirmation of grant shall be null and void for all purposes and intents. I need not also state that beneficial interest of a person beneficially entitled to a share in the estate must be identified and be capable of registration in his name before it could be sold or pledged as security or exchanged with another type of property.”

55. Similarly, the Court of Appeal in the case of **In re Estate of Jamin Inyanda Kadambi (Deceased) (2021) eKLR** held that:-

“No immovable property of a deceased person shall be sold before confirmation of the grant. Any transaction that purports to dispose of an estate property before such confirmation is unlawful and null and void.”

56. In the instant case, there is no dispute that the late John Geoffrey Kiarie Mwangi is the registered owner of the suit property herein. He died on 31st August, 2003. His wife, Jane Wangui Kiarie, and son, Peter Mwangi Kiarie, who is the Plaintiff herein, were appointed as Administrator/Administratrix of his estate vide a Grant of Letters of Administration Intestate issued on 14th July, 2004 in Eldoret HCPA No. 215 of 2003. The said Grant was duly confirmed on 25th October, 2006.

57. Evidently, the Grant issued on 14th July, 2004 appointed two administrators, yet the Agreements for sale were only signed by one administrator, Jane Wangui Kiarie. The Plaintiff has been adamant that he never was a part of the sales and he was not aware of them, thus his mother had no authority to sell. The Defendants on their part claim that they were not informed about the grant and the distribution of the suit property to the beneficiaries of the estate. The issue arising with regard to capacity therefore, is whether Jane Wangui Kiarie could solely transact over the land.

58. It is well known that where an estate has multiple administrators, one administrator cannot act or deal with assets

of the estate to the exclusion of the other administrators. A co-administrator therefore needs the consent, cooperation, and/or involvement of the other co-administrator(s) to sell land belonging to an estate. In **Re Estate of Kamatu Mwanthi Kamatu (Deceased) (2020) KEHC 6602 (KLR)**, Justice Odunga explained that:-

30. ... Where there are more than one administrators of the estate of a deceased, all the administrator must act jointly. This is so because an administrator is in the position of a trustee for the benefit of the beneficiaries. Just like other trustees, he must act in the best interests of the beneficiaries. It was therefore held in Willis Ochieng Odhiambo vs. Kenya Tourist Development Corporation & Another Kisumu HCCC No. 51 of 2007 based on Lewin on Trusts 16th Ed at 181 that:-

“In the case of co-trustees of a private trust, the office is a joint one. Where the administration of the trust is vested in co-trustees they all form as it were one collective trust and therefore must execute the duties of their offices in their joint capacity.”

31. In my view unless an administrator acts in accordance with the instrument that appointed her, in this case jointly, she may well be considered to be intermeddling with the estate since her powers and authority must always be jointly exercised.”

59. In **Re Estate of Makokha Idris Khasabuli (Deceased) (2019) KEHC 257 (KLR)**, Justice Musyoka stated as follows concerning the position of administrators:

“8. It must be stated that even though there are four administrators in places in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behoves the four administrators to act as one with regard to managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them.

9. ... By virtue of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, the assets are vested corporately in all the administrators named in the grant. The powers conferred on administrators by section 82 of the Law of Succession Act are exercisable by all the four administrators named in the grant, and all the duties imposed on administrators by section 83 of the Act fall on all four of the administrators. The four cannot purport to act singly or solely, unless, of course, there has been delegation of responsibility.”

60. It follows from the above authorities that a sale agreement executed by one administrator without the involvement of a co-

administrator is generally invalid. This is a court of record, and despite the Defendants' claims, the fact remains that there is no tangible evidence or written authority indicating the Plaintiff's consent as a co-administrator in the sale of the land. The Defendants have presented no proof that the late Jane Wangui Kiarie had express written consent of the Plaintiff, as the co-administrator, to sell the land to the Defendants.

61. Therefore, despite the fact that the Grant was confirmed, the late Jane Wangui Kiarie could not solely dispose of the suit property by sale to the Defendants herein. Since the property of the deceased could not be sold to any of the Defendants in the manner that happened in this case, there can be no valid sale agreement between any of the Defendants and the late Jane Wangui Kiarie.

(b) Whether the defendants are innocent purchasers for valuable consideration without notice?

62. In seeking to enforce the sale agreements, the Defendants have claimed to have been innocent purchasers. In fact, the first prayer in the Defendants' Amended Counterclaim is for a declaration that they are bona fide purchasers for value and without notice. They therefore sought to be declared lawful purchasers of their respective parcels.

63. The Black's Law Dictionary 10th Edition defines a 'bona fide purchaser' as follows:-

“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who

has in good faith paid valuable consideration for property without notice of prior adverse claims.”

