

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
KERUGOYA

ELC CASE NO. 125 OF 2016

JOSPHAT KAMAU GITIMU 1ST
PLAINTIFF

JESSE MURIITHI GATIMU 2ND
PLAINTIFF

PATRICK KANYUNYU GATIMU 3RD
PLAINTIFF

JAMES KARIUKI GATIMU 4TH
PLAINTIFF

JOSEPH KARIUKI GATIMU 5TH
PLAINTIFF

ESTHER WANJIRU MUTUGI 6TH
PLAINTIFF

VERSUS

AGNESS WANJIKU KARIMI (Defending as the Legal

representative of Peter Gatimu Kanyonyo) 1ST

DEFENDANT

PETER MUCHIRI GAKU 2ND

DEFENDANT

GRACE WAMUYU MUNYUA 3RD

DEFENDANT

MARY MURINGO MWAI 4TH
DEFENDANT

EUNICE WAKIAGA MUTONYI 5TH
DEFENDANT

ZABLON KIMINDU MUTONYO 6TH
DEFENDANT

FREDRICK MURIUKI KIBUCHI 7TH
DEFENDANT

CONSOLIDATED WITH

ELCC NO. 46 OF 2019

**JOSPHAT KAMAU GATIMU & 5 OTHERS
PLAINTIFFS**

VERSUS

**GRACE WAMUYU MUNYUA & 2 OTHERS
DEFENDANTS**

JUDGMENT

- 1. ELCC No. 125 of 2016** was consolidated with **ELCC No. 46 of 2019** through the directions issued on **27th May 2022** by **E. C. Cheron, J.**

Both suits concern competing claims arising from the subdivision and subsequent transfers of **Land Parcel**

Mutira/Kiaga/76, which originally belonged to the 1st defendant, Peter Gatimu Kanyonyo. The disputes revolve around the implementation of a decree issued in **Wang'uru Arbitration Case No. 9 of 2009**, which ordered the subdivision and distribution of the said parcel.

Plaintiff's pleadings in ELC Case No. 125 of 2016:

2. The plaintiffs in **ELC Case No. 125 of 2016** filed an Amended Plaint dated 30th October 2017, pleading that at all material times the 1st defendant, Peter Gatimu Kanyonyo, was the registered proprietor of **Land Parcel Mutira/Kiaga/76**.

According to the plaintiffs, the land was subsequently subdivided into **Parcels Mutira/Kiaga/1669 to 1677**.

The plaintiffs further pleaded that at all material times relevant to the suit, the 2nd defendant was the registered proprietor of **Land Parcels Mutira/Kiaga/1672, Mutira/Kiaga/1676 and Mutira/Kiaga/1677**, each measuring approximately **0.394 hectares**. They further averred that the 1st defendant was the registered proprietor of **Mutira/Kiaga/1673**, also measuring approximately **0.394 hectares**, while the 4th defendant was the registered proprietor of **Mutira/Kiaga/1706**.

3. The plaintiffs averred that the subdivision was undertaken pursuant to a decree issued in **Wang'uru Arbitration**

Case No. 9 of 2009, in which the court ordered that the original parcel be subdivided and distributed among the beneficiaries as follows:

- 1) The 1st to 5th plaintiffs were each to receive one acre.
- 2) Eunice Wakiaga Mutonyi, Agness Wanjiku Karimi, and Esther Wanjiru Mutugi were each to receive one-third of an acre.

They further pleaded that following the subdivision, the intended allocations of the resulting parcels were as follows:

<u>Parcel Number</u>	<u>Intended Beneficiary</u>
Mutira/Kiaga/ 1669	Esther Wanjiru Mutugi
Mutira/Kiaga/ 1670	Eunice Wakiaga Mutonyi
Mutira/Kiaga/ 1671	Agness Wanjiku Karimi
Mutira/Kiaga/ 1672	Patrick Kanyonyo Gatimu
Mutira/Kiaga/ 1673	Josphat Kamau Gatimu

Parcel Number **Intended**
Beneficiary

Mutira/Kiaga/ Peter Gatimu
1674 Kanyonyo

Mutira/Kiaga/
1675 Joseph Kariuki Gatimu

Mutira/Kiaga/
1676 Jesse Muriithi Gatimu

Mutira/Kiaga/ James Gathara
1677 Gatimu

4. The plaintiffs averred that, despite the existence of the decree and the intended allocations, the 1st defendant proceeded to transfer several parcels to third parties, including the other defendants in the suit.

