

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 930 OF 2017

SYLVIA METIAN LANTEI..... PLAINTIFF

VERSUS

DORCAS NAIPEI NTORE 1ST

DEFENDANT

NEWTON WANYOIKE KIRERA 2ND DEFENDANT

LEISA HILL GIRLS SCHOOL 3RD DEFENDANT

J U D G M E N T

1. By the plaint dated 14th November 2017 the plaintiffs have filed this suit against the Defendants jointly and severally seeking the following reliefs:
 - (a) That any sale transactions in respect of land parcel No.Kajiado/Olchoro Onyore/9335 between the 1st and 2nd Defendants were irregular, illegal, null and void
 - (b) That the 2nd Defendant's title No's Kajiado/Olchoro Onyore/13490 and 13491 were irregularly and unlawfully obtained and are hereby cancelled and /or nullified.
 - (c) That the 3rd Defendant's title No Kajiado/Olchoro/Onyore/13489 was irregularly and unlawfully obtained and is hereby cancelled and/or nullified/

(d) That the Land Registrar Kajiado North, be ordered to cancel all entries that gave rise to title No's Kajiado/Olchoro Ochore/13489, 13490 and 13491 and revert original title No Kajiado/Olchoro /Onyore/9335 to names of the Plaintiffs and the 1st Defendant jointly. To facilitate this the Land Registrar do dispense with the production of the 2nd and 3rd Defendants title deeds.

(e) That an eviction order be and is hereby issued to remove the 2nd Defendant from his occupation of original title No Kajiado/Olchoro Ochore/9335 (now Kajiado/Olchoro Ochore 13490 and 13491)

(f) Costs of this suit be to the Plaintiffs.

2. Upon being served with the pleadings, the 1st Defendant filed a statement of Defence dated 4th October 2022. It is her case that she only sold to the 2nd Defendant 5.5 Acres of Land and not 14.5 Acres as stated.

3. The 2nd Defendant filed a statement of Defence, dated 22nd December 2017 and amended on the 18th January 2023. It is his case that he bought 14.5 Acres from the 1st Defendant and a further 4 acres which he bought from other buyers.

This made a total of 16.4 Acres. It is his contention that he acquired the land legally openly and without any taint of any illegality, fraud or illegality. He contends that he paid a total of Kshs15,400,000/= for the land and an additional

Kshs700,000/= for the homestead structures to make a final figure of Kshs 16,100,000/=. He further contends that he was granted possession by the 1st Defendant in the presence of the Plaintiffs' in 2009 and has had uninterrupted Possession for the last eight (8) years. He prays that the Plaintiffs suit be dismissed with costs.

4. The 3rd Defendant's statement of Defence and Counterclaim is dated 18th January 2018 and Amended on 13th March 2023. It denies the particulars of fraud as contained in the plaint and holds that the work of the survey was the sole responsibility of the plaintiffs, the 1st Defendant and the Surveyor, the consent to transfer was their contractual obligation as the same was procured by the 1st Defendant and the Plaintiffs.
5. In the counterclaim the 3rd Defendant, claims that it bought their portion from the registered proprietor, James Ashaiyo Pulei vide a sale agreement dated 24th March 2007.

It prays for judgment against the Plaintiffs for:

- (i) An order directing the plaintiff and 1st Defendant to pay the 3rd Defendant's special damages.
- (ii) An order for specific performance against the plaintiff and 1st Defendant to give to the 3rd Defendant their acre of land or in the alternative and in the absence of Land they be directed to pay compensation at current market value of the said parcel of land due to them.
- (iii) An order for exemplary damages to the 3rd Defendant due to the 1st Defendant's actions

and plaintiff's actions that saw the closure of operation at the school stemming from fear and stigma; and

- (iv) General damages and cost of the suit

EVIDENCE OF THE PLAINTIFFS

6. PW1, Sylvia Metian Lantei, the 1st Plaintiff testified on the 24th January 2024. She told the Court that Kajiado/Olchoro Onyore/9335 was registered in her name, her brother James Parsimei Lantei and the 1st Defendants who is her mother, on the 9th of March 2010.

