



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC E002 OF 2024

SAMUEL NJUGUNA MACHARIAPLAINTIFF
VERSUS
FRANCI WAWERU NGONDI.....DEFENDANT

JUDGMENT

- (1)The Plaintiff seeks the following reliefs against the three Defendants both jointly and severally.
- (a) **A declaration that the Plaintiff is the rightful owner of the land known as Samuru/Mwitingiri/Block 1/514, suit land.**
 - (b) **The certificate of lease in respect of the suit land issued to the 1st Defendant herein be cancelled and the same be replaced with a certificate of lease to be issued in favour of the Plaintiff.**
 - (c) **The first Defendant, her servants, employees and/or any other person claiming through her to yield up vacant possession of the suit land to the Plaintiff herein.**
 - (d) **An order of permanent injunction do issue against the 1st and 2nd Defendants herein restraining them, their employees, agents, servants and/or any other person claiming through or under them from interfering, in any manner whatsoever with the Plaintiff's possession and/or occupation of the suit land.**
 - (e) **This Court be pleased to issue such other and/or further orders as it may deem just and expedient in the circumstances herein.**
 - (f) **The 1st and 2nd Defendant do jointly and/or severally be condemned to meet the costs of this suit.**

(2) The Plaintiff's case is as follows. Firstly, on 21-1-2008 the Plaintiff purchased the suit land from Francis Kamau Kangethe. She paid the full purchase price of Kshs 300,000/= to the seller. Secondly, Francis Kamau Kangethe had bought the suit land from James Njoroge Mukui, Patrick Karanja Mukui and Simon Mwaniki Mukui who were the children of the

original allottee Raphael Mukui Mwaniki who had bought the land from the 2nd Defendant. Thirdly, the sale of the suit land to Francis Kamau Kangethe by the Children of Raphael Mukui Mwaniki took place on 16-7-2007. On this date the parties to the sale agreement visited the offices of the 2nd Defendant where they were asked to sign some transfer forms by the 2nd Defendant's secretary, Kenneth K. Karanja. They duly complied and Kenneth appended the 2nd Defendant's official stamp to the transfer form. The sons of Raphael handed over to Francis a letter of subdivision scheme approval dated 14-3-2002. Francis duly paid Kshs 500/= being the search fees, Kshs 6000/= transfer fees and Kshs 5000/= as allotment transfer. He was issued with receipt numbers 93,94 and 95. Fourthly, the 2nd Defendant advised both Francis and the sons of Raphael that they needed to go through a succession process. Since there was already such a case which was Thika Succession Cause No. 74 of 2004, they requested the Plaintiff to await the confirmation of the grant which took place on 18-9-2023 and the suit land was transferred in favour of the Plaintiff.

(3) When the Plaintiff eventually presented the confirmed grant to the 2nd Defendant she was informed that Francis Kamau Kangethe had sold the suit land to the 1st Defendant and that is what their records showed. The Plaintiff avers that there was fraud and collusion between the 1st and 2nd Defendants, the particulars of which include the following.

- (a) The 1st and 2nd Defendants colluding to alter and forge the documents in the custody of the 2nd Defendant.**
- (b) The 1st Defendant presenting forged documents to the 2nd Defendant purporting to have acquired ownership of the suit land from Francis Kamau Kangethe while knowing that this to be true.**
- (c) The 1st and 2nd Defendants colluding to alter the records to purport a transfer from Francis to the 1st Defendant while knowing this to be untrue.**
- (d) The 2nd Defendant issuing the 1st Defendant with transfer documents to enable her to apply for a certificate of lease by the 3rd Defendant.**
- (e) The 1st Defendant presenting forged and falsified transfer documents in respect of the suit land to the 3rd Defendant.**
- (f) The 1st Defendant obtaining a certificate of lease in respect of the suit land knowing or having reason to believe that she was not legally entitled to the suit land.**

For the above and other reasons, the Plaintiff prays for the cancellation of the certificate of lease issued to the 1st Defendant and the same to be issued to her.

(4) In support of her case, the Plaintiff filed the following evidence.