That the 1st defendant transferred **Mutira/Kiaga/1675** as a gift to the 6th defendant, who was not a beneficiary under the decree. They further averred that **Mutira/Kiaga/1676** was transferred to the 7th defendant, who subsequently sold the parcel to the 2nd defendant, now the registered proprietor.

The plaintiffs further pleaded that the 1st defendant caused **Parcels Mutira/Kiaga/1669, 1670, and 1671**, each measuring approximately **0.13 hectares**, to be combined into a new parcel known as **Mutira/Kiaga/1706**, measuring

approximately **0.394 hectares**. They averred that this parcel was transferred to the 5th defendant, who later sold it to the 8th defendant, and thereafter to the 4th defendant, who is the current registered proprietor.

5. The plaintiffs contend that the said transfers were undertaken without the consent of the decree holders and in violation of the decree issued in **Wang'uru Arbitration Case No. 9 of 2009**, which decree was subsequently upheld by the **Court of Appeal in Civil Appeal No. 16 of 2014 at Nyeri**.

According to the plaintiffs, the impugned transactions were undertaken in haste and fraudulently, with the intention of frustrating the implementation of the court decree, thereby depriving them of their respective shares in the original parcel **Mutira/Kiaga/76**.

6. The plaintiffs, therefore, seek the following orders:

1. A declaration that the transfers of **Mutira/Kiaga/1672, 1675, 1676, 1677, and 1706** by the 1st defendant to the other defendants were unlawful, fraudulent, and intended to defeat the decree issued in **Wang'uru Arbitration Case No. 9 of 2009**, and are therefore *null and void ab initio*.

2. An order for cancellation of the titles to **Parcels Mutira/Kiaga/1672, 1673, 1675, 1676, 1677, and 1706**, and reversion of the same to the original **Parcel Mutira/Kiaga/76** for redistribution in accordance with the decree.
3. An order directing that the plaintiffs be registered as the lawful proprietors of the said parcels in accordance with the decree issued in **Wang'uru Arbitration Case No. 9 of 2009**.
4. Any other relief that the court may deem fit.
5. Costs of the suit.

Plaintiff's pleadings in ELC Case No. 46 of 2019:

7. In **ELCC No. 46 of 2019**, the same plaintiffs instituted a fresh suit against Grace Wamuyu Munyua, Fredrick Muriuki Kibuchi, and Eunice Waithera Munyua, following the withdrawal of the claim against some defendants in **ELCC No. 125 of 2016** after the statutory period for extension and re-issuance of summons had lapsed.

The plaintiffs state that the present suit was therefore necessary to bring those parties before the court and to enable the dispute concerning the resultant **Parcels of Mutira/Kiaga/76** to be determined conclusively. In that suit, the plaintiffs seek, in substance, declarations that the titles to

Mutira/Kiaga/1675, 1676 and 1706 were fraudulently and illegally acquired and that the transfers to the defendants are null and void; orders cancelling those titles; a declaration that **Mutira/Kiaga/1706** be subdivided into three equal portions with one portion transferred to the 6th plaintiff; declarations that **Mutira/Kiaga/1675** and **Mutira/Kiaga/1676** be transferred to the 5th and 2nd plaintiffs respectively as their alleged rightful owners; a permanent injunction restraining the defendants from interfering with the plaintiffs' proprietary interests in the suit properties; and costs of the suit.

8. The plaintiffs' case is that the original **Parcel Mutira/Kiaga/76**, which belonged to their father Peter Gatimu Kanyonyo, had already been subjected to subdivision pursuant to a decree issued in **Wang'uru Arbitration Case No. 9 of 2009**, which directed that the land be distributed among his sons while the portion allocated to his daughters be subdivided equally among them.

According to the plaintiffs, a mutation dated 24th July 2012 was prepared to implement the decree and the resultant parcels were intended to be transferred to the respective beneficiaries. They averred, however, that the 1st defendant caused the resultant parcels to be registered in his own name contrary to the court orders, and thereafter transferred several of them to third parties.

In particular, they contend that **Mutira/Kiaga/1676**, which they claim had been allocated to the 2nd plaintiff, was transferred to Fredrick Muriuki Kibuchi and subsequently sold to another purchaser; that **Mutira/Kiaga/1675**, which they claim belonged to the 5th plaintiff, was transferred by the 1st defendant as a gift to Zablon Mutonyi, who later sold it to Grace Wamuyu Munyua; and that the parcels originally allocated to the daughters were merged into a single parcel known as **Mutira/Kiaga/1706**, which was registered in the name of Eunice Wakiaga and later transferred to Eunice Waithera Munyua, who subsequently sold it to Fredrick Dickson Mwai Mburia, now deceased and substituted in the consolidated proceedings.