She told the Court that the 1st Defendant sold the suit property to the 2nd and 3rd Defendant without her consent and/or participation. It is her case that her late brother did not participate in the transaction.

7. When cross examined by Counsel for the 2nd Defendant, she stated that she realised in the year 2011 that the 1st Defendant had sold the entire parcel to the 2nd Defendant.

She also admitted that she knew the 2nd Defendant well and even received some monies from him.

She also admitted that she had nothing to show that the transfer to the 2nd, 3rd Defendants was fraudulent. She denied that this suit was a collusion between herself and the 1st Defendant to take away land from the 2nd Defendant

8. On cross examination by counsel for the 3rd Defendant, she stated that she has no issue with the land held by the 3rd Defendant, though she did not sign the transfer form. She

also stated she has no evidence of fraud with respect to the transfer to the 3rd Defendant.

She also admitted that she had disagreed with the 1st defendant.

9. On re-examination she stated that she had no issue with the 3rd Defendant's parcel and that the 2nd Defendant purchased 1.5 Acres. She reiterated that she was not in good terms with the 1st Defendant hence it took so long to file this suit.
10. PW2 Raphael Santamu Lantei adopted his witness statement dated 22nd February 2022 as his evidence in chief. When cross examined by counsel for the 1st Defendant he stated that he had no evidence of fraud against the 1st and the 2nd Defendants.
11. When cross examined by the 2nd Defendants Counsel, he stated that the 1st Defendant told him she had leased the land to the 2nd Defendant. He admitted that the suit property is fully developed by the 2nd Defendant. When cross examined by the 3rd Defendant's counsel, he stated that the 2nd and 3rd Defendants had taken a possession of their respective portions
12. On re-examination, he reiterated that the 1st Defendant told him the land had been leased. He also stated that he had no issue with the 3rd Defendant's portion.

EVIDENCE OF THE DEFENDANTS

13. DW1, Dorcas Naipei Ntore, the 1st Defendant, adopted her witness statement dated 4th October 2022 as her evidence in chief.

She also relied on the Bundle of Documents dated 22nd April 2023. When cross examined by counsel for the Plaintiffs she admitted that she sold an additional one acre to the 3rd Defendant and a total of five acres to the 2nd Defendant. She admitted that she signed the documents herself in the absence of the plaintiffs

She also stated that she disagreed with the 1st Plaintiff after she had sold the land.

14. When cross examined by counsel for the 2nd Defendant she stated that she sold the land voluntarily.

Further that she sold 5 Acres to the 2nd Defendant who also bought from four previous buyers. She admitted she received monies severally from the 2nd Defendant. She stated that she did not agree with the schedule of payments produced by the 2nd Defendant but she did not have different copy. She admitted that the 2nd Defendant has put up a house on the land.

She also admitted that she signed some documents at the Advocate's office but did not go to the Land Control Board. She further stated that she did not know if the 2nd Defendant had Committed any fraud in acquiring the titles.

15. When cross examined by Counsel for the 3rd Defendant, she stated that she signed the mutation form and the transfer forms in favour of the 2nd and 3rd Defendants. She told the Court that the Plaintiffs were aware though she did not know that it was wrong to sign on their behalf.

16. On re-examination, she reiterated that she signed on behalf of her children in good faith. She also stated that the 2nd Defendant paid for the land in Bissil.

It is her case that the 6 1/4 acres ought to remain with the family.

17. DW2, Joseph Muigai Ngugi , a director of the 3rd Defendant adopted his witness statement dated 20th February 2023 as his evidence in chief. He also produced the Documents in the bundle of documents dated 20th January 2023 as exhibits in this case. When cross examined by counsel for the Plaintiffs, he told the court that the 3rd Defendant owns three (3) acres of the land.

When cross examined by counsel for the 2nd Defendant he told the Court that Waweru Munyi, the 1st Defendants Advocate followed up on the titles.

On cross examination by counsel for the 1st Defendant he stated that he paid Kshs2 million for the extra one acre and has no dispute with the 1st Defendant.

