



REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
MALINDI**

ELC CASE NO E038 OF 2023

MONICA NDUNGE MUTISO KNOCHE

MICHAEL HELMUT W. KNOCHE

**BRIGITTA ROMANA W. KNOCHE (All suing through
RAPHAEL MUTISO KIOLI).....**

.....PLAINTIFFS

VERSUS

OMAR MOHAMED OMAR.....1 ST

DEFENDANT

BEN KEMBOI KOMEN.....2 ND

DEFENDANT

JAMES MUGAYA WAITITU..... 3RD

DEFENDANT

LIEN ESTATE DEVELOPERS LIMITED.....4 TH

DEFENDANT

LAND REGISTRAR -MOMBASA.....5 TH

DEFENDANT

CHANIA LOGISTICS LIMITED.....6 TH

DEFENDANT

LAND REGISTRAR KILIFI.....7 TH

DEFENDANT

JUDGMENT

1. The plaintiff filed this suit through an amended plaint dated May 23, 2024, seeking judgment against the defendants for:

- a) A declaration that the plaintiffs are the true and legitimate owners of the suit land, namely, land parcel No. 7751/111/MN and No. LR 7752/111/MN.**
- b) Cancellation of the 6th defendant's certificate of title for land parcel number LR 11745/111/MN (Original No. 7751-7752), issued on January 11, 2019, by the 7th defendant.**
- c) An eviction order should be issued against the 6th defendant, its family members, agents, employees, tenants, and anyone acting under the 6th defendant's instructions to vacate land parcel No. 7751/111/MN and**

No. LR 7752/111/MN within 60 days from the date of the judgment.

- d) An order directing the 6th defendant and/or individually to demolish the building and/or structures erected on land parcel no. 7751/111/MN and No. LR 7752/111/MN within 60 days from the date of the judgment, and in case of failure to do so, the plaintiffs are authorized to demolish the said building at the 6th defendant's expense.**
- e) An order directing the OCS Mtwapa police station to provide security during the eviction and demolition of the house and/or structures erected on land parcel no. 7751/111/MN and No. LR 7752/111/MN.**
- f) An order directing the 5th defendant to amend, rectify, and/or correct any discrepancies on the land registry to accurately reflect the plaintiffs as the registered owners of land parcel no. 7751/111/MN and No. LR 7752/111/MN.**
- g) Costs of this suit and interest.**

2. The 1st, 2nd, 4th, 5th, and 7th defendants opposed the plaintiff's suit through their respective statements of defense on record. The 6th defendant, in addition to filing a defense, also filed a counterclaim seeking:

- a) A declaration that he is the lawful registered owner of the suit properties,**

- b) A permanent injunction against the plaintiffs in the main suit from interfering with the suit property,**
- c) Revocation of the plaintiff's title,**
- d) Damages for trespass.**
- e) Cost and interest.**

3. The matter proceeded to a full trial on the merits. At the close of the trial, the court directed the parties to file written submissions, which they did. I acknowledge receipt of submissions from counsels for the plaintiff, Mr. Omondi and Mr. Adika; learned counsel for the 1st and 2nd defendants, Ms. Kemunto; learned counsel for the 4th defendant, Mr. Odunga; learned counsel for the 5th and 7th defendants, Ms. Lutta; and learned counsel for the 6th defendant, Mr. Osundwa, with much appreciation, as the submissions detailed the issues at hand, the relevant precedents, and the applicable law, which assisted the court in reaching its verdict.

4. The plaintiff presented evidence from PW1 Raphael Mutiso, who adopted a witness statement dated May 28, 2025. He stated that L.R No. 682/III/MN belonged to Charles Anyanda, who transferred it to Zakayo Kagombe Nderu on January 30, 1989. Furthermore, the transfer to Zakayo Kagombe Nderu

was approved on February 16, 1989, and on the same day, it was transferred to Michael Knoche, Monica Mutiso, and Brigitta Knoche. It was his testimony that after purchasing the property known as L.R. No. 682/III/MN in 1989, the plaintiffs resided there for a limited period, appointed him as a caretaker of the parcel of land, and left the country in 1992. He further testified that in 2012, the plaintiffs caused the subdivision of L.R. No. 682/III/MN into two parcels, CR 56249 and 58076. He also stated that the plaintiffs did not merge the parcels of land. He produced the documents listed in his bundle of documents dated 27th October, 2023, 7th October, 2025, and 26th June, 2025, as exhibits.