64. In the case of **Kamere vs Lands Registrar, Kajiado (Civil Appeal 28 of 2005) (2015) KECA 644 (KLR)** where the Court of Appeal held that:-

“... in order to be considered a bonafide purchaser for value, he must prove that he had acquired a valid and legal title, secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration for the purchase of the suit property.”

65. What comes to play is the invalidation of the Defendants' agreements on the finding by this court that the seller had no capacity to sell the property without her co-administrator's express consent and/or involvement or that of the beneficiaries. The Defendants having been shown the Grant that indicated there was a co-administrator, ought to have ensured that he also executed the sale agreements, but they did not. They have spoken of asking the late Jane Wangui Kiarie as to the whereabouts of the Plaintiff, and were informed that he was pursuing a development in Thika. However, none of the Defendants has told this court that they sought to speak to the Plaintiff to confirm that he was involved in or had expressly consented to the sale. In the circumstances, the Defendants cannot claim to have been unaware of any defects in the title.

66. Moreover, going by the Certificate of Confirmation of Grant, the suit property had already been distributed to the beneficiaries of the estate who are the Plaintiff herein, his sister Anne Murugi

Kiarie and Benard Mugo Kiarie. Jane Wangui Kiarie was not among the beneficiaries to whom the land had devolved to. It is possible that the Defendants may have acted in good faith, however in the circumstances, the doctrine of bona fide purchaser cannot come to their aid.

(c) Whether the Defendants are trespassers on the suit land;

67. The suit property herein is registered in the name of John Geoffrey Kiarie Mwangi. As the Administrator of his estate, under the Law of Succession Act, the property is vested in the Plaintiff. There is no dispute therefore that the Plaintiff is entitled to exclusive possession thereof as a representative of the estate. The question that arises is whether the entry of the Defendants into the suit property amounts to trespass.

68. Trespass is defined in the **10th Edition of Black's Law Dictionary** as an unlawful act committed against the person or property of another; especially wrongful entry on another's real property. In **Charles Ogejo Ochieng vs Geoffrey Okumu (1995) KECA 169 KLR**, the Court of Appeal described trespass thus:

“Trespass is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass.”

69. The Defence contends that access was permitted. The Defendants herein claim to have purchased their respective portions of the suit property which they currently occupy. They

uniformly told this court that they were shown their parcels of land and after paying for the land, they took possession.

70. Each of the Defendants herein entered the land on the basis of the sale agreement they had entered with Jane Wangui Kiarie over their respective portions. However, the said agreements were not made by a party with capacity to transact. Whatever consent was extended to the Defendants to occupy the land by the late Jane Wangui Kiarie was clearly withdrawn by the Plaintiff herein in both as an administrator of the estate of the Registered owner as well as a beneficial owner of the suit property herein alongside his siblings. That being the case, the Defendants have no justification to remain on the suit property, and this court finds that they are trespassers.
71. Notably, the prayers in the Plaintiff's amended Plaint are premised on the finding that the Defendants are on the land without permission. Seeing as the Defendants have no justifiable reason to be on the land, the prayer that the Defendants vacate the land or face eviction and permanent injunction is merited. Equally, as an administrator and beneficial owner of the land, the Plaintiff is entitled to protection by way of permanent injunction as sought in the Plaint.
72. As to the claim for mesne profits, the same are only payable where there is a landlord and tenant relationship, and where the tenant has derived a particular benefit from the premises during a period when they had no right to remain on the premises. No such relationship exists between the Plaintiff and the Defendants, thus this relief cannot issue.
73. In the alternative to the prayer for mesne profits, the Plaintiff also asked for damages for trespass. However, the Defendants

entry into the land was through what they at the time believed to be agreements duly entered into by a representative of the estate. The monies paid for the purported sales still remain with the estate. For this reason, I find no merit in this prayer

(d) Whether the Defendants are entitled to the orders sought in the Counterclaim;

74. The next step is to determine whether the prayers sought in the Defendants' counterclaim are merited. The Defendants sought a declaration that they had purchased their respective portions of the suit property as innocent purchasers for value without notice, and that they are the lawful owners, who remain in lawful possession and occupation. The Defendants also sought an order of specific performance as well as a permanent injunction against the Plaintiff.
75. In the alternative, the Defendants asked for a refund of the purchase price at the current market rates, plus the costs of improvements and developments as at the date of the judgment in case the Plaintiffs wishes to have them vacate the suit land.
76. I note that the topic of refund of the purchase price has dominated this suit from the very beginning. The Plaintiff has in his testimony expressed willingness to refund the purchase price. Even the late Jane Wangui Kiarie had expressed willingness to refund the Defendants' purchase price. Although the offer for refund had earlier been made, the Defendants had rejected it because they were offered the money they paid for the land whereas they wanted a refund at current market price.