18. On re-examination, he reiterated that the Plaintiffs and the 1st Defendant do not dispute the 1 acre bought by the 3rd Defendant. He also confirmed that Mr Waweru Munyi was the 1st Defendant's Advocate.

19. DW3 Lydia Mugito, a principal at the 3rd Defendant adopted her witness statement dated 20th February 2023 as her evidence in chief. She also produced the Documents in the Bundle of Documents dated 20th January 2023 as exhibits in this case.

When cross examined by the counsel for the Plaintiffs she stated that the sale agreement was between herself and Joseph Muigai Ngugi (DW2) as buyers and Dorcas Naipei Ntore, as the seller. This was land meant for the 3rd Defendant. She also bought $\frac{1}{4}$ acre for herself.

On cross examination by the Counsel for the 1st Defendant she stated that she has no claim against the 1st defendant.

20. On re-examination, she stated that she is claiming a $\frac{1}{4}$ of acre from the 1st Defendant or a refund of the purchase price. She also stated that the 3rd Defendant ought to be paid costs of the suit.

21. DW4, Newton Wanyoike Kirera, the 2nd Defendant adopted his witness statement dated 30th October 2022 as his evidence in chief. He also produced the Document dated 30th October 2022 as exhibits in this case. He stated that he first bought 1.5 Acres from the 1st Defendant, for Kshs600,000/=

He also produced a sale agreement for 4 $\frac{1}{2}$ Acres at Kshs3,600,000/= whereby the full purchase price was paid.

22. It is also his testimony that the 1st Defendant intended to move her family to Bissil and they agreed that he purchases the remaining 6.4 Acres and get a parcel for the 1st Defendant at Bissil. It is then that a sale agreement between Noah Kurraru and the 1st Defendant was reached. The purchase price for the land at Bissil was Kshs4,350,000/= which the 2nd Defendant paid the seller in full. This was less the amount he was to pay for the 6.4

Acres. The 1st Defendant was to follow up on the title for the land in Bissil.

23. It is his testimony that he bought 12.4 Acres from the 1st Defendant for Kshs15.4 Million and that the entire purchase price had been paid. It was also agreed that he pays Kshs700,000/= for the structures in the home which he did. He told the Court that some monies would go to the 1st Plaintiff. He stated that he took possession in 2012 and accelerated the developments in the year 2013.

24. He recalls that he signed the transfer documents in the offices of Waweru Munyi Advocate who followed up process at the Kajiado Land Registry. He later collected the title from the advocate's office.

He believed the 1st Defendant when she said the children were aware.

It is his case that the transaction was above board.

25. When cross examined by counsel for the Plaintiffs, he stated that he started the process of purchasing the land in the year 2007 and that he carried out due diligence. He admitted that the sale agreement for the 6.4 Acres does not state the price per acre. He maintained that he paid Noah Kirraru seller of the land at Bissil.

He told the court that the total acreage as per the title deeds is 18.5 Acres.

26. When cross examined by counsel for the 1st Defendant he stated that the 1st Defendant bought a surveyor to demarcate the 6.4 Acres. On cross examination by the Counsel for the 3rd Defendant, he stated that the 1st

Defendant admits she sold to him 12.4 Acres which he developed in the year 2012.

27. On re-examination he stated that the extra 2.1 Acres in the title is riparian land. He also stated that the 1st Defendant does not deny that she received the money.
28. At the close of the oral testimonies, parties tendered final written submissions.

SUBMISSIONS OF THE PLAINTIFF

- 30 The Plaintiff claims that her family only sold 8.5 acres of land and the remaining 11.5 acres was taken from them fraudulently. The titles issued to the 2nd and 3rd defendants were thus illegal and ought to be cancelled. The issues for determination are as summarised below.
- 31 On whether the 3rd Defendant's counterclaim is merited, it was submitted that the Plaintiff was aware of the sale of 3 acres of land to the 3rd Defendant during the lifetime of the late James Asheiyu Parsimei, which she did not object. It is the sale of a further 2 acres that the Plaintiff objects submitting that there was no sale agreement to that effect and she was not aware of any payments made to the 1st defendant. It was argued that the parcel was held in joint ownership and no party had any right to carry out any transaction without the consent of the others. Reference was made to the case of ***Re Estate of Gwonda Kebate, Kebate Kebate, Ondande Kebate & Onchere Kebate (Deceased) [2024] KECA 784 (KLR)*** on joint ownership. The claim for reimbursement of costs accrued in the process of subdivision was also contested