5. PW2, Josephine Njoki, adopted her witness statement dated 20th November, 2024, as her evidence in chief. She claimed to have been a neighbor of the plaintiffs since 1990 and that the land belonged to the plaintiffs.
6. PW3, Benson Wambua, claimed to have been employed as the plaintiffs' cook from 1992 to 2002 and therefore asserted that the plaintiffs were the owners of the suit property.
7. DW1, Omar Mohamed Omar, is the 1st defendant. He stated that he resides in Nyali, Mombasa. He endorsed his

statement dated June 17, 2025, as his evidence in chief. He produced the documents in his bundle, dated June 17, 2025, as exhibits. DW1 testified that he co-owned the suit property with the 2nd defendant. They purchased this property in 1997 from a person known as Kuria Nguri. As evidence, he presented the Sale Agreement dated February 12, 1997. DW1 further testified that, before the purchase, they conducted due diligence tracing their title back to one Zakayo Nderu, as evidenced by the sale agreement dated February 6, 1989, and the transfer dated February 16, 1989. He also stated that their due diligence revealed Zakayo Nderu obtained the property from Charles Luyundi, as indicated by Grant CR. 17952. DW1 further testified that Zakayo had also mortgaged the suit property to KCB but later discharged the mortgage. It was DW1's additional evidence that the vendor, Mr. Kuria Nguri, applied for a change of user of the property from agricultural to commercial, as shown in the letter dated January 26, 1995, to the Land Control Board. This change was granted, and the Bahari District Land Control Board conveyed the consent in a letter dated January 30, 1995. In the same year, Kuria Nguri

applied to the Commissioner for Lands for a change of user by endorsement, and the application was approved by a letter dated May 2, 1995. Satisfied with the due diligence, DW1 testified that they executed the transfer deed dated February 12, 1997, and submitted it for registration. The transfer was registered on February 17, 1997, and they acquired an interest in the suit property as tenants in common. DW1 further testified that on May 13, 2009, they sought to subdivide the suit property. They engaged a surveyor, E.M. Kiguru, to subdivide MN/III/682. They received the necessary approvals, and the land was subdivided into MN/III/7551-7552. DW1 also testified that the 2nd defendant later intended to sell his interest in the suit property. The offer was too low to be economically viable, so they decided to amalgamate the portions, a process carried out by a licensed surveyor, B.M. Okumu. DW1 stated that following this amalgamation, the Director of Survey issued and released deed plan number 430953 for the property known as L.R No. MN/III/11745. DW1 testified that, as a consequence of this amalgamation, they received a lease dated January 7, 2019, for a term of ninety-nine years,

commencing on May 1, 1995. They signed the lease and recorded it for registration, along with the surrender instrument dated January 7, 2019, which surrendered their certificate of title in exchange for the change of user reflected on the title registered on June 6, 1995. He further stated that this lease was registered on January 11, 2019, and that they obtained a certificate of title, CR No. 72766, in their names. DW1 added that they sold their interest in 2020 to the 4th defendant via a sale agreement dated May 11, 2020, for Kshs. 10 million. He produced the consent letters, transfer instrument, and the KRA e-slip showing payment of capital gains tax. DW1 also mentioned hearing that the fourth defendant later sold its interest to the 6th defendant, which he confirmed was based on a valid root of title. Concerning Ben Kemboi's statement to the police, DW1 stated he had the authority to testify on his behalf. He also indicated that Ben Kemboi had not disowned his interest in the suit property and that they maintained constant contact with him. DW1 further explained that he had not been asked to record a statement and that no criminal proceedings had been initiated against him.

