

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC NO. E008 OF 2021 (OS)**

**IN THE MATTER OF THE DELIVERY OF RECONVEYANCE OF  
TITLE AND DELIVERY OF VACANT POSSESSION OF  
PROPERTY TITLE NUMBER KAJIADO/KISAJU/3132**

**AND**

**IN THE MATTER OF DELIVERY OF VACANT POSSESSION  
OF PROPERTY TITLE KAJIADO/KAPUTEI-NORTH/80361  
(ORIGINALLY KAJIADO/KAPUTEI-NORTH/38790)**

**AND**

**IN THE MATTER OF THE ADVOCATES ACT, CAP 16 OF THE  
LAWS OF KENYA**

**BETWEEN**

**CHRISTOPHER MUNGAI MUNDIA.....PLAINTIFF**

**-VERSUS-**

RONALD MORARA NGISA.....1<sup>ST</sup>

DEFENDANT

MORARA & COMPANY ADVOCATES.....2<sup>ND</sup>

DEFENDANT

HELEN NJERI WANDAKA.....3<sup>RD</sup>

DEFENDANT

AND

LAND REGISTRAR, KAJIADO COUNTY.....INTERESTED

PARTY

**JUDGMENT**

1. The Plaintiff initiated this suit by way of an originating summons dated 12<sup>th</sup> July 2021 brought under the provisions of Order 37 rules 3 and 8, Order 53 rules 4(1)(e) and 10 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and Section 157 of the Land Act, Part X and XI and Section 55 and 56 of the Advocates Act, cap 16, Laws of Kenya. The Plaintiff claims to be entitled to title and vacant possession of properties, Titles Numbers Kajiado/Kisaju/3132 & Kajiado/Kaputiei-North/80361 (original Kajiado/Kaputiei-North/38790) situate in Kajiado County.

2. The Plaintiff seeks the determination of the questions on the face of the Originating Summons, namely;

- i. That the Plaintiff be registered as the legal and beneficial owner of all those two (2) parcels of land situate in KAJIADO County and registered as properties Title Numbers Kajiado/Kisaju/3132 (measuring approximately 2.02 Ha) and Kajiado/Kaputiei-North/80361 (measuring approximately 2.24 Ha) (hereinafter together referred to as “the suit properties”).
- ii. That the Plaintiff be and is hereby granted unfettered access and vacant possession of the said suit properties.
- iii. A declaration that the transfer of Title No. Kajiado/Kisaju/3132 and registration of the same in the name of Helen Njeri Wandaka was irregular, unlawful and fraudulent and therefore null and void ab-initio.
- iv. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants either by themselves, or by their servants, agents or any other occupants on the suit properties be forcefully evicted from the said suit properties should they fail to deliver vacant possession within five (5) days from the date of the Order of this Honourable Court.

- v. That the 2<sup>nd</sup> Defendant be sanctioned as the court deems fit for engaging in legal practice that is discreditable and likely to diminish public confidence in the legal profession and/or administration of justice and otherwise likely to bring the legal profession into sheer disrepute.
  - vi. That the Plaintiff be awarded special, punitive and aggravated damages for illegality, misconduct, fraud, pain and suffering caused and negligence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants jointly and severally.
  - vii. That the court be pleased to make any other order in the interest of justice.
  - viii. That the Defendants bear the costs of this application.
3. The originating summons is premised on a whopping thirty grounds on the face of it and on the supporting affidavit of Christopher Mungai Munda sworn in London on 12<sup>th</sup> July 2021. The fiduciary relationship between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was created when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted and represented the Plaintiff during the sale and purchase of KAJIADO/KISAJU/3132 measuring 2.02ha from William Kimitei Chelimo and Domitila Jepngetich Chelimo at a consideration of Ksh.1,800,000/=. On the same date, it is alleged that the Plaintiff paid the entire purchase price, legal fees, transnational taxes and

other related costs to the 1<sup>st</sup> Defendant, who is the proprietor of the 2<sup>nd</sup> Defendant and a partner.