arguing that the Plaintiff did not direct the 3rd Defendant to undertake any subdivisions or any other action and the 3rd defendant was a victim of a fraudulent scheme by the 1st and 2nd Defendants.

- 32 On whether the 2nd Defendant made a second purchase of 4.5 Acres, it was submitted that the only contention the Plaintiff had was for the purported sale made in 2010 through an agreement between the 2nd Defendant and the 1st and the purported payments made between April 2010 and June 2011 arguing that neither her or her siblings were involved in the transaction. The 2nd defendant could therefore not claim to be a bonafide purchaser citing **Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR)**, adding that the sale did not also adhere to **Section 3(3) of the Contract Act**. The Plaintiff also contested any third sale of 6.4 acres by the 2nd Defendant and that these sales claimed by the 2nd defendant should be invalidated. Counsel also argued that the purported payments and agreement with Noah Kurraru were unrelated to this case since they are not in relation to the suit property nor were they acknowledged or executed by joint owners of Kjd/Olchoro/Onyore/9335. Additionally, the Mpesa payments were isolated and provided no context and the Plaintiff cannot be bound to them. As such, the said sale was lacking in evidence and should be invalidated.

- 33 Counsel went on to add, that while any sale of property 9335 without the participation of the registered owners was invalid, the 2nd defendant's claim was further unmerited because the titles held by him were totalling to 16.4 acres while he was claiming 18.5 acres without justification. The signatures executing the requisite documents were also contested by the Plaintiff adding that the 2nd and 3rd defendants confirmed that they did not witness execution of any documents and neither did they visit the LCB for consent to transfer the land.
34. As such any additional sale save for the purchase of 3 Acres by the 3rd Defendant and 5.5 Acres by the 2nd Defendant should be invalidated and the prayers sought in the Plaint granted.

SUBMISSIONS OF THE 1ST DEFENDANT

35. Counsel for the 1st defendant also acknowledged that the sale of the 3 acres to the 3rd Defendant was not disputed. However, there was no agreement to sell a further 2 acres to the 3rd Defendant, and any purchase other than the 3 acres was not supported by documentary evidence. It was submitted that the 3rd defendant did not prove that they exhausted all steps in undertaking due diligence and the title claimed was acquired fraudulently, citing the Court of Appeal in ***Samuel Kamere v Lands Registrar [2015] eKLR***.
36. The 1st defendant went on to contest the sale of an additional 4.5 acres to the 2nd defendant submitting that any transaction not carried out by the registered

proprietors of property Kajiado/Olchoro Onyore/9335 was invalid as held in ***Jethwa v Jethwa [KEELC] 2024 (KLR)***. And that there was no evidence supporting the said sale and the 1st defendant denied taking part in the alleged sale. The additional purchase of 6.4 acres by the 2nd defendant was also contested. As such, the claim that he was entitled to 18.5 acres of the suit property was illegal and his ownership of the suit property was fraudulently undertaken. As such, the 1st Defendant was a victim of fraud orchestrated by the 2nd Defendant and the titles acquired ought to be cancelled.

SUBMISSIONS OF THE 2ND DEFENDANT

37. The 2nd Defendant submits that he lawfully purchased the suit property from the registered proprietor after conducting due diligence across three transactions between 2009 and 2011, paying a total of Kshs. 15,400,000. He additionally acquired 4 acres through a swap arrangement with six earlier buyers, bringing his total to 16.4 acres. The full purchase price was paid through a combination of cash, cheque, M-Pesa transfers. The 2nd Defendant submitted that the 1st Defendant had authority to transact on behalf of the family, consistent with her conduct in entering numerous prior sale agreements with other buyers, none of which included the Plaintiff. And that he only learnt that Kajiado/Olchoro-Onyore/9335 had been issued in joint names upon the filing of the suit.