9. The plaintiffs contend that these transactions were undertaken in defiance of the court decree and without the beneficiaries' consent, thereby depriving them of their respective shares in the original Land Parcel.

They further particularised fraud on the part of the 1st defendant, including causing the resultant parcels to be registered in his name contrary to the decree, transferring parcels belonging to the plaintiffs to third parties without authority, and disposing of the suit properties with the intention of defeating the court orders.

The plaintiffs also attribute negligence to the purchasers, contending that they acquired the parcels from the 1st

defendant without undertaking proper due diligence to ascertain whether there were any disputes or court orders affecting the land.

The 1st, 2nd, 5th and 6th Joint Amended Statement of Defence:

10. The 1st, 2nd, 5th and 6th defendants filed a joint Amended Statement of Defence dated 13th March 2018 in which they denied the allegations contained in the Amended Plaintiff. While denying liability, the defendants admitted that **Land Parcel Mutira/Kiaga/76** was subdivided into **Parcels Mutira/Kiaga/1669 to Mutira/Kiaga/1677**. They, however, contended that the 1st defendant, as the absolute registered proprietor of the original parcel, had the lawful right during his lifetime to deal with his property in any manner he deemed fit.

The defendants denied that the impugned transfers were fraudulent or undertaken in collusion to frustrate the decree relied upon by the plaintiffs. They maintained that the transactions complained of were lawful and that the plaintiffs had no basis to challenge them. They therefore contended that the plaintiffs' claim lacked merit and urged the court to dismiss the suit with costs.

4th Defendant's Amended Defence and Counterclaim:

11. The 4th defendant filed an Amended Defence and Counterclaim dated 22nd December 2017. In his defence, he averred that if there existed any order by the **Land Disputes Tribunal** directing the subdivision of **Mutira/Kiaga/76**, then the same was a nullity as it was issued by a body that lacked jurisdiction to determine disputes relating to title to registered land.

He further averred that on or about 14th November 2014, he entered into a written sale agreement with Eunice Waithera Munyua, the 8th defendant, who at the time was the registered proprietor of Land Parcel **Mutira/Kiaga/1706**.

According to the 4th defendant, the title to the property was clean at the time of purchase, and he paid the full purchase price. He stated that he complied with all the statutory requirements for transfer and that the parcel was duly registered in his name. He further averred that he was thereafter put into possession of the property and has remained in occupation of the land from 2014 to date.

On that basis, the 4th defendant asserted that he was a bona fide purchaser for value without notice of any alleged defect in the title. In the counterclaim, the 4th defendant seeks a declaration that the award in **Wang'uru Land Disputes Tribunal Case No. 9 of 2009**, together with the order adopting it as a judgment of the court, was null and void for

want of jurisdiction, and consequently prays that the said award and the adoption order be set aside with costs.

12. The plaintiffs filed a Reply to the 4th Defendant's Amended Defence and Counterclaim in which they reiterated the contents of the Amended Complaint dated 30th October 2017. They denied the allegations contained in the counterclaim and maintained that the same was without merit. The plaintiffs, therefore, urged the court to strike out the amended defence and counterclaim with costs and to enter judgment as prayed in the amended complaint.

Plaintiffs' Evidence:

13. The plaintiffs called **Josphat Kamau Gatimu**, who testified as **PW1** on 20th February 2025 on his own behalf and with the authority of his co-plaintiffs, whom he described as his brothers and sisters. He adopted his witness statement dated 22nd October 2019, together with the plaintiffs' bundle of documents dated 16th January 2025. His evidence was that the dispute concerns the subdivision and subsequent transfers arising from the original **Land Parcel Mutira/Kiaga/76**, which belonged to their father, Peter Gatimu Kanyonyo.

He testified that a dispute had previously been determined before the **Wang'uru Land Disputes Tribunal**, which ordered that the land be subdivided such that the sons would receive

one acre each. In contrast, the three daughters would receive one-third of an acre each, with their father also retaining a portion. He stated that the court later adopted the decree.

14. According to the **PW1**, their father subsequently subdivided the land and allocated the respective portions during his lifetime, although the transfers had not been completed in favour of the beneficiaries. He testified that despite the subdivision and the tribunal decree, their father later sold several of the resultant parcels to third parties without involving the plaintiffs in the transactions.

He further stated that the land was clan land, and in his view, their father ought to have consulted them before disposing of the parcels. The witness confirmed that the purchasers who bought the land from their father are currently in occupation of the parcels they acquired. He also confirmed that the plaintiffs and their brothers were not evicted from the land.