4. It is contended that the sale agreement and transfer instruments were couriered to the Plaintiff in London for his execution and afterwards couriered back to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for further action. Although the suit property was registered in favour of the Plaintiff, it is alleged that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants irregularly retained the original title deed and instead dispatched a duplicate counterfeit copy to the Plaintiff which he retained believing it was legitimate. Subsequently, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fraudulently sold the property to the 3<sup>rd</sup> Defendant on 14th December, 2011 and transferred it to her without the Plaintiff's consent, knowledge and consideration. This, according to the Plaintiff, was effected by forging his signature on the transfer instrument and other accompanying documents. The completion documents were afterwards lodged before the Interested Party leading to registration and issuance of the title to the suit property to the 3<sup>rd</sup> Defendant on 16th January, 2011.

5. It is the Plaintiff's case that he discovered the Defendants' fraudulent dealings around February, 2014 after he had engaged Kimotho Kimani, a surveyor to jointly work with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to subdivide the suit property. According to the Plaintiff, the discovery was made when his counterfeit title deed supplied to

him by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was surrendered to the Interested Party.

6. The Plaintiff asserts that he further learned that the suit property had already been transferred to the 3<sup>rd</sup> Defendant. It is the Plaintiff's case that when he questioned the 1<sup>st</sup> Defendant, he admitted to the fraudulent dealings. As a result, the 1<sup>st</sup> Defendant offered to compensate the Plaintiff with KAJIADO/KAPUTEI-NORTH/80361 measuring 2.24ha which he informed the Plaintiff, he was in the process of purchasing from Jetlink Agencies Limited. The 1<sup>st</sup> Defendant allegedly also undertook to reverse the disputed property, KAJIADO/KISAJU/3132 back to the Plaintiff plus the difference in value between the two parcels.

7. The Plaintiff prays for a declaration that the transfer of Kajiado/Kisaju/3132 and registration in the name of Helen Njeri Wandaka was irregular, unlawful and fraudulent and therefore null and void ab initio. He consequently prays for the cancellation of the transfer and registration in the name of Helen Njeri Wandaka and that the title reverts to him; that he be granted vacant possession and Defendants be evicted from the subject property. The Plaintiff further prays that he be awarded, special, general, punitive and aggravated damages for illegality, misconduct, fraud, and negligence of the 1<sup>st</sup>, 2<sup>nd</sup>

and 3<sup>rd</sup> Defendants. It is the Plaintiff's prayer that the 2<sup>nd</sup> Defendant be sanctioned as the court deems fit for engaging in legal practice that is discreditable and likely to diminish public confidence in the legal profession and or administration of justice and otherwise likely to bring the legal profession into disrepute.

8. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered appearance on 28th September, 2021 through the Law firm of Akhaabi Advocates & Co. Advocates. In the course of the proceedings, the Law firm of Akhaabi Advocates & Co. Advocates filed a Chamber Summons application dated 12th May, 2025 seeking leave to withdraw from acting for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants allegedly, for lack of sufficient instructions. However, when the application came up for hearing on 31st October, 2023, Mr. Akhaabi, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant orally withdrew the application.
9. The court record reveals that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file their responses to the Plaintiff's Originating Summons within the stipulated timelines despite being granted extension of time to do so by the court. They purported to file their Replying Affidavits on the morning of 6th October, 2025 on the date the hearing was scheduled to take place and without leave of court. The court struck out the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Replying Affidavits following an oral

application made by Mr. Donald Kipkorir, learned Counsel for the Plaintiff.

10. The 3<sup>rd</sup> Defendant on her part responded to the Plaintiff's Originating Summons through grounds of opposition dated 24th October, 2023 and a Replying Affidavit which sought for its dismissal with costs on the following grounds;

- (1) *The 3<sup>rd</sup> Defendants is not privy to the relationship and transactions between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, or any arising betrayal of trust between them;*
- (2) *The Plaintiff has no proper legal basis upon which to impugn the 3<sup>rd</sup> Defendant's bona fide ownership of the interest in the land in question, the purchase, or registration thereof;*
- (3) *Having instituted separate legal proceedings against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under the Advocates Act, the present proceedings against the 3<sup>rd</sup> Defendant are frivolous, vexatious and an abuse of the court process and amounts to a fishing expedition.*

11. The Interested Party was represented by Mr. Oscar M. Eredi, State Counsel, on behalf of the Hon. Attorney General pursuant to a notice of appointment dated 18th January, 2022. Through grounds of opposition dated 18th January, 2022, the Interested

Party sought for dismissal of the Plaintiff's suit with costs based on the following grounds;

(1) *That the transfer and the registration of the suit land in the name of the 3<sup>rd</sup> Defendant was done within the Interested Party's Statutory mandate as provided by the Land Registration Act.*

(2) *That the Interested Party cannot be faulted for performing his statutory mandate.*

(3) *That the Interested Party was not privy to the transactions between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and cannot be held liable on any issues arising from the said transaction.*

### **Evidence adduced at the hearing**

**12. PW1-Christopher Mungai Mundia** attested that the 1<sup>st</sup> Defendant represented and acted for him in 2009 during the purchase of the suit property via mortgage from Kenya Commercial Bank. He informed court that he intended to subdivide the suit property into 35 plots with an intention of selling them.