38. Counsel went on to submit that the 2nd and 3rd defendants purchased the additional properties as a continuation of the first agreement with the understanding that the cumulative parcel would be excised from the 20 acres piece of land. It was added that in ***Kimani v Njeri & 3 others [2023] KEELC 17771 (KLR)***, the Court held that lack of a sale agreement was not fatal to the enforceability of the contract as long as all the other ingredients were present. And ***Maiyebai v Chesebe [2025] KEELC 5294 (KLR)*** which outlined grounds in which requirements of Section 3(3) of the Law of Contract Act were not absolute. As such, the 1st Defendant, having put the 2nd Defendant into possession of the suit properties in the period 2009 to 2012 with the knowledge of the Plaintiff, they were barred by the doctrines of proprietary estoppel and constructive trust from reneging on the sale of the 4.5 and 6.4 Acres.
39. On whether the 2nd Defendant's titles are vitiated by fraud and or illegalities, it was submitted that the titles held by him were absolute and indefeasible as per **Sections 24, 25 and 26 of the Land Registration Act** adding that fraud must be strictly proved to a standard higher than the balance of probabilities as held in ***Gladys Wanjiru Ngacha vs Treresa Chepsaat & 4 Others*** and ***Omondi v Manyala [2024] KEELC 13874 (KLR)***.
40. On whether he was a bona Fide Purchaser for value without notice, applying the test in ***Kananu v Kiriimi [2023] KEELC 16480*** and ***Katende v Haridar [2008] 2 EA 173***, the 2nd Defendant submitted that he satisfied the

requisite elements. He holds certificates of title; purchased in good faith; had no knowledge of any fraud; paid full valuable consideration; dealt with a vendor; and was not a party to any fraud. He indicated that he conducted due diligence by consulting the 1st Defendant's mother-in-law, the Plaintiff, and other family members, all of whom confirmed awareness of the sales. His open and extensive developments on the land from 2012 were also carried out in full public view, which shows he holds good title which should be upheld by the Court.

41. On the extra 2.1 Acres, he submitted that the total 18.5 acres against the 16.4 acres he purchased, emanated from riparian land arising from a river crossing between these properties. This was captured in the final survey on the Mutation Form commissioned by the 1st Defendant, the Plaintiff and her late brother. It was submitted that the extra 0.86 acres of the 20.26 acres represented 4.3% of the 20-acre block which fell within the judicially accepted margin of error for general boundary surveys, which courts have accepted at up to 20% as per **Oyaro v Oisebe, ELC Case No. 399 of 2015**.
42. On whether the plaintiff was entitled to the orders sought, counsel submitted that the suit should be dismissed with costs on grounds that, the Plaintiff failed to discharge the evidentiary burden under **Sections 107 and 109 of the Evidence Act**. And that her claim was an attempt to reclaim land they had already disposed off. It was also noted that the 1st Defendant's pleadings shifted from

conceding 11.5 acres sold to later claiming only 5.5 acres were sold and that the Plaintiff's five-year delay in filing the suit was inexplicable. This is because there were visible developments on the suit property, and her failure to seek orders against the 1st Defendant within the period on which the transactions were carried out undermined the credibility of her claim.

SUBMISSIONS OF THE 3RD DEFENDANT

43. On whether the title held by the 3rd defendant was indefeasible, it was submitted that a certificate of title was issued on 2nd August 2012 by the Land Registrar in favour of the two directors, who subsequently founded the school on the property. This registration was therefore conclusive evidence of ownership and was indefeasible as per Section 24 of the Land Registration Act.
44. The defendant went on to submit that they were bona fide purchasers for value without notice as outlined in ***Weston Gitonga & 10 Others v Peter Rugu Gikanga & Another [2017] eKLR and Katende v Haridar & Company Limited [2008] 2 EA 173***, having satisfied all the stipulated requirements. The 3rd Defendant further pointed out that neither the Plaintiff nor the 1st Defendant disclosed to it during the transaction that the title to Kajjado/Olchoro-Onyore/9335 had been registered in three names jointly. It was only at the stage of executing the conveyancing instruments that the 3rd Defendant became aware of the joint registration, and upon enquiry

was assured by the Advocates handling the matter that the family had already consented to the transaction. That the Plaintiff and her siblings were beneficiaries of the purchase price and the family subsequently vacated the property without opposition or complaint to any authority.