He testified that the 2nd plaintiff lodged a caution against the titles, and confirmed that the plaintiffs seek cancellation of the defendants' titles, but that **Parcel Number Mutira/Kiaga/1674** was not among the parcels sought to be cancelled.

15. With regard to the transactions involving **Parcel Number Mutira/Kiaga/1706**, **PW1** testified that three parcels initially belonging to the daughters had been

consolidated. He stated that his sister Eunice was instrumental in those transactions and that she later sold the consolidated **Parcel 1706** to Eunice Waithera, who subsequently sold it to the 4th defendant. The witness also testified that his father did not have fraudulent intentions, but stated that Eunice took advantage of him.

He confirmed that the 4th defendant did not purchase land directly from his sister, and stated that he did not know whether the 4th defendant inspected the land prior to purchase.

He further testified that the 5th defendant had since died and had not been substituted. Finally, he confirmed that under the Wang'uru decree, the sons were not individually named, whereas their father and the daughters were specifically identified.

Defence Evidence:

16. **Peter Muchiri Gaku**, testified as **DW1**, inter alia that he purchased several parcels of land arising from the subdivision of **Mutira/Kiaga/76**. He stated that he entered into written sale agreements with Peter Gatimu Kanyonyo, the registered owner of the original parcel, and that the vendor was of sound mind at the time of the transactions. He testified that he purchased three parcels at different times, and that some of the vendor's sons participated in the transactions and signed the agreements. According to him, some of the plaintiffs also

received part of the purchase consideration. He stated that before purchasing the parcels, he conducted official searches, which confirmed that the titles were clean.

He also testified that he attended the Land Control Board in relation to the transactions. According to him, he subsequently took possession and occupation of the parcels he purchased.

He further testified that **Parcel Number Mutira/Kiaga/1672** was sold to him by Peter Gatimu Kanyonyo together with his sons, while **Parcel Number Mutira/Kiaga/1676** was sold to him by Fredrick Muriuki. He also stated that the 2nd plaintiff had lodged cautions against the titles, which were later removed. He testified that the plaintiffs had previously sued him in Wang'uru and that the matter was finalized.

17. **Mary Muringo Mwai**, testified as **DW2**, that she and her late husband purchased **Parcel Number Mutira/Kiaga/1706** in November 2014 from Eunice Waithera Munyua, who was the registered proprietor at the time. She testified that when they purchased the land, it was Eunice Waithera who was utilizing it, and that after the purchase they took possession and have continued utilizing the land.

She adopted her witness statement and list of documents as her evidence, and also withdrew her counterclaim dated 22nd

December 2017. In re-examination, she maintained that her husband conducted due diligence before purchasing the land.

Submissions of the Parties:

18. The learned Counsel for the plaintiffs filed their submissions dated 16th September 2025, and submitted inter alia that the dispute revolves around the subdivision and transfer of the original **Land Parcel Mutira/Kiaga/76**, which was initially registered in the name of the 1st defendant, their father.

It was argued that the subsequent subdivision of the land and the transfer of the resultant parcels to the defendants were undertaken in violation of a court decree arising from proceedings before the **Wang'uru Land Disputes Tribunal in Arbitration Case No. 9 of 2009**. Counsel submitted that the dispute between the family members had previously been determined by the Wang'uru Land Disputes Tribunal, which directed that the **Land Parcel Mutira/Kiaga/76** be subdivided and shared among the children of the 1st defendant.

The Tribunal's award was subsequently adopted as a judgment of the court, thereby giving it the force of a decree capable of execution. It was submitted that despite the existence of that decree, the 1st defendant proceeded to subdivide the land and transferred several of the resultant parcels, namely **Mutira/Kiaga/1672, 1675, 1676, 1677 and 1706**, to various defendants.

19. According to counsel, those transactions were undertaken with the intention of defeating the decree of the court and depriving the plaintiffs of the portions that had been awarded to them.

Counsel argued that the plaintiffs had demonstrated that the impugned transfers were irregular, unlawful and tainted with fraud, as they were carried out in disregard of an existing court determination. In that regard, it was submitted that the defendants could not rely on the defence of innocent purchasers for value without notice, since the titles they acquired were derived from a process that was itself unlawful.

Counsel further submitted that under **Section 26(1)(b) of the Land Registration Act**, a title is liable to impeachment where it is shown that the same was obtained illegally, unprocedurally or through a corrupt scheme. It was argued that the provision removes the statutory protection ordinarily accorded to registered proprietors, even where the current holder may not have directly participated in the illegality.