**13.** Upon being cross-examined, he testified that although he obtained the suit property in 2009 after purchase, he left its title deed with the 1<sup>st</sup> Defendant for safe keeping but it was later

dispatched to him to London via DHL. He maintained that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were not justified to transfer and sell the suit property to the 3<sup>rd</sup> Defendant without his consent because he was not indebted to them in any way. With respect to his prayer seeking eviction of the Defendants from the suit property, he self-proclaimed that he did not have any documentary evidence to show that they were in its occupation. He further confirmed that he had not filed any compliant against the 2<sup>nd</sup> Defendant before the Advocates Compliant Commission.

**14.** PW1 explained that he commenced legal action against the Defendants 7 years after his appointed surveyor learnt from the land office that his title to the suit property was fake in the year 2014. Nonetheless, he did not have any documentary evidence to prove this allegation neither did he file any report by a document examiner to prove his signature was forged. Additionally, the land registrar was not called to testify in support of his case. PW1 also admitted that the memorandum of understanding detailing how the 1<sup>st</sup> Defendant would compensate him was not filed in court. It was his testimony that his wife informed him that possession of KAJIADO/KAPUTEI-NORTH/80361 was not possible since the 2<sup>nd</sup> Defendant had not paid the entire purchase price of the same.

**15.** When he was re-examined, PW1 denied ever meeting or transacting with the 3<sup>rd</sup> Defendant. It was his testimony that

although attempts were made to negotiate the matter out of court, he was not granted vacant possession of the suit property.

**16. DW1-Hellen Njeri Wandaka**, the 3<sup>rd</sup> Defendant commenced her evidence in chief by adopting her affidavit and annexures marked exhibit 1 and 2 in support of her case. When she was cross-examined, she denied ever meeting or speaking to the Plaintiff during the purchase of the suit property. It was her testament that she paid the entire purchase price to her advocates Kiarie & Company Advocates which monies were conveyed to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants; not to the Plaintiff.

**17.** The court was informed that a broker who was involved in the transaction mentioned that the owner of the suit property was based in London.

**18.** Responding to a question raised by the court, DW1 stated that she obtained possession of KAJIADO/KISAJU/3132 after purchasing it at Kshs. 7.5 Million through a sale agreement dated 19th July, 2011 from the Plaintiff who was the seller.

**19.** The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not call a witness in this case. The Interested party too did not call a witness.

**20.** Upon the close of the hearing, the court directed parties to file written submissions which now form part of the record of this court. They have been duly considered in the writing of this judgement.

## **Submissions by the parties.**

### **Plaintiff's submissions;**

21. The Plaintiff submitted on 6 issues as hereunder;

#### **a) Failure to call evidence.**

22. The Plaintiff asserts that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants did not file any statement of Defence neither did they testify in the case. The 3<sup>rd</sup> Defendant however filed a Replying Affidavit which was treated as a statement of defence but did not file any documents to either refute the Plaintiff's claim or prove her title. The Interested Party on his part merely filed grounds of opposition but did not offer any evidence.

23. The Plaintiff cites the case of **George Kinuthia Ngure vs Josephine Mwangi Murage** where the court held that where a party has the custody or is in control of evidence that the party fails or refuses to tender or produce, the court is entitled to make an adverse inference that if such evidence was produced, it would be adverse to such a party.

#### **b) Good Title.**

24. The Plaintiff submits that he is the bona fide owner of Title No. Kajiado/Kisaju/3132 and he did not sell it to the 3<sup>rd</sup> Defendant nor to any other person.

25. Citing the case of **Fanikiwa Ltd & others vs Sirikuwa Squatters Group and others**, the Plaintiff avers that the burden of proof shifted to the 3<sup>rd</sup> Defendant to prove that her title was genuine. He submits that the 3<sup>rd</sup> Defendant did not discharge that burden.