45. On whether the 3rd defendant's title could be challenged, it was submitted that in the Plaintiff, the Plaintiff acknowledged awareness of and involvement in the sale transaction itself, while distancing herself only from the process of transfer. Therefore, the Plaintiff should not be allowed to gain from unjust enrichment by trying to reclaim land that they had duly sold and transferred.
46. On whether the 3rd defendant was entitled to the reliefs sought in the counterclaim, it was submitted that since the commencement of this suit, the school's operations had been severely disrupted with parents withdrawing their children out of fear that the school would be forced to close. This had caused serious financial loss, reputational damage, and mental distress to the directors. Reference was made to ***Nkuene Dairy Farmers Cooperative Society Ltd & Another v Ngacha Ndeiya [2010] eKLR***, where the Court held that: *"...special damages in a material damage claim need not be shown to have been actually incurred; rather, the claimant is only required to show the extent of the damages and what it would cost to restore the damaged item to as near as possible the condition it was in before the damage..."* As such, the counterclaim should be

allowed in its entirety with costs being borne by the Plaintiff.

ANALYSIS AND DETERMINATION

47. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are:-

- (i) Whether the Plaintiffs are entitled to the reliefs sought in the plaint dated 14th November 2017.
- (ii) Whether the Title Deeds for Land parcel Nos Kajiado/Olchoro Onyore/13489, Kajiado/Olchoro Onyore/13490 and Kajiado/Olchoro Onyore/13491 ought to be cancelled.
- (iii) Whether the 3rd Defendant's claim is merited.
- (iv) Who should bear costs of this suit?

48. It is not in dispute that the suit property Kajiado/Olchoro Onyore/9335 was registered in the names of the 1st Plaintiff her late brother, James and the 1st Defendant who is their mother.

PW1 told the court that she did not participate in the sale of the suit property at all. She did not sign the sale Agreement any mutation forms or signed for any application for any consent from the Land Control Board.

49. DW1, the first Defendant, admitted that she sold the land without the participation of the 1st Plaintiff and her son James.

She signed the document to facilitate transfer alone since PW1 and James refused as they had not signed the sale agreement. It is the Plaintiffs' position that they did not

participate in any way in disposing of the suit property yet they were joint owners. From the evidence tendered it seems they were aware that certain portions had been sold for example they did not dispute that the 3rd Defendant bought the portion they occupy from their late grandfather. The question is whether due process was followed in effecting the transfer of the same in favour of the 3rd Defendant?

50. It is therefore clear that the 1st Defendant (DW1) went ahead to dispose portion of the suit property even though she knew the same was jointly registered in her name and her children.
51. It is clear that the 2nd Defendant also bought a portion of the same though there is a sale agreement for only 4.5 acres. Again, the 1st Defendant participated alone to the exclusion of the other join owners.
52. This therefore means that whatever she did was null and void. I therefore find that the plaintiffs have demonstrated that they did not participate in the sale of suit property more so, to the 2nd Defendant hence entitled to the reliefs sought in the plaint.
53. As to the issue No2, it is the 2nd Defendant's case that he just bought 1 1/2 Acres from the 1st Defendant which he paid for. He later bought 4 1/2 Acres for Kshs3,600,000/=. It is his case that he paid in full. The 1st Defendant then gave authority to M/s Ombasa Advocates to transfer the land to him.

54. It is his case that he was given possession of the said portion. He later bought the remaining portion, as DW1 desired to move the family to Bissil . He said he paid Kshs11,200,000/= for the remaining portion, part of the purchase price was paid directly to the vendor of the land in Bissil.