- (a) Witness statements by herself and Simon Mwaniki Mukui.**
- (b) Copy of sale agreement dated 24-1-2008.**
- (c) Copy of letter dated 27-6-2008 written by the sons of the original owner.**
- (d) Copy of the Defendant's letter dated 16-7-2007,**
- (e) Copies of receipts issued to Francis Kamau Kangethe on 16-7-2007.**
- (f) Copy of subdivision scheme approval dated 14-3-2002.**
- (g) Copy of demand letter by the Plaintiff's counsel dated 26-10-2021.**
- (h) Copy of the 2nd Defendants letter dated 10-11-2022.**
- (i) Copy of certificate of confirmation of grant dated 18-9-2023 in Thika P and A 74 of 2004.**

(5) The second Defendant, through counsel on record filed a written statement of defence dated 5-4-2024 in which it avers as follows. One, Francis Kangethe did not at any time sell the suit land to the Plaintiff. Two, as per its records, the 1st Defendant is the bona fide owner of the suit plot. Three, the Plaintiffs' claim is statute barred. Four, all the allegations of fraud are denied as is the entire claim by the Plaintiff.

(6) In support of its case, the 2nd Defendant filed the following evidence.

- (1) Witness statement by its Chairman, Erastus Ng'ang'a Muthungu.**
- (2) Copy of certificate of registration No. CS/4864 dated 11-5-1987.**
- (3) Copy of register showing the 1st Respondent as the owner of the suit plot.**

(7) The 3rd Defendant filed a written statement of defence dated 12-3-24 which is a general denial of the Plaintiff's claim. The said defence is not accompanied by any witness statements or documents.

(8) The 1st Defendant did not enter appearance even after being served through the Standard Newspaper of 14-8-2024. Hear case proceeded as undefended.

(9) At the trial on 23-2-2026 a total of three witnesses testified. They included the Plaintiff and her witness, Simon Mukui Mwaniki and the Chairman of the 2nd Defendant Erastus N. Muthungu. Each of parties reiterated their case as per the pleadings and none of them deviated from whatever they said in their witness statements and documents.

(10) Counsel for the parties filed written submissions. The Plaintiff's submissions are dated 25-3-2026, and the 2nd Defendant's are dated 13-3-2026. The issues framed by the 2nd Defendant are as follows.

- (a) Whether the Plaintiff's failure to include the Francis Kamau Kangethe or his personal representative is fatal to her case.**
- (b) Whether the suit is time barred under Section 4 of the Limitation of Actions Act.**
- (c) Whether fraud has been proved on the part of the 2nd Defendant.**
- (d) Whether the suit land belonged to Simon Mwaniki Mukui or his father Raphael Mukui Mwaniki.**
- (e) Whether the plaint is defective for failure to seek judgment against the Defendants either jointly or severally.**

(11) I have carefully considered all the evidence adduced in this case by the Plaintiff and the 2nd Defendant including the witness statements, documents and testimony at trial. I have also considered the written submissions by learned counsel for the parties, the issue raised therein and the law cited. I find that the five issues identified by the 2nd Defendant's counsel will resolve the dispute.

(12) On the first issue, I find that the Plaintiff's failure to join Francis Kamau Kangethe or his estate is not fatal to the suit. According to the Plaintiff and her witness, Francis Kamau Kangethe is blameless because he is not the registered owner of the suit land. Secondly, she and the family of Raphael Mukui were advised by the second Defendant to file a succession cause so that the suit land could be transferred to her directly. In their view therefore, they have no cause of action against Francis and his estate because he is not at fault. Thirdly, the narrative that Francis sold the suit land to the 1st Defendant is not true and was brought up by the 2nd Defendant.

Since Francis is not the registered owner of the suit land and there is evidence from Simon (P.W.2) that he bought the land from their family and then sold it to the Plaintiff and it is Francis who requested the land to be transferred directly to the Plaintiff, then there was no reason at all for joining Francis or his estate in this suit. The certificate of confirmation of grant which is one of the Plaintiff's exhibits proves this point of direct transfer from the estate of Raphael to the Plaintiff. It corroborates the evidence by P.W. 2 of the arrangement between the Plaintiff, the family of Raphael and Francis. I believe that this is the true version of what happened. The Plaintiff and P.W.2 were eye witnesses to what transpired in the offices of the 2nd Defendant on 16-7-2007. The Chairman of the 2nd Defendant, (DW 1) was not a witness to this arrangement. He said he took office in the year 2022. His evidence cannot disprove what happened on 16-7-2007 because he did not witness it.