**c) Vacant Possession.**

26. The Plaintiff reiterated that his property was transferred to the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants fraudulently. As such the 3<sup>rd</sup> Defendant had a defective title and must give vacant possession to the legitimate owner. To buttress this argument, the Plaintiff cites the case of **David Mburu Wakimba vs Chief Land Registrar & others**, where the court held that there can be no protection offered to a title whose root is defective or marked by illegality.

**d) General damages.**

27. The Plaintiff seeks general damages citing the case of **Joyce Wanjiku Madsen & another vs Dr. Daniel Kairu Kiaraho & others**. He prays for Kshs. 20,000,000/-

**e) Courts have powers to punish errant lawyers.**

28. Citing Section 56 of the Advocates Act, the Plaintiff submits that this court is empowered to deal with

misconduct or offences by an advocate committed during, or in the course of or relating to proceedings before the court. He too makes reference to an article by Prof. Tom Ojienda where the Professor states that the advocate's relationship to other advocates in court and in relation to the process of court may give rise to disciplinary action by the court.

**f) Costs.**

29. The Plaintiff prays for the costs of the suit.

**The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' submissions**

30. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' submissions are dated 18<sup>th</sup> November 2025. They identify seven issues for determination which they then collapse into four, the first one being that the Plaintiff's suit is time barred therefore denying this court the jurisdiction to entertain the suit. They assert that since the Plaintiff discovered the alleged fraud in the year 2014, the 3 years' limitation period for a tortious claim expired in the year 2017.

31. The 2<sup>nd</sup> issue is on accord and satisfaction whereby the 1<sup>st</sup> and 2<sup>nd</sup> Defendants argue that the Plaintiff admitted under cross-examination that he had engaged in negotiations with the 1<sup>st</sup> Defendant whereby he was compensated with the

parcel of land known as Kajiado/Kaputiei-North/38790. They accuse the Plaintiff of approbating and reprobating, a course of action which equity cannot condone or entertain.

32. On the 3<sup>rd</sup> issue, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submit that the Plaintiff has not proved allegations of fraud to the required standard. They assert that the Plaintiff's claim was premised on hearsay evidence and was not supported by any forensic evidence.

33. The final issue was a concoction of 4 issues. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submit that the Plaintiff had improperly bundled 3 distinct actions into one; a land dispute which falls under the mandate of this court, a professional negligence claim which falls under the jurisdiction of the High Court and a professional misconduct claim falling under the mandate of the Advocates Disciplinary Tribunal. They particularly pointed out that the prayer for sanction against the 1<sup>st</sup> Defendant was incompetent. Finally they submitted that the Plaintiff was not entitled to general damages.

### **The 3<sup>rd</sup> Defendant's Submissions.**

34. The 3<sup>rd</sup> Defendant's submissions were filed outside the timelines given by the court. I have noted the protest by the

Plaintiff to that effect. Nonetheless, considering the nature of this case and the wider interests of justice, the court considers it appropriate to consider all the materials presented before for purposes of a final and conclusive determination of this matter.

35. The 3<sup>rd</sup> Defendant identifies 3 issues for determination as follows;

- i. Whether 3<sup>rd</sup> Defendant is an innocent purchaser for value without notice.
- ii. Whether the Plaintiff proved alleged fraudulent transfer of the suit land to the request standard.
- iii. Whether the 3<sup>rd</sup> Defendant's title should be cancelled.

36. Submitting on the first issue the 3<sup>rd</sup> Defendant refers to the definition of a bona fide purchaser for value in the Black's Law Dictionary 9<sup>th</sup> Edition and further relies on the case of **Oloo vs Oloo & 2 others** where the Court of Appeal cited with approval the definition of a Bona fide purchaser by the Uganda Court of Appeal in the case of **Katende vs Haridar & Co. Ltd (2008) 2 E.A. 173.**

37. The 3<sup>rd</sup> Defendant asserts that she came to know about the suit property through a broker and that the 1<sup>st</sup> & 2<sup>nd</sup>

Defendants were selling it on behalf of the Plaintiff who was abroad. She visited the suit property confirmed it was occupied and she therefore instructed her advocate to represent her in the transaction and the transfer process.