He stated that he was not involved in the process of sub division and transfer but that in July 2012 the 1st Defendant asked to go to the firm of M/s Waweru Munyi Advocate in Kiserian to sign the transfer. In his testimony he stated in part “..... I was not involved in the process of the transfer in the Kajiado Land Registry. Waweru Munyi was the 1st Defendant’s Advocate. The Advocate called me to collect the titles. I knew Pauline through the 1st Defendant. Pauline would do the errands for the 1st Defendant. I did not participate in the processing of titles in the Kajiado Land Registry. When I signed the transfers, I saw three photographs and signatures. They were for the 1st Defendant and her children. She told me the children were aware.....”

55. From the above it is clear that the 2nd Defendant confirm that he failed to do due diligence during the whole transaction. He did not see the said title. He did not meet the said children but merely relied on the 1st Defendant’s word. He paid all the monies to the 1st Defendant who would acknowledge receipt. The Plaintiffs do not acknowledge receipt of the said monies.

56. He admitted on cross examination by the Plaintiff's counsel that there was no sale agreement for the purchase of the 4 1/2 acres and even for the third purchase. He also admitted that he did not attend the Land Control Board, but only executed documents at the office of Waweru Munyi Advocate. He said he did not pay legal fees or Stamp Duty.
57. From the testimony of DW4, the 2nd Defendant, it is clear that there are no sale agreements in respect of the purported second sale of 4 1/2 acres and the one for the remaining portion of land. He produced a bundle of acknowledgments confirming receipts of the purchase price by the 1st Defendant.

Section 3 (3) of the Law of Contract Act, provides that:

No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it

affect the creation of a resulting, implied or constructive trust.

58. It is clear from the above provisions that the 2nd Defendant undertook these transactions casually despite the amounts involved. The purchase price running into millions from his schedule is not something that can be taken lightly. He stated that the 1st Defendant had engaged the firm of M/s Waweru Munyi Advocate to represent her in the transactions. Why didn't the 2nd Defendant insist that sale agreements be in writing. He even failed to avail the said Advocate as his witness to shed more light on the transactions. I do not believe that 2nd Defendant was this ignorant to undertake such a huge transaction in this manner. There is more to it than it meets the eye. As stated earlier, he did not attend the Land Control Board to seek consent. He did not pay stamp duty. All these point to someone who knew the whole transaction was illegal. I believe he was a party to the fraud.

Section 26 (1) (2) of the Land Registration Act 2012 provide that:

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) 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 taken by all courts as prima facie evidence that the

person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, 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.**

(2)A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

60. In the case of ***Munyu Maina Vs Hiram Gathiha Maina (2013) KECA 94 (KLR)*** the Court of Appeal states as follows:

“We state that where a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It

is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebutt the appellant’s testimony”

I am guided on the above authority in finding that the 2nd Defendant had failed to demonstrate that his acquisition was legal, formal and free from encumbrances given that the title was in the joint names of the 1st Defendant, the 1st Plaintiff was James Persimei Lantei. I find that the certificate of title held by the 2nd Defendant is not lawful hence not legitimate.

59. It should be noted that the Plaintiffs do not appear to deny that Waweru Munyi Advocate effected transfer in favour of the 2nd and 3rd Defendants. The fact that they do not have an issue with the 3rd Defendant’s title and not the 2nd Defendant’s is puzzling. They cannot accept one and reject the other. The titles were procured in the same manner by the said Advocate. It is my view that all the titles emanating from Kajjado/Olchoro Onyore/9335 will suffer the same fate as the 2nd Defendant’s as due process was not followed.
60. In the case of ***Wambui Vs Mwangi & 3 Others KECA 144 (KLR) 19*** the Court of Appeal stated thus:-

“The jurisprudence relied upon by the appellant and which we find a prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the records as assessed herein by us.

Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on fraud, deceitfulness; a contrived decree; illegality; nullity; irregularity; unprocedurally or otherwise a produce of a corrupt scheme”

61. Also in ***Funzi Island Development Limited & 2 Others Vs County Council of Kwale & 2 Others (2014) KECA 882 (KLR)*** the Court of Appeal stated thus;

“ A Court of law cannot on the basis of indefeasibility of title, Sanction on illegality or give its seal of approval to an illegal or irregularity obtained title”

I am guided by the above authorities in finding that the resultant titles arising out of Kajiado/Olchoro Onyare/9335 were irregularly obtained and ought to be cancelled.

62. Having decided on the preceding issue that the titles were irregularly obtained, I find that the 3rd Defendant’s claim fails as well. The claim by the 3rd Defendant is that it is a bonafide purchaser for value without notice of any defect in title and seeks the court to protect and sanction its title. The ingredients that a bonafide purchaser for value must satisfy were stated in the case of ***Mwangi James Njihia Vs Janetta Wanjiku Mwangi & Another (2021) KECA 768 (KLR)*** where the Court of Appeal thus;

“In *Lawrence P Mukiri Mungai Attorney of Francis Muroki Mwaura Vs Attorney General & 4 Others Nairobi Civil Appeal No 146 of 2014*

this court cited with approval the case of ***Katende Vs Haridar & Company Ltd (2008 2 EA 173,*** where the Court of Appeal in Uganda held that:-

“For the purpose of this appeal, it suffices to describe a bonafide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly”

For the purchaser to successfully rely on the bonafide doctrine as was held in the case of ***Hannington Njuki Vs William Nyanzi High court Civil suit Number 434 of 1996,*** 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 notice of any fraud; and
7. he was not a party to the fraud”

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

In the case **of Samuel Kamere Vs Lands Registrar (2015) eKLR** the Court of Appeal stated as follows: -

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

I find that the 3rd Defendant has failed to satisfy all the ingredients set out on the above and authorities hence its claim must fail.

It is however, clear that the Plaintiffs admit the 3rd Defendant's entitled to some portion of the land. I leave it to the parties to engage further on the issue.

63. In conclusion I find that the Plaintiffs have proved their case as against the Defendants on a balance of probabilities.
64. Accordingly, judgment is entered for the plaintiffs as against the Defendants jointly and severally as follows”

(a) That a declaration be and is hereby issued that the sale transactions in respect of land parcel known as Kajiado/Olchoro Onyore/9335 between the 1st and 2nd Defendants were irregular, illegal, null and void.

- (b) That a declaration be and is hereby issued that the 2nd Defendants title for land parcel Kajiado/Olchoro Onyore/13490 and Kajiado Olchoro onyore/13491 were irregularly and unlawfully obtained and the Land Registrar Kajiado North is hereby directed to cancel the same within Ninety (90) days from the date of this judgment.**
- (c) That a declaration be and is hereby issued that the 3rd Defendants title for land parcel known as Kajiado/Olchoro Onyore/13489 was irregularly and unlawfully obtained hence null and void. The Land Registrar Kajiado North is hereby directed to cancel the same within ninety (90) days from the date of this judgment.**
- (d) That the Land Registrar Kajiado North is hereby directed to cancel all entries in the Register that give rise to Title Numbers Kajiado/Olchoro Onyore/13489; Kajiado/Olchoro Onyore/13490 and Kajiado/Olchoro Onyore/13491 and revert to the original title Kajiado/Olchoro Onyore/9335 in the names of the Plaintiffs and the 1st**

Defendant jointly within ninety (90) days from the date of this judgment.

- (e) That the 2nd Defendant is hereby ordered to vacate the suit property known as Kajiado/Olchoro Onyore/13490 and 13491 within one hundred and twenty (120) days from the date of this judgment.**

In default the Plaintiffs, be at liberty to use lawful means to evict him.

- (f) That each party to bear its cost except that 3rd Defendant whose costs to be borne by the 1st Defendant.**

Judgment dated, signed and delivered virtually at Nakuru this 30th day of April 2026.

L KOMINGOI

JUDGE

In Presence of :-

Mr. Dagaye for Mr. Koome for the Plaintiff

Mr Dagaye for the 1st Defendant

Mr Kimani for the 2nd Defendant

Ms Mongare for the 3rd Defendant

Court Assistant : Derick