8. DW2, Joel Ashiachi Kusimba, a director of the 4th defendant, adopted his witness statement dated June 12, 2025, as his evidence in chief. He produced the documents in the 4th defendant's Bundle of Documents dated February 6, 2025, and June 12, 2025. It was DW2's evidence that the 4th defendant purchased the suit property from the 1st and 2nd defendants after conducting due diligence and verifying they held a good title based on a valid root of title. To this end, DW2 produced official searches from May 20, 2020, showing that the 1st and 2nd defendants, as the owners of the suit property, held Grant CR 17952, tracing their predecessors in title, transfers, sale agreements, and consents issued by the Land Control Board and the Commissioner for Lands. DW2 also presented the deed plans for the subdivision of MN/111/682, which he stated were not used for registration because the 1st and 2nd defendants chose to have the parcels amalgamated and were subsequently issued a certificate for lease for the parcel known as MN/111/11745. He further testified that after completing this due diligence, the 4th defendant purchased the suit property from the 1st and 2nd defendants through a sale agreement dated May 11,

2020, for Kshs. 10 million. They then executed the transfer on June 3, 2020. Before this, the 1st and 2nd defendants provided the necessary completion documents, namely, the Land Consent to Transfer dated May 21, 2020, and land rent clearance notes and payment slips. DW2 also demonstrated that the stamp duty of Kshs. 200,040/- was properly paid, as shown by the payment slip from the National Bank dated June 3, 2020. Following compliance, the transfer was registered on June 5, 2020, and the 1st and 2nd defendants paid capital gains tax. DW2 further testified that after this purchase, official searches, including one from October 1, 2020, confirmed that the 4th defendant was duly registered as the owner of the suit property. It was DW2's testimony that after taking possession, the 3rd defendant and its agents trespassed onto the suit property. Consequently, the 4th defendant filed a suit in **Malindi ELC Case No. 20 of 2020, Lien Estate Limited v James Mugaya Waititu**, and obtained orders to prevent further interference. That case was later settled by mutual consent, with the defendants confirming they had no interest in the suit property. DW2 added that the plaintiffs sought to join that case, but their

application was dismissed for want of prosecution on June 22, 2023. Later, DW2 sold its interest in the suit property to the 6th defendant under an agreement dated July 3, 2023, for Kshs. 20 million. The 6th defendant conducted its own due diligence, and after reviewing the necessary documents, executed and registered the transfer on July 21, 2023. DW2 assured that the purchase by the 6th defendant was fully compliant with the law, including payment of the required stamp duty. The 6th defendant also obtained official searches confirming its interest following the lawful purchase and registration. DW2 concluded by stating that the 6th defendant's interest is based on a clear and verifiable root of title, supported by all relevant documents supplied to the Court. DW2 explained that the deed plans for MN/III/7751-7752 were not used for registration because the 1st and 2nd defendants chose to amalgamate the parcels. He also confirmed that the 5th and 7th defendants filed certified records confirming the legality of the 6th defendant's interest. Since taking possession, they maintained possession until the 4th defendant sold it to the 6th defendant.

9. DW3, David Kimani, a director of the 6th defendant, informed the Court that the 6th defendant had filed the defense and counterclaim dated June 5, 2024. He adopted the witness statement dated November 15, 2024, and June 13, 2025, as his evidence in chief. DW3 presented the documents in the 6th defendant's Bundle of Documents dated June 13, 2025, and July 10, 2025, as exhibits, except for the survey report marked as the 6th defendant's Exhibit No. 35, which was later produced by its author, Steve Rodgers Kobado. In summary, DW3 testified that they purchased L.R No.MN/111/11745 from the 4th defendant after conducting due diligence and confirming it had a valid title. DW3 also informed the Court that before the purchase, he personally visited the land. He further visited the land registry in Mombasa and obtained official searches confirming that the 4th defendant held a valid title. Additionally, DW3 stated that after acquiring the property, the 6th defendant obtained official searches confirming that it is the lawful registered owner. DW3 explained that upon acquiring the property, the 6th defendant peacefully took possession of it. He also mentioned that at the time of purchase, ownership was not

disputed; the 4th defendant was in possession, and there were no third-party claims or eviction proceedings.