38. The 3<sup>rd</sup> Defendant submits that by establishing that the suit property belonged to the Plaintiff, verifying that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had the authority to sell it on behalf of the Plaintiff, executing the sale agreement and paying the full purchase price, she was a bona fide purchaser for value without notice. Further that having been represented by an advocate in purchase of the suit property and based on the fiduciary nature of the advocate/client relationship; she acquired a valid title.

39. The 3<sup>rd</sup> Defendant reiterated that she was not involved in any fraud neither did she have knowledge of the alleged fraud nor did she contribute to the fraud insisting that she is a bona fide purchaser of the disputed property.

40. The 3<sup>rd</sup> Respondent made reference to the Black's Law Dictionary 9<sup>th</sup> Edition's interpretation of the word "*bona fide purchaser*"; **Oloo v Oloo & 2 others (Environment and Land Appeal 014 of 2023) [2025]** which alluded to

**Katende** supra); and **Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005 [2015] eKLR** to further advance this argument.

41. The 3<sup>rd</sup> Respondent averred that the Plaintiff's assertions that his signature were not supported by expert evidence. The Plaintiff further never called the Land Registrar to shed light on the forgery allegations despite enjoining him in the proceedings.

42. As a legal legitimate proprietor of the suit property, the 3<sup>rd</sup> Defendant submits that her suit property title should not be cancelled for she has demonstrated that it was procedurally and lawfully acquired. Additionally, no proof was tabled before this court showing that she substantially contributed to fraud or mistake through any omissions, act, negligent or default. She refers to the case of **Bruce Joseph Bockle -vs- Coquero Limited [2014] eKLR** and **Kenya Power & Lighting Company Limited v Nathan Karanja Gachoka & another [2016] eKLR**. She submits that this honorable court cannot order for cancellation or rectification of her title under Section 80 of the Land Registration Act because the Plaintiff has failed to infer liability on the part of the 3<sup>rd</sup>

Defendant. It is further argued that it was not within the 3<sup>rd</sup> Defendant purview or knowledge that the Plaintiff's signature was forged since the transaction was handled by advocates. Additionally, she purchased the property on account of **power of attorney donated to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by the Plaintiff.** In concluding, the 3<sup>rd</sup> Defendant calls for dismissal of the Plaintiff suit with costs because it is in the interest of justice so as to protect this court integrity.

**Issues for Determination.**

43. I wish to point out that the issue of time bar had already been determined by my predecessor, Justice M.N Gicheru vide a ruling delivered on 23 October, 2024, whereby he dismissed a preliminary objection to that effect holding that;

***"I find that the suit is not time barred. From the supporting affidavit, it seems that the sale agreement between the Plaintiff and W.K. Chelimo and another is dated 8/6/2009. It was not until the year 2016 that the plaintiff discovered the alleged fraud. Under Sections 7 and 26 of the Limitation of Actions Act, the***

***period of 12 years starts running in the 2016 and lapses in the year 2028. This suit having been filed on 30/7/2021 was filed on time.”***

44. I agree with the finding of my Learned brother Justice M.N Gicheru and have nothing useful to add on this issue.

45. Upon considering the pleadings herein, the evidence adduced and submissions by the parties, the issues that arise for determination are;

- a) Whether the transfer of title No. Kajiado/Kisaju/3132 and registration in the name of the 3<sup>rd</sup> Defendant was lawful.***
- b) Whether the Plaintiff has established grounds for cancellation of the title in the name of the 3<sup>rd</sup> Defendant and rectification of the register to revert to the name of the Plaintiff.***
- c) Whether the Plaintiff is entitled to the relief sought.***
- d) Whether the Plaintiff is entitled to be registered as proprietor of Kajiado/Kaputei- North/80361.***
- e) Whether the Court, may sanction the 2<sup>nd</sup> Defendant.***
- f) What orders should issue on costs.***

**Determination.**

**A. Whether the transfer of the suit property and registration on the name of the 3<sup>rd</sup> Defendant was lawful.**

