



REPUBLIC OF KENYA



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Osimbo v Kiptanui & 6 others (Environment and Land Case Civil Suit E044 of 2021) [2025] KEELC 5536 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5536 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT E044 OF 2021
SO OKONG'O, J
JULY 24, 2025

BETWEEN

OKENDO OSIMBO ALIAS STEPHEN OKENDO OSIMBO PLAINTIFF

AND

ABRAHAM KIPSANG KIPTANUI 1ST DEFENDANT

PAUL OGANGA OGADA 2ND DEFENDANT

PAMELA ADHIAMBO ODIMA 3RD DEFENDANT

ANN AKINYI ODIMA 4TH DEFENDANT

**THE COUNTY LAND & SETTLEMENT ADJUDICATION OFFICER-
KISUMU 5TH DEFENDANT**

THE COUNTY LAND REGISTRAR-KISUMU 6TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 7TH DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit against the Defendants through a plaint dated 16th September 2021, filed on 21st September 2021. The Plaintiff averred that at all material times relevant to this suit, he was the owner, occupier and user of the parcel of land known as Kisumu/Kogony/2194 (hereinafter referred to as “the suit property”).
2. The Plaintiff averred that sometime in 1983 before the conclusion of the adjudication process, he sold a portion of the suit property then known as Kisumu/Kogony Adjudication No. 2194 to one Peter Winani. The Plaintiff averred that the said portion of the suit property was thereafter adjudicated in favour of the said Peter Winani. The Plaintiff averred that he retained parcel number Kisumu/Kogony



Adjudication No. 2194. The Plaintiff averred that he had no reason to suspect that the Defendants would hatch an elaborate scheme to defraud him.

3. The Plaintiff averred that on or about 8th May 2019, after partly recovering from ill health, he intended to subdivide the suit property and distribute the same to some members of his family. The Plaintiff averred that he obtained documents from the lands office from which he discovered that the Defendants had jointly and severally uttered false documents and manipulated records to show that the 1st Defendant had obtained title to the suit property and was in a position to sell the same to the 2nd Defendant who thereafter transferred the property to the 3rd and 4th Defendants.
4. The Plaintiff averred that the 5th and 6th Defendants were compromised by the 1st Defendant and manipulated records at the Lands Registry, Kisumu by illegally and fraudulently removing the name of the Plaintiff as the owner of the suit property and inserting the name of the 1st Defendant as the owner of the property. The Plaintiff averred that the 5th and 6th Defendants thereafter illegally registered the suit property in the names of the 2nd, 3rd and 4th Defendants as the owners thereof. The Plaintiff pleaded several particulars of fraud and illegality against the Defendants.
5. The Plaintiff averred that he demanded that the Defendants surrender the title for the suit property for cancellation, but the Defendants refused to comply. The Plaintiff prayed for judgment against the Defendants jointly and severally for;
 1. A declaration that the 1st Defendant never acquired ownership and title to the suit property.
 2. An order directing the 5th Defendant to remove the name of the 1st Defendant from the Adjudication Record and to restore the name of the Plaintiff.
 3. A declaration that the 1st Defendant had no capacity to sell and to transfer ownership and title of the suit property to the 2nd Defendant and consequently the 3rd and 4th Defendants hold title to the suit property unlawfully and illegally.
 4. An order directing the 3rd and 4th Defendants to surrender the title deed for the suit property to the 5th and 6th Defendants for cancellation.
 5. An order directing the 6th Defendant to delete and remove the current card for the suit property and open up a new card with the name of the Plaintiff as the first entry.
 6. The Defendants be ordered jointly and severally to pay damages for their actions and untold suffering and anguish they have caused to the Plaintiff.
 7. Interest on (6) above at 14% per annum from the date of filing the suit until payment in full.
 8. Costs and interest on such costs at 14% per annum as from the date of filing the suit until payment in full.
6. The 1st Defendant neither entered an appearance nor filed a defence. The 2nd Defendant filed a statement of defence dated 30th November 2021 on 8th December 2021. The 2nd Defendant denied all the allegations made against him in the plaint. The 2nd Defendant averred that he was an innocent purchaser of the suit property and prayed that the suit be dismissed with costs.
7. The 3rd and 4th Defendants filed a memorandum of appearance dated 30th November 2021 on 1st December 2021, but never filed a defence. The 3rd and 4th Defendants filed a Notice of Preliminary Objection on 17th November 2022, in which they contended that the Plaintiff's suit was bad in law as the Plaintiff did not exhaust the dispute resolution mechanism provided in the [*Land Adjudication Act*](#),