10. DW4, Steve Rodgers Kobado, a registered and licensed land surveyor, presented the contents of his report, contained in the 6th defendant's trial bundle. He testified that this report was commissioned by the 6th defendant. DW4 informed the Court that the purpose of this report, based on official records, was to provide technical background information on L.R. No. 682/III/MN, L.R. No. MN/III/7751-7751, and the resulting parcel MN/III/11745, which is the property in question. The report also included survey data on the resulting parcel. DW4's evidence indicated that L.R. No. 682/MN/III originated from L.R. No. 539/III/MN, which was a subdivision of 118 plots approved by the Director of Surveys on May 22, 1981. Furthermore, in 2011, a subdivision was carried out on 682/III/MN to create L.R. MN/III/682/1, designated for road expansion, and MN/III/682/4, set aside for environmental conservation. The subdivision of L.R. MN/III/682 also resulted in MN/III/7751 and MN/III/7752. All these subdivisions obtained the necessary approvals, which are attached to the survey report. They

were conducted by a surveyor named E.M Kiguru under the instructions of the 1st and 2nd defendants. Mr. E.M Kiguru confirmed this, as evidenced by the letter dated May 21, 2025, of the 6th defendant's trial bundle. DW4 also stated that 7751/III/MN and 7752/III/MN were later amalgamated upon the instructions of the 1st and 2nd defendants. This was done by another licensed surveyor, Mr. B.M. Okumu, and the amalgamation was approved in 2018. The resulting parcel was L.R. No. 11745/III/MN. DW4 clarified that his report was based on official records, and he had not seen any other report contradicting its contents. He further stated that Mr. E.M Kiguru had not denied performing the subdivisions on behalf of the 1st and 2nd defendants. On CR. No. 117952 filed by the Attorney General, DW4 confirmed that an endorsement related to L.R. No. 682/III/MN was made on June 6, 1995. The transferred interest took effect on February 17, 1997, with a term of 99 years. This interest was a leasehold.

11. DW5, Sheila Soita, a Land Registrar, adopted her statement dated June 17, 2025, as her evidence in chief. She also presented the documents in the 5th and 7th defendant's

bundle dated June 18, 2025. DW5 informed the Court that, according to the official records in their custody and supplied to the Court, the 6th defendant is the lawful registered owner of the suit property. She testified that the ownership of the 6th defendant could be traced to Charles Anyanda Luyundi, who held an interest in L.R. No. 682/III/MN via grant no. CR. No. 17952/1, registered on December 15, 1986. Charles Anyanda Luyundi transferred his interest to Zakayo Kagombe Nderu on January 30, 1987, who then transferred it to Mr. Kuria Nguri on February 16, 1989. DW5's in his testimony revealed that in 1995, Mr. Kuria Nguri applied for a change of user for L.R No. 682/III/MN, which was granted on the condition that the property became a leasehold effective May 1, 1995, as evidenced by the endorsement dated May 16, 1995, registered on June 6, 1995. Regarding who transferred the interest between Mr. Kuria Nguri and the plaintiffs, DW5 stated that official records show that Zakayo Nderu transferred interest over 682/III/MN to Mr. Kuria Nguri on February 16, 1989. Mr. Nguri then transferred it to the 1st and 2nd defendants in 1997 via a transfer instrument registered on February 17, 1997. DW5 further testified that

on January 11, 2019, the 1st and 2nd defendants surrendered their original title and endorsement and were issued a lease and certificate of title for L.R No. 11745/III/MN after a survey process. She added that, according to official records, they later sold and transferred an interest in the suit property to the 4th defendant through a transfer registered on June 5, 2020, and that the 4th defendant transferred the suit property to the 6th defendant on July 21, 2023. DW5 concluded her testimony by noting that the searches indicating the suit property belonged to other parties were not found in her files, and there were no parallel records. She suggested that summons could be issued to the persons who allegedly authored those searches for clarification. She also stated that the tenure of the suit property had changed from freehold to leasehold effective May 1, 1995, following an endorsement registered on June 6, 1997. Regarding the letter dated December 2, 2021, DW5 said she could not confirm its authenticity or whether it originated from their office, as it was not stamped. She further stated she was unaware of any reconstruction of the parcel as claimed by the plaintiffs.

12. Based on the evidence and the submissions made by counsels for the parties that I have previously acknowledged, the issues for determination by this Court are as follows: whether the plaintiff or the 6th defendant holds rightful ownership of the suit property; whether the defendants acquired the title through fraudulent means; whether the defendants are *bona fide* purchasers; whether the reliefs sought by the plaintiff in the plaint and by the 6th defendant in the counterclaim are sustainable; and who should bear the costs of this litigation.