(13) In regard to the 2nd issue, I find that the Plaintiff's suit is not time barred under **Section 4 of the Limitation of Actions Act**. Since the Plaintiff's suit is based upon the fraud of the Defendants, **Section 26(a) of the Limitation of Actions Act** kicks in. It provides that where a case is based on the alleged fraud of the Defendant, then time does not begin to run until the Plaintiff discovers the fraud. From the available evidence, it is only in 2019 when the Plaintiff found out that a stranger had put up a site house on the land. She then asked the 2nd Defendant to address the issue vide a letter dated 26-10-2021. It was not until 10-11-2023 when the 2nd Defendant confirmed in writing that the land had been transferred to the 1st Defendant that time started running.

Section 26

“ **Where, in the case of an action for which a period of limitation is prescribed, either**

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(a) the action is based upon the fraud of the Defendant... the period of limitation does not begin to run until the Plaintiff has discovered the fraud or mistake...”

(14) It is my finding in regard to the third issue that fraud has been proved against the 1st and 2nd Defendants for the following reasons. One, the 1st and 2nd Defendants have not proved that suit land was transferred to the 1st Defendant through a lawful process. While the 2nd Defendant advised the Plaintiff to wait for the Succession Cause of the estate of the late

Raphael to go through to the end, the 2nd Defendant did not advise the 1st Defendant to do the same. The 2nd Defendant readily facilitated the issuance of the title deed to the 1st Defendant without her going through a similar process. As the Plaintiff waited for the succession cause to be finalized, the 1st and 2nd Defendants transferred the suit land without her knowledge. Secondly, unlike the Plaintiff who has a sale agreement between her and Francis, the 1st and 2nd Defendants have not filed any such sale agreement. It is a mandatory requirement of the **Land Act (Act No. 6 of 2012)** and the **Law of Contract Act at Section 3(3)** that all contracts for the disposition of an interest in land be in writing and be witnessed. It is the 1st Defendant and not the Plaintiff who suffers this handicap in this case. The sale agreement between Francis and the Plaintiff has been produced as an exhibit in this case. The Defendants have no such sale agreement. Three, the Plaintiff traces her title to the original owner Raphael, his family and finally Francis. In addition to this, she traces her title to a lawful court order and process in Thika Succession Cause No. 74 of 2024. The 1st Defendant, even with the support of the 2nd Defendant only traces her title to Francis. This Francis is known by the family of the original owner to have sold the land to the Plaintiff long before the 1st Defendant purportedly bought it. I find that Francis, having sold the land to the Plaintiff could not again sell it to the 1st Defendant. His failure to involve the family of the original owner and to go through a succession process was fraudulent. I am not convinced that Francis sold the land twice.

It has been held in the case of **Hiram Gathiha Maina vs. Maina Munyu 2013 eKLR** as follows,...

“when the validity of a title is challenged , it is not enough for a party to simply produce the title deed. The registered owner must go further and demonstrate the legality of how that title was acquired that is, its root.”

This is where the 1st and 2nd Defendants have failed. It is my finding that the Plaintiff has proved fraud against the 1st and 2nd Defendants to the high standard set in the case of **Ndolo vs. Ndolo Civil Appeal No. 128 of 1995.**

(15) Regarding the fourth issue, I find that the suit land belonged to Raphael Mukui Mwaniki and not to his son Simon Mwaniki Makui and the only way to dispose of the land was through a succession cause like it happened in Thika Succession Cause No. 74 of 2004.

(16) A look at final issue and a further look at the plaint shows that what the plaint seeks is neither vague nor ambiguous. Prayer (a) is for a declaration that the suit land belongs to the Plaintiff. **Prayers (b), (c) and (d)** are directed against the 1st and 2nd Defendants. The two Defendants are mentioned in those prayers. The plaint cannot be said to be defective for merely not asking that the Defendants be held jointly and severally liable. There is no such mandatory requirement either in law or in practice.

(17) For the above stated reasons, I find merit in the Plaintiff's claim against the 1st and 2nd Defendants. Consequently, I enter judgment for the Plaintiff against the Defendants in terms of prayers **(a), (b), (c), (d) and (f)**.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 28th day of April, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

Plaintiff 's Counsel – Miss Waithira Mwangi

2nd Defendant's Counsel – Miss Wainaina

3rd Defendant – Miss Njuguna