Chapter 284 Laws of Kenya. The 3rd and 4th Defendants contended that the Plaintiff's suit was statute-barred and could not be entertained by the court.

8. The Attorney General entered appearance on behalf of the 5th, 6th and 7th Defendants and filed a statement of defence on 25th October 2021. 5th, 6th and 7th Defendants denied that they acted unprofessionally and corruptly as alleged by the Plaintiff in paragraph 13 of the plaint. The 5th, 6th and 7th Defendants averred that the plaint disclosed no reasonable cause of action against them. The Plaintiff filed a reply to the 5th, 6th and 7th Defendants' defence on 23rd December 2021 in which he joined issue with the 5th, 6th and 7th Defendants in their defence save for the admissions therein.
9. At the trial, the Plaintiff, Stephen Okendo Osimbo (PW1) adopted his witness statement filed together with the plaint as his evidence in chief. He produced the documents in his list of documents dated 16th September 2021 as P.EXH. 1(a), 1(b), 2,3,4,5,6,7,8,9,10 and 11 respectively. He stated that he acquired the suit property during land adjudication. He stated that he gave a portion of the land to a friend, Peter Winani. He stated that they lodged an objection at the Adjudication Office and the objection was recorded as per P.EXH. 1(a).
10. PW1 testified that apart from the portion that he sold to Peter Winani, he did not sell the suit property to any other person. He stated that he did not sell the suit property to the 1st Defendant and did not know him. He stated that he did not lodge any other objection. He stated that he did not go with the 1st Defendant to the Adjudication Office and did not lodge any objection in favour of the 1st Defendant. He stated that the Adjudication Record did not show the objection in favour of Peter Winani. He stated that the objection in favour of the 1st Defendant did not have the objection number. He stated that he obtained all the documents that he produced in evidence from the lands office and the same had been certified.
11. On cross-examination by the advocate for the 2nd Defendant, PW1 stated that the 1st Defendant was served with Summons to Enter Appearance and he did not know whether he was alive or not. He stated that as far as he was concerned, the 1st Defendant was alive. He stated that the 1st Defendant may have been a state house comptroller but he did not know him. He stated that he got the name of the 1st Defendant from the documents he obtained from the Land Registry. PW1 stated that the 2nd Defendant acquired the suit property from the 1st Defendant. On cross-examination by the advocate for the 3rd and 4th Defendants, PW1 denied that he sold the suit property to the 1st Defendant. PW1 reiterated that he was not aware that the 1st Defendant was deceased. On cross-examination by the advocate for the 5th, 6th and 7th Defendants, PW1 stated that he sued the 5th, 6th and 7th Defendants because they claimed that he had sold the suit property to the 1st Defendant.
12. On examination by the court, PW1 stated that he was working with the Ministry of Water. He stated that he was employed in the 1980s. He stated that he went to school up to class 8 and thereafter did some courses with the Ministry of Water. He stated that he retired in 1997. He stated that he could not remember the last time he used or cultivated the suit property. He stated that he stopped using the suit property because he was sick. He stated that he was staying far from the suit property. He stated that the suit property was in Kogony while he lived in Dago.
13. The 2nd Defendant, Paul Oganga Ogada (DW1), adopted his witness statement dated 17th November 2022 as his evidence in chief. He produced his bundle of documents filed on 18th November 2022 as D.EXH.1. He stated that he did not know the Plaintiff. He stated that the 1st Defendant died in April 2021. He stated that he acquired the suit property from the 1st Defendant. He stated that before he purchased the suit property, his advocate did a search and confirmed that the 1st Defendant was the registered owner of the property. He stated that the 1st Defendant was his neighbour in Uasin Gishu