46. The Plaintiff's case in brief is that he retained the services of the 1<sup>st</sup> Defendant, Ronald Morara Ngisa t/a Morara Ngisa & Co. Advocates to represent him in the purchase of the property known as Kajiado/Kisaju/3132 from William Kimitei Chelimo & Domitira Jepngetich Chelimo (vendor) for the sum of Kshs. 1,800,000/-.
47. The Plaintiff asserts that, unknown to him and through fraudulent means, the 1<sup>st</sup> Defendant procured two certificates of title over the subject property in his (the Plaintiff's) name. The agreement between the Plaintiff and the 1<sup>st</sup> Defendant had been that the 1<sup>st</sup> Defendant would retain the original certificate of title to the subject property to enable him supervise the subdivision of the same into 35 portions, on behalf of the Plaintiff.
48. The Plaintiff pleads that he later learnt that the 1<sup>st</sup> Defendant had without his knowledge commercialized one of the duplicate titles by obtaining money from the 3<sup>rd</sup> Defendant

and subsequently purportedly effected a transfer to the 3<sup>rd</sup> Defendant ostensibly by forging the Plaintiff's signature.

49. The Plaintiff had in the meantime instructed his agent, one Kimathi Kimani of 'Heri Homes' to engage his surveyors to commence the subdivision process of the suit property as he had intended to, in February 2014. However, even before the subdivision scheme had been drawn up, the 1<sup>st</sup> Defendant rushed and applied for and obtained relevant statutory approvals and the consent to proceed with the subdivision which resulted in the creation of false registry entries. The 1<sup>st</sup> Defendant did this in the name of the Plaintiff based on the fictitious duplicate certificate of title. The consent to subdivide too was obtained from the Isinya Land Control Board using the Plaintiff's name.

50. When the Plaintiff's authorized surveyor asked the 1<sup>st</sup> Defendant for the original title for purposes of surrender in order to process the 35 title deeds (resulting from the intended subdivision), the 1<sup>st</sup> Defendant declined forcing the Plaintiff to travel to the Kenya from London when he was informed of the development. The title provided by the 1<sup>st</sup> Defendant turned out to have been fake. The Plaintiff's surveyor was informed at

the Land's Office that the title was fake and that the subject property had long been transferred to the 3<sup>rd</sup> Defendant.

51. The Plaintiff states that he confronted the 1<sup>st</sup> Defendant who allegedly admitted forging the Plaintiff's signature to effect the transfer to the 3<sup>rd</sup> Defendant.

52. The 3<sup>rd</sup> Defendant insists that she was an innocent purchaser for value without notice of the suit property. The Plaintiff's case on the other hand is that as the proprietor of the land title No. Kajiado/Kisaju/3132, he did not instruct nor authorize the sale of the suit property by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the 3<sup>rd</sup> Defendant or to any other person for that matter. The 1<sup>st</sup> & 2<sup>nd</sup> Defendant acted without the instructions and authority of the Plaintiff; the proprietor of the suit property. The Plaintiff further asserts that he did not sign the agreement for sale (if there was any), the transfer documents nor the application for the Land Control Board consent to transfer the suit property which was agricultural land.

53. The 3<sup>rd</sup> Defendant relies on the decision in the case of **Oloo vs Oloo & 2 others** where the Court of Appeal cited with approval the decision in the case of **Katende vs Haridar & Co Ltd (2008) 2 EA 173** by the Court of Appeal of Uganda which

defined a bona fide purchaser for value without notice as follows;

***“For purposes of this appeal it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that;***

- 1. He holds a certificate of title;***
  - 2. He purchased the property in good faith;***
  - 3. He had no knowledge of the fraud;***
  - 4. He purchased for valuable consideration;***
  - 5. The vendors had apparent valid title;***
  - 6. He purchased without any notice of fraud;***
- and***
- 7. He was not a party to the fraud.***

54. While the Katende case (supra), remains good law, the Court of Appeal in the case of **Mwangi James Njihia vs Janetta Wanjiku Mwangi & another (2021) ECLR**, critically relooked into the Katende case in view of increased incidences of land fraud in Kenya and stated that;

***“We nonetheless wish to state that the law, including case law is not static, and the above requirements which were crafted over 10 years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.***

***We say so because in the recent past and even presently, fraudsters have upped their game and we have come across several cases where title deeds manufactured in the backstreets have, with collusion of officers in land registries, been transplanted at the lands office and intending buyers have been duped to believe that such documents are genuine and on that basis they have “purchased” properties which turn out to belong to other people when the correct documents mysteriously reappear on the register or the genuine owner shows up after seeing strangers on their properties waving other instruments***