Relying on that statutory provision and the authorities cited, counsel submitted that once it is established that the process through which the title was obtained was illegal or unprocedural, the court is empowered to cancel the resultant titles and restore the property to its lawful status. Counsel therefore contended that the subdivision of **Mutira/Kiaga/76** and the transfers that followed were undertaken in

contravention of the decree arising from **Wang'uru Arbitration Case No. 9 of 2009**, and that the resultant titles could not stand in law. On that basis, the plaintiffs urged the court to grant the reliefs sought in the amended plaint.

20. The learned counsel for the 2nd, 5th and 6th defendants submitted that the plaintiffs had failed to prove the allegations of fraud pleaded in the amended plaint. Counsel traced the background of the dispute to proceedings before the **Wang'uru Land Disputes Tribunal in Arbitration Case No. 9 of 2009**.

It was submitted that the 5th defendant, who is a daughter of the 1st defendant, had filed the claim before the Tribunal on behalf of her sisters seeking subdivision of **Land Parcel Mutira/Kiaga/76**. The Tribunal made an award directing that the land be subdivided among the children of the 1st defendant.

Counsel, however, submitted that the award did not stand. It was challenged before the **Nyeri Provincial Land Disputes Appeals Tribunal**. Later in the **High Court in Kerugoya High Court Judicial Review No. 24 of 2013**, the court quashed the decision of the Provincial Appeals Tribunal, the order of the **Wang'uru Senior Resident Magistrate's Court dated 6th January 2011** adopting the award, and the subsequent order authorising the **Executive Officer** to sign documents on **21st February 2013**.

It was further submitted that the matter was also considered by the **Court of Appeal, Civil Appeal No. 16 of 2014**, where the court observed that the Tribunal lacked jurisdiction to determine the dispute.

21. Counsel argued that following those developments, the 1st defendant, being the registered proprietor of the original **Parcel Mutira/Kiaga/76**, proceeded to subdivide the land into several portions. Some of the parcels were sold to third parties, while others were gifted to his children and grandchildren, including the 5th and 6th defendants.

It was submitted that the subdivision, sale, and transfers gave rise to the present dispute, with some of the deceased's children alleging that the transactions were illegal and fraudulent. With regard to the 2nd defendant, counsel submitted that he lawfully purchased **Parcels Mutira/Kiaga/1676 and Mutira/Kiaga/1677** from the 1st defendant, and later acquired **Parcel Mutira/Kiaga/1672** from the 4th defendant.

It was submitted that the purchases were supported by written sale agreements dated 3rd July 2013 and 17th July 2014, which were produced in evidence and were never challenged as forged or illegal.

Counsel further submitted that the plaintiffs had not produced any evidence to substantiate their allegations of fraud. In particular, it was pointed out that during cross-examination, the 1st plaintiff admitted that no criminal complaint or proceedings had been instituted regarding the alleged fraud.

The plaintiffs had also claimed that the 5th defendant had influenced the 1st defendant in the transactions, but no evidence was presented to support that assertion. Counsel emphasized that allegations of fraud must be specifically pleaded and strictly proved.

22. Reliance was placed on **Arthi Highway Developers Limited versus West End Butchery Limited & 6 others**, where the **Court of Appeal** held that fraud must be proved on a standard higher than a balance of probabilities though not beyond reasonable doubt.

Counsel also referred to **Section 107 of the Evidence Act**, submitting that the burden of proof rested upon the plaintiffs to establish the facts they alleged, which burden had not been discharged. It was further argued that the evidence demonstrated that the 1st defendant was the registered proprietor of the original parcel and therefore had the legal right to deal with the property as he wished.

Counsel relied on **Article 40 of the Constitution and Section 24 of the Land Registration Act**, which recognise the rights of a registered proprietor to enjoy and dispose of property. Counsel therefore urged the court to find that the plaintiffs had failed to establish fraud or any illegality in the acquisition of the disputed parcels and to dismiss the suit with costs.

The 4th Defendant's Written Submissions:

23. Counsel for the 4th defendant submitted that the plaintiffs had failed to prove the allegations of fraud pleaded against the defendants, and therefore, the suit against the 4th defendant could not stand. It was submitted that the 4th defendant lawfully acquired **Land Parcel Mutira/Kiaga/1706** through a valid sale transaction.

Counsel pointed out that the parcel was registered in the name of the 8th defendant, Eunice Waithera Munyua, who had a clean and valid title at the time of the sale. The 4th defendant entered into a written sale agreement with the said Eunice Waithera on 14th November 2014, paid the agreed consideration in full, and thereafter complied with all the statutory requirements leading to registration of the property in his name. The 4th defendant was subsequently put into possession and has remained in occupation of the land since the year 2014. Counsel argued that prior to purchasing the property, the 4th defendant

undertook the necessary due diligence and confirmed that the title held by the vendor was valid and unencumbered.