and that he gave the 1st Defendant his land in Uasin Gishu in exchange for the suit property and another land in Njiru. DW1 stated that he sold the suit property to the 3rd and 4th Defendants. He stated that the 3rd and 4th Defendants should be allowed entry into the suit property. He urged the court to dismiss the suit. He stated that the 1st Defendant had retired when they exchanged the two parcels of land.

14. The 4th Defendant, Ann Odima (DW2) was the next to give evidence. DW2 stated that she knew the 3rd Defendant. She stated that the 3rd Defendant allowed her to give evidence on her behalf. She adopted her witness statement dated 24th April 2023 as her evidence in chief. She stated that she had never met the 2nd Defendant, but she bought the suit property from him. She stated that she was issued with a title, which she produced as D.EXH.2. She stated that she wanted to build a house on the suit property. She stated that she had cleared the land, which had a lot of trees, and had put up a structure on the land. She stated that a lady came and inquired how she acquired the land. She stated that the lady did not stop her from using the suit property. She stated that she had never met the Plaintiff. She stated that she was the lawful owner of the suit property.
15. The next witness was the Land Registrar, Nicholas Obiero (DW3). DW3 stated that he was a land registrar in Kisumu. He stated that he had the parcel file for the suit property which contained the register, the transfer from the 1st Defendant to 2nd Defendant, the consent in respect of that transfer, the transfer from the 2nd Defendant to the 3rd and 4th Defendants and the application for consent and consent in respect of that transaction, a copy of the title deed that was surrendered by the 2nd Defendant and the adjudication record for the property. He stated that at some point, the original register was lost or misplaced. He stated that the register was reconstructed. He stated that when they traced the original register, they replaced the reconstructed register with the original. He stated that what he had produced was the original register.
16. DW3 stated that the transfer form between the 1st Defendant and the 2nd Defendant was not perfect, but the same showed that a transfer was done. He stated that the 1st Defendant's ID and PIN were attached. He stated that the fact that the same was not indicated in the transfer was not fatal. He stated that they only received one copy of the adjudication record. He stated that they did not keep adjudication records and proceedings. He stated that what he had seen from the record is that the registration of the Plaintiff was cancelled following an objection, and the property was registered in the name of the 1st Defendant. He stated that apart from the fraudulent entries that were expunged, the other entries in the register were valid. He produced the certified copies of the documents in the parcel file as D.EXH.3.
17. The last witness was Benjamin Oduge (DW4). He told the court that he was the Deputy Director of Adjudication and Land Settlement in charge of Kisumu County. He stated that he had a duplicate copy of the Adjudication Record (AR) for Kogony Adjudication Section Parcel No. 2194. He stated that according to the AR, parcel number 2194 was initially in the name of Okendo Osimbo. He stated that the property was thereafter registered in the name of Abraham Kipsang Kiptanui through objection No. 753/1988. He stated that he did not have the proceedings of the said objection. He stated that the AR confirmed partially that there was an objection. He stated that by partially, he meant that he had not seen the proceedings and the objection that was registered. He stated that he was unable to obtain the other documents. He produced the AR as D.EXH. 4.
18. On examination by the court, DW4 stated that the adjudication at Kogony Adjudication Section started in the 1970s. He stated that no objections were registered in 1988 in respect of this adjudication section. He stated that according to the AR, Okendo Osimbo lodged the objection, and his name was cancelled in the AR and replaced with that of Abraham Kipsang Kiptanui.