13. Because we are dealing with titles that appear to conflict - that held by the plaintiff and the 6th defendant, the core issue in this matter is determining who has a better title between the two. The root of the title will be the investigation this court will conduct to resolve the deadlock.

14. The plaintiff states that Section 24(a) of the Land Registration Act, 2012 Laws of Kenya, provides that the registration of a person as the owner of land shall vest full ownership of the land, along with all rights and privileges attached thereto.

15. Furthermore, Section 26 of the Land Registration Act goes further to state that: The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor, shall be regarded by all courts as *prima facie* evidence that the person named as proprietor is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions, and conditions contained or endorsed in the certificate. The title of that proprietor shall not be challenged except: (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme. From the foregoing, a Certificate of Title issued by the Registrar will be considered conclusive evidence of proprietorship for the person named as the proprietor of the land.

16. The plaintiff claims that they produced certificates of postal search dated as recently as September 25th, 2025, certificates of title proving they are the registered owner of the suit property, and a copy of the green card. However, the 1st and 2nd defendants, in their defense, presented sale

agreements and a certificate of title of the suit property bearing a completely different title number, having purchased it from Kuria Ngugi. This implies that the parties must examine the root of title to establish true ownership. Reliance is placed on the case of **Munyu Maina v Hiram Gathiha Maina [2013] KECA 94 (KLR)**.

17. Plaintiff asserts that in establishing the root of title, they stated that they purchased the suit property from one Zakayo Kagombe Nderu. They produced an instrument of transfer dated 8th February 1989, as evidence. Following the acquisition of the suit property, the plaintiffs took possession of the property and even constructed a residential house with a swimming pool. The plaintiffs produced photographs of the said house. The plaintiffs further annexed a Kenya Power and Lighting bill that proves they have been in occupation of, and have been paying electricity bills for, the house built on the suit parcel. The plaintiffs also called witnesses, including a neighbor living on the adjacent plot and a cook employed at the time, to confirm possession of the suit premises. Plaintiff further states that from the testimonies of both, it is clear that the plaintiff has been in

occupation of the suit property for a very long time. The defendants, on the other hand, failed to establish the root of title. They did not demonstrate how they acquired the suit property or whether it was acquired legally. There was no proof of payment of stamp duty for the transfer of the suit property to Kuria Ngugi. It is therefore argued that this honorable court finds that the suit property was lawfully acquired by the plaintiffs, having established the root of title.

18. Citing decisions in **Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR)** and **Dr. Joseph Arap Ngok v Justice Moiwo ole Keiwua & 5 others, Civil Appeal No. Nai**, the plaintiffs contend that the title held and transferred by the defendants was obtained through fraud. To demonstrate the defendants' fraud, the plaintiffs presented a certified copy of the 2nd defendant's statement record from the DCI offices in Kilifi, in which the 2nd defendant admitted to illegally obtaining title to the suit property with the help of the 1st defendant. However, the 2nd defendant withdrew from the transaction after realizing it was illegitimate and did not participate further. The plaintiffs also relied on a copy of

the green card showing them as the last registered owners of the suit property.

19. The plaintiff, citing The Black's Law Dictionary 9th Edition, the decisions in **Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005 [2015] eKLR**, and **Dina Management Ltd v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)**, argues that the title passed over time by the defendants does not qualify the 6th defendant as a *bona fide* purchaser for value. They assert that it was obtained through fraud.

20. The plaintiffs finally submit that the defendants in this case did not conduct due diligence to establish that a residential house had been built on the suit property with people residing there since 1989. Furthermore, the defendants purchased the suit property for amounts of Kshs. 10,000,000/= and Kshs. 20,000,000/= respectively. This sum is quite unreasonable, considering the property is currently valued at approximately Kshs. 80,000,000/=. This does not qualify the defendants as *bona fide* purchasers, as they

failed to conduct proper due diligence on the property and purchased it at a significantly low price.

21. The 1st and 2nd defendants significantly submit that the documentation held by the plaintiff on the manner the suit property was acquired does not add up since there is nothing to show the purchase of the suit property from one Zakayo Kagombe Nderu at a consideration of Kshs 1,000,000, there is no consent from the relevant land control board nor a transfer instrument to authenticate that process

22. The 1st and 2nd defendants claim that the 6th defendant has provided the trail and documentation showing how it purchased the land from the 4th defendant, who had bought it from them; therefore, the origin of the title can be established.