It was therefore submitted that the 4th defendant acquired the property in good faith, for value, and without notice of any defect in title.

24. The 4th defendant therefore contended that he qualified as a bona fide purchaser for value without notice, and that his title was protected under the law. Counsel argued that the plaintiffs had not adduced any evidence showing that the 4th defendant participated in any fraudulent scheme or that he had knowledge of any alleged irregularities affecting the title. With regard to the dispute arising from the decision of the **Wang'uru Land Disputes Tribunal in Arbitration Case No. 9 of 2009**, counsel submitted that the Tribunal lacked jurisdiction to determine matters relating to title to land or the subdivision of registered land. It was argued that any award made by the Tribunal purporting to direct the subdivision or distribution of the land was therefore null and void for want of jurisdiction and could not form the basis for cancellation of titles lawfully issued to third parties.

Counsel further submitted that the plaintiffs had merely made general allegations of fraud without providing cogent evidence to support those claims. It was emphasised that fraud must be

specifically pleaded and strictly proved, and that the plaintiffs had failed to meet the required standard of proof. In light of the foregoing, counsel urged the court to find that the plaintiffs had failed to establish their case against the 4th defendant and that the title held by the 4th defendant over **Mutira/Kiaga/1706** was lawfully acquired and protected by law. The court was therefore urged to dismiss the plaintiffs' claim as against the 4th defendant with costs.

25. The following are the issues arising for determinations in the consolidated suits.

- a. *Whether the award arising from the proceedings before the **Wang'uru Land Disputes Tribunal in Arbitration Case No. 9 of 2009**, and the decree adopting the same, was lawful and capable of conferring enforceable rights over the **Land Parcel Mutira/Kiaga/76**.*
- b. *Whether the subdivision of **Land Parcel Mutira/Kiaga/76** and the subsequent transfers of the resultant parcels to the defendants were undertaken unlawfully, fraudulently, or in contravention of the said decree.*
- c. *Whether the defendants who purchased portions of the resultant parcels, particularly the 4th defendant in respect of **Mutira/Kiaga/1706**, acquired valid and*

indefeasible titles as bona fide purchasers for without notice.

d. Who bears the costs?

26. The court has after carefully considering the pleadings, oral and documentary evidence tendered, submissions by the learned counsel and the superior court decisions thereof come to the following conclusions:

a. In respect of issue (a), the record shows that the dispute relating to **Land Parcel Mutira/Kiaga/76** was determined through proceedings before the **Provincial Land Disputes Tribunal**. The tribunal rendered an award dated 3rd December 2010, which was subsequently read and adopted as a judgment of the court by the Senior **Resident Magistrate's Court at Wang'uru** on **6th January 2011** in **Arbitration Case No. 9 of 2009**.

The decree issued by that court distributed the land as follows: the five sons were to receive one acre each; Peter Gatimu Kanyonyo was to retain one acre; while the daughters, namely Eunice W., Agnes Wanjiku and Esther Wanjiru, were each to receive one-third of an acre.

It is common ground that a second order was later issued by the same court on 21st February 2013, by which Jesse Muriithi

Gatimu, Josphat Kamau Gatimu, James Gathara Gatimu and Esther Wanjiru Mutugi were joined as interested parties, and the Executive Officer of the court was directed to execute transfer documents to facilitate the transfer of the respective shares of the resultant parcels derived from **Mutira/Kiaga/76**.

b. The deceased, Peter Gatimu Kanyonyo, subsequently instituted judicial review proceedings seeking an order of certiorari to quash the decision of the Senior Resident Magistrate issued on 21st February 2013 in the said arbitration proceedings. That challenge eventually reached the **Court of Appeal in Civil Appeal No. 16 of 2014**. The Court of Appeal observed that the judicial review application had specifically sought to quash the decision of the Senior Resident Magistrate made on 21st February 2013, but that the **High Court** had instead quashed the decision of the **Nyeri Provincial Land Disputes Appeals Tribunal**, which had not been the subject of the application before it. The Court of Appeal therefore set aside the judgment and decree of the High Court and substituted it with an order dismissing the Notice of Motion dated 18th March 2013.

c. The practical effect of that decision is that while the order made on 21st February 2013 became the subject of challenge, the original decree adopting the

tribunal award issued on 6th January 2011 was never set aside. That decree, therefore, remains on record.