***of title. It is the prevalence of these incidents that have necessitated the current overhaul and computerization of the registration systems at the Land Registry in Nairobi.***

***The elephant in the room is whether genuine, legitimate owners of property should be dispossessed of their hard earned property, because a party has “purchased” land on the basis of an apparent title at the Land Registry which has been transplanted in place of the genuine one to re-emerge after the transaction.***

***In our view no legitimate owner of property should be divested of their property unlawfully under the guise that the “purchaser” was duped to buy land which he/she believed to be genuinely owned by the person holding himself as the vendor.”***

55. The dilemma brought out in the Njehia case (supra) is no lesser or different when the fraudster turns out to be the

lawyer of the owner of the property. The question then is whether a genuine legitimate owner of a property should be dispossessed of his hard earned property because a party has “purchased” the property from a lawyer on the basis of a false/fraudulent representation by the lawyer purporting to have the authority and instructions of the owner to sell it on his behalf.

56. My view, guided by the view of the Court of Appeal in the Njehia case (supra) is that no legitimate owner of property should be divested of his property unlawfully under the guise that the “purchaser” was duped to buy land on the false belief that the purported seller had the authority of the owner to sell.

57. The 3<sup>rd</sup> Defendant knowing as she did that the Plaintiff was out of the country should have been more diligent to establish whether the lawful owner had indeed authorized the sale of his property by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants. That is part of due diligence.

58. The Plaintiff did not even sign the agreement for sale, if there was any; neither did he sign the transfer documents nor appear before the Isinya Land Control Board for the

issuance of the mandatory Land Control Board consent to transfer the suit property. I must state at this juncture that the evidentiary burden of proof shifted to the 3<sup>rd</sup> Defendant to demonstrate that she had conducted rigorous due diligence, followed the due process and consequently obtained a good title for her to qualify as a bona fide purchaser for value. The 3<sup>rd</sup> Defendant in her submissions at paragraph 28 asserts that,

***“Your Lordship, the 3<sup>rd</sup> Defendant bought the suit land on account of a power of attorney donated by the Plaintiff to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and it was on the same legitimate basis that she signed the sale agreement and paid the full purchase price.”***

59. The 3<sup>rd</sup> defendant’s submissions bring out an even more pertinent question; did she conduct due diligence on the alleged power of attorney? Was the power of attorney duly registered?

60. No power of attorney was exhibited in this case. The Plaintiff clearly did not discharge the evidentiary burden of proof.

61. This court therefore finds and holds that the transfer of the title to the suit property, title No. Kajiado/Kisaju/3132 and registration in the name of the 3<sup>rd</sup> Defendant was not only unlawful but unprocedural, null and void ab initio.

**B. Whether the Plaintiff has established grounds for cancellation of the title and rectification of the register to revert to the name of the Plaintiff.**

62. Under Section 26 of the Land Registration Act, a certificate of title may be challenged on the ground of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired **illegally, unprocedurally or through a corrupt scheme.** Again under Section 80 of the Act, the court may order rectification if satisfied the registration was obtained, made or omitted by fraud or mistake.

63. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their submissions allude to a memorandum of understanding whereby they agreed to compensate the Plaintiff for the parcel of land unlawfully and irregularly transferred to the 3<sup>rd</sup> Defendant with a different parcel of land. This amounts to an admission of wrongdoing

on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Why else would they be compensating the Plaintiff?

64. The 3<sup>rd</sup> Defendant's title was obviously obtained unprocedurally and fraudulently as the court has already found. Consequently, the said title No. Kajiado/Kisaju/3132 must be cancelled and the register rectified to revert to the genuine legitimate owner- the Plaintiff.

C. **Whether the Plaintiff is entitled to Kajiado/Kaputei-North 80361.**

65. The title Kajiado/Kaputei-North 80361 came into the picture as the offer by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to allegedly compensate the Plaintiff for his land which was unprocedurally and fraudulently transferred to the 3<sup>rd</sup> Defendant.

66. The agreement or memorandum of understanding entered into between the Plaintiff and the 1<sup>st</sup> & 2<sup>nd</sup> Defendants was however not produced before the court. For a transaction involving land to be valid, it must be in writing, executed and attested in terms of the provisions of Section 3(3) of the Law of Contract Act.