23. Regarding fraud, the 1st and 2nd defendants argue that it was neither specifically pleaded nor proven by the plaintiffs, as seen in **Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others [2025] KESC 79 (KLR)**. The police statement they intended to rely on, attributed to the 2nd defendant, could not be authenticated. They assert it was illegally obtained evidence.

- 24.** The 4th defendant adopted a similar submission to that of the 1st and 2nd defendants, asserting the 6th defendant has a firm title as opposed to that of the plaintiff.
- 25.** The same streak was adopted by the 5th and 7th defendants, who added that the history of the suit property and who between the plaintiff and 6th the defendant holds a superior and rooted title is as demonstrated by the Land Registrar's evidence, as she produced the entire parcel file.
- 26.** The 6th defendant, like the other defendants, argued that its title is legitimate, as shown by how it acquired the suit property, compared to the method the plaintiff claims to have used to acquire the same.
- 27.** The defendants collectively provided judicial authorities to affirm that the root of title held by the 6th defendant is superior to that of the plaintiffs.
- 28.** I agree with all the parties' submissions that there are two conflicting titles to the same land. Therefore, the starting point should be to trace the origin of the titles and determine which root of title between the two is superior to the other, as summarized in **Wakaimba v Registrar & 3 others [2025] KEELC 1058 (KLR):**

“Ordinarily, a Certificate of Title would prima facie evince legitimate ownership of property. Where parties claim to have titles over one parcel of land, the court is mandated to conduct an investigation into the root of the titles to establish the real ownership. This position was enunciated by the Court of Appeal in Megvel Cartons Limited vs Diesel Care Limited & 2 Others (Civil Appeal 70 of 2018) [2023] KECA 184 (KLR) (17 February 2023) (Judgment) placing reliance on the decision of the court in Hubert L. Martin & 2 Others vs Margaret J. Kamar & 5 Others [2016] eKLR, which noted thus:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the

property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder."

89.The Court of Appeal in Munyu Maina vs Hiram Gathiha Maina Civil Appeal No. 239 of 2009 [2013] eKLR, had earlier opined that where a registered proprietor's title is under challenge, it is not enough to dangle the instrument of title as proof of ownership."

29. Besides, Section 107 of the Evidence Act, Cap 80, states that anyone seeking a court to give judgment on a legal right or liability dependent on facts they assert must prove those facts exist. Parties claiming an interest in the suit land have a duty to demonstrate that the interest was obtained legally and procedurally.

30. PW1, while testifying on behalf of the plaintiffs, admitted that the plaintiffs have not and did not submit any records showing how they acquired the suit land or proof of payment. The plaintiffs also produced only a Certificate of Title for L.R. No. 7751/III/MN, which covers just part of the suit land, despite claiming to have acquired an interest in L.R. No. 682/III/MN via Grant CR No. 17952—an interest they

allegedly subdivided into L.R. No. 7751/III/MN and L.R. No. 7752/III/MN.

31. Unlike the defendants, especially the 6th defendant, who have provided evidence showing the origin of their interest, the plaintiffs failed to produce any evidence proving that the primary documents, including whether consents to transfer were obtained, existed before the alleged transfer of interest. The ownership records submitted by the 1st, 2nd, 4th, and 6th defendants appear to match the official records maintained by the 5th defendant regarding ownership of the disputed land.

32. Although the plaintiffs claim they are the rightful owners of the suit land, they neither submitted certified records to prove their ownership at the land office nor provided any evidence of the process used to reconstruct the records if they were missing. The documentation they held from the land registry was marked for further authentication, but it never happened. In the case of **East African University v Lands Registrar, Kajiado County [2025] KEELC 3502 (KLR)**, while considering the law related to reconstructing land records, the court observed as follows:

“The Land Registration (General) Regulations 2017 further explain the steps that the Registrar is required to take before embarking on the process of reconstructing a register. Regulation 29 provides that a person claiming to be a registered proprietor may apply to the Registrar for the reconstruction of the register in Form LRA 14, set out in the 6th Schedule. Such an applicant is in addition to making the application required to provide an indemnity. The Registrar then proceeds to notify the loss, to the general public at large, by notice in the Gazette in the prescribed form. It is only then and upon making the clarifications as under paragraph 4 and on condition that no objection is raised that the Registrar may reconstruct the Land Register.”