Under the repealed **Land Disputes Tribunals Act**, once a tribunal rendered its decision, it was filed with the magistrate's court for adoption as a judgment of the court. Upon such adoption, the award became a court decree and could be challenged only through the mechanisms provided by law, including appeals, reviews, or judicial review.

This principle has been affirmed in several decisions of the superior courts, including Speaker of the **National Assembly v Karume, (Civil Application 92 of 1992) [1992] KECA 42 (KLR) (29 May 1992) (Ruling)**, where the **Court of Appeal** emphasized that where the law provides a specific procedure for redress, that procedure must be strictly followed. The Court in this case held that:

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

- d. Similarly, in **Owners of the Motor Vessel 'Lillian S' versus Caltex Oil (Kenya) Ltd, (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989)**, the court underscored that judicial authority must be exercised strictly within the

confines of jurisdiction and established legal processes.

In the present matter, although an attempt was made to challenge the order of 21st February 2013, the decree adopting the tribunal award dated 6th January 2011 was never successfully challenged through the procedures provided by law. As matters stand, that decree remains valid and operative.

e. In these proceedings, no party has sought orders to set aside, vary, or invalidate the decree issued in **Wang'uru SRM Arbitration Case No. 9 of 2009**. And even if any party had, this court would have to remind the party that it is not sitting as an appellate court in this suit. Therefore, to interrogate or invalidate the findings contained in that decree in the absence of a proper challenge would amount to indirectly reopening a matter that has already been conclusively determined.

Accordingly, this court proceeds on the basis that the decree issued on 6th January 2011, adopting the tribunal award and distributing **Land Parcel Mutira/Kiaga/76** among the sons, their father, and the daughters, remains valid and binding. This court cannot upset those findings in the present suit, particularly where no party has sought such relief.

Accordingly, this court proceeds on the basis that the decree adopting the tribunal award is valid, binding, and capable of conferring enforceable rights over **Land Parcel Mutira/Kiaga/76**. Any subsequent dealings with the suit property must therefore be evaluated against that subsisting legal framework.

- f. On issue (b), and having found that the decree issued on 6th January 2011 remains valid and binding, the next question is whether the subsequent subdivision of **Land Parcel Mutira/Kiaga/76** and the transfers of the resultant parcels were consistent with that decree. The evidence on record is largely uncontested that the original parcel was subdivided into **Parcels Mutira/Kiaga/1669 to 1677**. However, the manner in which the resultant parcels were dealt with departs from the distribution contemplated in the decree. Portions that were intended for specific beneficiaries were transferred to third parties, some were gifted to persons not provided for under the decree, and others were consolidated and subsequently sold. To that extent, it is difficult to escape the conclusion that the implementation of the subdivision and the subsequent dispositions did not adhere to the terms of the decree. The decree envisaged distribution to identified beneficiaries; what followed was, in part, a reallocation and alienation of those interests.

g. That said, the inquiry does not end at a finding of non-compliance. The court must also interrogate the legal character of those transactions whether they were fraudulent, illegal, or merely irregular and, more importantly, against whom such findings can properly be made. The plaintiffs bear the burden of proving fraud, which must not only be specifically pleaded but also strictly proved.

Further, the evidence discloses that some of the impugned transfers were made to third parties who entered into formal sale agreements, conducted searches, obtained Land Control Board consents, and took possession of the land. In some instances, members of the plaintiffs' family participated in or were aware of the transactions. In those circumstances, while the court is satisfied that the dealings with the resultant parcels were not strictly in conformity with the decree, the question whether those dealings can be impeached, particularly as against subsequent purchasers, calls for a more nuanced analysis, to which I now turn, under issue (c).

h. The resolution of the plaintiffs' claim turns on whether the defendants who presently hold title to the suit properties are entitled to the protection accorded to bona fide purchasers for value without notice under the land law regime.

Under **Sections 24, 25 and 26 of the Land Registration Act**, the registration of a person as proprietor vests in that person absolute ownership of the land together with all rights and privileges appurtenant thereto. Such a title is prima facie indefeasible and can only be impeached on the grounds set out under **Section 26(1)**, namely, where it is shown that the title was obtained through fraud or misrepresentation to which the proprietor is proved to be a party, or where it has been acquired illegally, unprocedurally, or through a corrupt scheme.

In addressing that question, it is necessary to distinguish between two categories of defendants. The first category comprises the family members of the deceased, including the 1st defendant (now deceased), the 5th defendant (also deceased and not substituted), and the 6th defendant. The second category comprises third-party purchasers who acquired interests in the resultant parcels following the subdivision.