67. With regard to the parcel Kajiado/Kaputei-North 80361, the Plaintiff did not supply the court with such a contract in writing entitling him to it. The claim for that parcel fails. In any event, the court has already made a decision that the parcel No. Kajiado/Kisaju/3132 be reinstated to the Plaintiff. It would amount to double compensation and unjust enrichment if the Plaintiff was to keep if the Plaintiff was to keep title Kajiado/Kaputei-North 80361 as well.

D. **Whether the Plaintiff is entitled to the reliefs sought.**

68. The court has already made its findings in respect to the parcel Kajiado/Kisaju/3132. Being the legitimate owner, the Plaintiff is entitled to enjoy his land. Under the Land Registration Act, registration vests in the proprietor the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto.

69. It naturally follows that the Plaintiff is entitled to the quiet, undisturbed possession and enjoyment of his property as guaranteed by the provisions of Article 40 of the Constitution of Kenya.

70. Eviction of any trespassers/unlawful occupants is therefore an entitlement to enable the Plaintiff enjoy his rights and privileges belonging or appurtenant thereto.

**Special & General damages.**

**General damages.**

71. For the inconvenience and denial of his right to quiet enjoyment of his title, the Plaintiff is entitled to general damages. There is no evidence of any wastage/destruction on the land. The Plaintiff has therefore not made a case for aggravated damages.

72. Consequently, considering the period of time the Plaintiff has been kept out of his land, the court will award the Plaintiff a reasonable sum of **Kshs. 3,000,000/-** as general damages against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

**Special damages.**

73. It is trite that special damages must not only be pleaded but must be specifically proved. The court having reinstated the suit property to the Plaintiff; he cannot claim loss of the purchase price, stamp duty and transactional costs. That would amount to double compensation. The same applies to legal fees paid for the transaction.

74. For legal fees paid to the current advocates, the award of costs suffices. The cost of flights and accommodation was not specifically proved. It was further not proved that the flights were made for sole purpose of pursuit of the issues in this case. In any case the award of general damages is meant to compensate for such inconveniences.
75. On the claim of loss of Kshs. 600,000/- paid to Surveyor; with the reinstatement of the suit property, the Plaintiff is now in a position to proceed with the subdivision with the surveyor he had already paid. The money will therefore not be lost.
76. The upshot is that the court disallows the claim for special damages in its entirety.

**D. Whether the 2<sup>nd</sup> Defendant may be sanctioned by the court for engaging in legal practice that is discreditable and likely to diminish public confidence in the legal profession and administration of justice.**

77. The Plaintiff in his submissions cites Section 56 of the Advocates Act. A clear reading of the Section however reveals that the court's power to deal with misconduct or

offences by an advocate is limited to misconduct or offences committed during or in the course of, or relating to proceedings before the court.

78. I will leave it at that. The Plaintiff is at liberty to pursue the matter further before the relevant institutions.

79. On the issue of costs, guided by the provisions of section 27 of the Civil Procedure Act that costs shall follow the event, the Plaintiff is awarded the costs of this suit as against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

**Final disposition**

80. The final disposition is that judgement is entered for the Plaintiff as follows;

A. A declaration be and is hereby made that the transfer of Title No. Kajiado/Kisaju/3132 and registration of the same in the name of Helen Njeri Wandaka was irregular, unlawful and fraudulent and therefore null and void ab-initio. Accordingly, the Land Registrar is ordered to cancel the said tile in the name of the 3<sup>rd</sup> Defendant, Helen Njeri Wandaka and the register be rectified accordingly to revert to the Plaintiff's name, Christopher Mungai Mundia.

B. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are hereby ordered to deliver vacant possession of Title No. Kajiado/Kisaju/3132 to the Plaintiff within thirty (30) days from the date of this judgement failing which they be forcefully evicted from the said parcel Title No. Kajiado/Kisaju/3132 without any further refence to this court.

C. The Plaintiff is awarded a sum of **Kshs. 3,000,000/-** as general damages against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants with interest at court rates from the date of this judgement until payment in full.

D. The Plaintiff is awarded the costs of this suit as against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

Ordered accordingly.

**Dated Signed and Delivered at Kajiado Virtually this 25<sup>th</sup> Day of March 2026.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Mr. Donald Kipkorir for the Plaintiff

Ms. Kulohoma for the 3<sup>rd</sup> Defendant

Mr. Akhaabi for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Court Assistant: Alex

**M.D. MWANGI**  
**JUDGE**

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