77. As to the various purchases made by the Defendants, the following facts emerge from the documents produced before this court, that while some Defendants had paid the purchase price in full, some still had outstanding balances. But despite paying monies, the land was never transferred to them and the Defendants were never issued with title documents to the parcels of land that they purchased.
78. Under section 3(3) of the Law of Contract Act, land can only be transferred after a valid sale agreement. However, the invalidation of the said sale agreements does not entitle the Estate to which the Defendants paid the purchase price, to keep the monies paid towards the purchase of the suit property. The Defendants are thus entitled to a refund of the monies they paid for the land to the extent that they have each proved.
79. As to the monies paid by the Defendants herein, I have taken time to peruse the documents filed in court and have calculated the amounts proved by the Defendants herein. From the evidence in court, Elijah Kiplangat Sang had two agreements for purchase of 4½ at an aggregate price of KShs. 315,000. On the Acknowledgment Slip of 2nd April, 2009, Jane Wangui Kiarie indicated that as of that date he had a balance of KShs. 100,000/- of which he paid KShs. 40,000/- on 11th January, 2013 leaving a balance of KShs. 60,000/-. This means he paid KShs. 255,000/-. Micah Kiptabut Kosgei also had two agreements under which he purchased 8 Acres for a total of KShs. 525,000/-. Out of this amount, he only paid KShs. 495,000/-. In the agreement dated 22nd July, 2008 Isaac Kiptakam Magut bought 10 Acres for KShs. 720,000/- which he paid in full.

80. Chepor Tapserka purchased 5 Acres for KShs. 650,000/- which he paid in full. He however made further payments totalling to KShs. 86,000/- which were duly acknowledged. From the evidence produced before this court, in total, Chepor Tapserka paid a total of KShs. 736,000/-. Monicah Jeptoo, through her husband purchased 5 Acres of the suit property on 11th June, 2007 from Jane Wangui Kiarie for KShs. 610,000/- but only paid a total of KShs. 510,000/-. Methuselah Kipkurgat Kirwa bought 5 Acres of the suit property for KShs. 600,000/-, but only paid KShs. 390,000/.
81. Notably, aside from representing his late father's estate, the Plaintiff herein is also the Administrator of the estate of Jane Wangui Kiarie. The Plaintiff is therefore in a unique position to be able to refund the Defendants their monies. However, the monies were paid under agreements that have been declared invalid for lack of capacity. To this end, I find that the Defendants are only entitled to the monies paid towards the purchase price and not at the current market price as sought in their Counterclaim. In any event, the Defendants have had use of the suit land for almost 20 years now without paying rent to either the plaintiff, his siblings or the estate at large.
82. The 1st Defendant talked of an initial transaction, where he had bought land from a previous buyer, one Josia Kiptanui Mutai, who had purchased from the late Jane Wangui Kiarie. For that land, the 1st Defendant can only seek a refund of the monies paid from the person who sold to him.

(e) Who shall bear the costs of this suit?

83. With regards to costs of the suit, Section 27 of the Civil Procedure Act provides that:-

27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

84. Costs of an action or proceedings therefore, are at the discretion of the Court. It further provides that costs shall follow the event. The Supreme Court in the case of ***Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others (2014) eKLR***, affirmed that costs must always follow the event unless the Court has a good reason to direct otherwise.

85. In the instant case, both the Plaintiff as well as the Defendants have partially succeeded in their respective claims. Bearing this in mind, I find that a departure from the general rule is justified. For this reason, I hereby direct that each of them bear their own costs of this suit.

Orders:-

86. In the end, the Plaintiff's the following orders are issued in the determination of this suit:-

- a) An order directing the Defendants vacate the land parcel LR No. 9360 within six (6) months from the date hereof, failure to which the Plaintiff shall be at liberty to evict them from the land.
- b) A permanent injunction restraining the defendants from interfering with, ploughing, using and/or erecting structures on that land parcel LR No. 9360 situate in Kapsaret measuring approximately 50 acres, which injunction shall come into force upon expiry of the six (6) months period granted at (a) above.
- c) The Plaintiff be and is hereby ordered to refund the purchase price paid by each of the Defendants to the late Jane Wangui Kiarie for their respective parcels purchased on the parcel of land known as LR No. 9360 to the extent that they have each proved, within six (6) months from the date hereof.
- d) Each party shall bear their own costs of the suit.

87. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **16TH** day of **APRIL, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of:-

Mr. Kimani for Plaintiff.

Mr. Orina for the Defendants.
Court Assistant - Laban.

ORIGINAL