- i. As regards the first category, the evidence shows that, except for the 1st defendant, who retained a portion, the other family members dealt with and disposed of the parcels registered in their names. Those dealings form part of the broader factual matrix in which the decree was not strictly implemented. As regards the second category, the evidence on record shows that the purchasers acquired their respective parcels through formal sale

transactions. They entered into written agreements, conducted official searches which confirmed the status of the titles, obtained the requisite Land Control Board consents, and were duly registered as proprietors. They took possession and have remained in occupation.

- j. The green card extracts produced in evidence further show that, at the time the purchasers were registered as proprietors, any cautions or restrictions that had previously been placed against the titles had been removed. The register, therefore, did not disclose any encumbrance or limitation capable of alerting a purchaser to the existence of an adverse claim or competing interest in the suit properties.

The plaintiffs alleged that the impugned transfers were fraudulent and intended to defeat the decree. However, beyond those assertions, no cogent evidence was placed before the court to demonstrate that the purchasers were party to any fraud, misrepresentation, or illegality within the meaning of **Section 26(1) of the Land Registration Act.**

- k. Further, while it was suggested in evidence that some members of the plaintiffs' family were aware of, or even participated in, aspects of the transactions, those matters were not conclusively

rebutted. In any event, no evidence was led to establish that the purchasers themselves had notice of any defect in title or of the decree said to govern the distribution of the land. In those circumstances, the court is unable to find that the titles held by the purchasers fall within the exceptions set out under **Section 26(1) of the Land Registration Act**. To the contrary, the evidence supports the conclusion that they acquired their interests for value, in good faith, and without notice of any defect.

- I. The court is therefore confronted with the interplay between a subsisting decree on the one hand, and the statutory protection accorded to registered proprietors on the other. While the decree remained binding as between the parties to it, the subsequent registration of third-party purchasers introduced proprietary interests that are protected under statute, unless the strict threshold for impeachment of title is met. That threshold has not been satisfied in the present case. The irregularity in the implementation of the decree cannot, without more, be a basis for impeaching the titles of purchasers who were not shown to be party to any wrongdoing.

Accordingly, the defendants who acquired the suit properties as purchasers are entitled to the protection accorded to bona fide purchasers for value without notice, and their titles are not

liable to cancellation on the grounds advanced by the plaintiffs. Flowing from the foregoing findings, the plaintiffs' primary reliefs, being the cancellation of titles to the suit properties and the reversion of the same to the original parcel for redistribution in accordance with the decree, cannot be granted.

m. While the court has found that the subdivision and subsequent dealings with the land did not strictly conform to the decree issued on 6th January 2011, it has equally found that the defendants, who are current proprietors, acquired their respective interests as bona fide purchasers for value without notice. Their titles are therefore not liable to cancellation on the basis advanced by the plaintiffs. The court must also be mindful that the remedy of cancellation of title is a drastic one, which must be exercised judiciously and only in clear cases where the legal threshold has been met. That threshold has not been satisfied in the present case, and the court finds the plaintiffs have failed to establish a basis upon which the court can grant the declaratory and cancellation orders sought.

n. This court cannot conclude this matter without observing that the dispute before it arises from a family arrangement that was, at one point, reduced into a court decree intended to guide the distribution

of land among the members of the 1st defendant's family. The evidence, however, shows that the implementation of that arrangement did not proceed as contemplated, leading to the present contest. While this court has found that the titles presently held by the purchasers are protected under the law and cannot be disturbed, that finding does not diminish the underlying sense of grievance expressed by the plaintiffs regarding the manner in which the original land was dealt with.

Ultimately, however, this court is bound to apply the law as it stands. Where third-party rights have crystallized and the statutory threshold for impeachment of title has not been met, the court must uphold the sanctity of such title, even where the result may appear harsh as between members of the same family.

- o. Under **Section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya**, costs follow the events unless otherwise ordered by the court. In view of the chequered history in the transactions leading to this suit, and the familial relationship of the original beneficiaries, the court finds this an appropriate case where an order for each party to bear their own costs will be fair and just.

27. Flowing from the foregoing determinations in the consolidated suits, the court finds and orders as follows:

- i. That the plaintiffs have failed to establish their claim to the standard required of balance of probabilities, and is hereby dismissed.**
- ii. That each party to bear their own costs.**

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS
23RD DAY OF APRIL 2026.**

**S. M. Kibunja
ELC JUDGE**

In the presence of:

Plaintiffs - M/s Kariuki

Defendants - Mr. Mwangi for Maina Kagio for 4th Defendant

M/s Mokaya for 2nd, 5th and 6th Defendants

Kinyua - Court Assistant

**S. M. Kibunja
ELC JUDGE**

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