33. The plaintiff alleged that the defendants in this case fraudulently acquired the title held by the 6th defendant with the help of the 5th defendant, further stating that the purchase prices for the suit property were lower than the current market value.

34. The Court of Appeal, in the case of **Martevé Guest House Limited v Njenga & 3 others [2022] KECA 539 (KLR)**, while considering allegations of fraud, held that

fraudulent conduct must be specifically alleged and proven, and it is not permissible to infer fraud from the facts.

35. The plaintiffs have made allegations of fraud, especially against the 1st, 2nd, and 4th defendants, as well as the 5th and 7th defendants, without providing any evidence to support these claims. The allegation that the 2nd defendants admitted that they acquired the suit property through fraud, as narrated to the DCI, was not proved, as the alleged statement by the 2nd defendant was not produced, its origin was doubted, and its acquisition was disputed.

36. DW5 testified and produced official records in the custody of the 5th defendant. No evidence has been presented to show that these records were obtained illegally or through fraud involving the 5th and 7th defendants. Additionally, the plaintiffs relied on a purported letter dated December 2, 2021, allegedly written by a land registrar. DW5 disavowed this letter, noting it was not part of the 5th defendant's official records nor certified as required by law to verify its authenticity.

37. Furthermore, the claim that the suit land is freehold and that a title for a leasehold interest was illegally issued by the

5th defendant is also not proved. The records presented by DW5 showed that Kuria Nguri applied for a change of user in 1995, which was approved on the condition that the status of the suit land be changed from freehold to leasehold. This was also supported by the survey conducted by E.M. Kiguru.

38. All these records were submitted by DW5 as exhibits in this case. Given everything discussed, it is quite clear that the plaintiffs' case does not hold up. They have not shown any legal ownership of the property by tracing backward, nor have they challenged the 6th defendant's documented ownership chain, nor have they called, as stated, key witnesses from the Lands Registry to support their claims. Their case is based on hearsay, unverified documents of unknown origin, and averments that fell apart under cross-examination.

39. On the other hand, the 6th defendant has provided steady, certified proof showing that he has a good title and an unbroken chain of ownership for the property. This was supported by the 5th and 7th defendants, who submitted certified copies from the land registry, making it clear there are no conflicting records.

40. The Court, therefore, has a duty to uphold the records filed by the 5th and 7th defendants, as the Court of Appeal held in **Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others [2019] KECA 157 (KLR)**:

“We have considered the appellants ground of appeal as to who was the first allottee of the suit property. The factual dilemma is that the Third Party witness, Mr. Oseko the Land Adjudication and Settlement Officer denied the authenticity and existence of the appellant’s letter of allotment dated 2nd January 1984. In his testimony, he stated that the official land parcel file for the suit property does not contain any of the letters referred to by the appellant and tendered in court as defence exhibits.

34. *On this issue, the learned judge expressed himself as follow:*

[15] It is clear that the defendant’s documents are questionable. The said documents are not in the records and he did not bother to call any person from the head office where he allegedly obtained the documents from. The scheme was administered from the office on the ground. The defendant decided to go to the headquarter to get allocation from there. He was

given documents which are not genuine. If the documents were genuine, he should have called those who gave him the documents.....”

41. Having established that the plaintiffs lack a valid claim to the suit property, and on a balance of probabilities, the plaintiffs’ suit is hereby dismissed with costs. I hereby uphold the 6th defendant’s counter-claim dated November 15th, 2024, in terms of prayers (a)-(g) with costs.

Dated, signed, and electronically delivered in Nyeri on this 9th day of April, 2026.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Mwarumba and Mr. Adika for the Plaintiffs

Mr. Wanjuku for the 1st and 2nd Defendants

Mr. Odunga for the 4th Defendant

Ms. Sheunda for the 6th Defendant.

Kendi: Court Assistant

In the absence of:

Ms. Lutta for the 5th and 7th Defendants