19. After the close of evidence, the court directed that the parties make closing submissions in writing.

The Plaintiff's submissions

20. In his submissions dated 30th August 2024, the Plaintiff submitted that the main issue for determination by the court was whether the 1st Defendant acquired a good title to the suit property. The Plaintiff submitted that it was not disputed that the Plaintiff acquired the suit property during the land adjudication exercise. The Plaintiff submitted that before the land adjudication process was finalised, he sold a portion of his land to Peter Winani, who thereafter lodged Objection No. 107 with the adjudication officer. The Plaintiff submitted that he never lodged any objection against the suit property in favour of the 1st Defendant.
21. The Plaintiff submitted that, according to the register (Green Card), the suit property was the subject of fraudulent transactions. The Plaintiff submitted that on the face of it, and by the admission of the Land Registrar, there was a reconstructed register and that the register (Green Card) issued to the Plaintiff was the one signed on 9th September 2003.
22. The Plaintiff submitted that the 2nd, 3rd and 4th Defendants entered into a sale transaction involving the suit property with the full knowledge that the 1st Defendant had acquired the suit property illegally. The Plaintiff submitted that the 3rd and 4th Defendants admitted in cross-examination that they were shown a register that was different from the one that was produced by the 6th Defendant. The Plaintiff submitted further that the 2nd, 3rd and 4th Defendants, during cross-examination, told the court that they did not know for how much they sold and bought the suit property which confirmed that there was no sale at all. The Plaintiff cited Muranga ELC Case No. 27 of 2019, Nelios Muthoni Thegetha v. Julius Ndungu Mwangi & Another and Thika ELC Case No. 111 of 2020, Margaret Muthoni Njenga v. Peter Githinji Mwangi & 2 others in support of his submissions.

The 2nd Defendant's submissions

23. The 2nd Defendant filed submissions dated 12th November 2024. The 2nd Defendant submitted that the main issue for determination by the court was whether the 2nd Defendant acquired a good title to the suit property from the 1st Defendant. The 2nd Defendant submitted that he acquired a good title to the suit property from the 1st Defendant. The 2nd Defendant submitted that the rights of a registered owner of land were set out in Sections 24, 25 and 26 of the *Land Registration Act* 2012. The 2nd Defendant submitted that he followed due process when acquiring the suit property from the 1st Defendant.
24. The 2nd Defendant submitted that in compliance with the decisions in Hebert L Martin & 2 Others v. Margaret J Kamar & 5 Others [2016] eKLR and Munyu Maina v. Hiram Gathiha Maina, Civil Appeal No. 239 of 2009, the 2nd Defendant had led evidence at the trial on how he acquired the suit property from the deceased 1st Defendant who was its previous registered owner. The 2nd Defendant urged the court to dismiss the Plaintiff's suit with costs.

The 3rd and 4th Defendants' submissions

25. The 3rd and 4th Defendants filed submissions dated 4th November 2024. The 3rd and 4th Defendants framed two issues for determination, namely, whether the 1st Defendant had a good title to the suit property to transfer to the 2nd Defendant and whether the 3rd and 4th Defendants acquired a good title in the property. The 3rd and 4th Defendants submitted that from the register, the 1st Defendant was the first registered owner of the suit property. The 3rd and 4th Defendants submitted that the Adjudication Record bore the name of the 1st Defendant as the owner of the suit property, his name



having been entered thereon on 11th March 1988 after the name of the Plaintiff was cancelled by the Land Adjudication Officer pursuant to Objection No.753 of 1988. The 3rd and 4th Defendants submitted that it was the Adjudication Record which was used by the Land Registrar to create the records held at the Land Registry.

26. The 3rd and 4th Defendants submitted that the Plaintiff did not appeal against the determination of the said Objection in accordance with the provisions of Section 29 of the *Land Adjudication Act*, Chapter 284 Laws of Kenya. The 3rd and 4th Defendants submitted that the rights of a proprietor of land are protected under Section 25 of the *Land Registration Act* 2012. The 3rd and 4th Defendants submitted that a certificate of title issued to a proprietor of land shall be taken as prima facie evidence that the named proprietor is the absolute and indefeasible owner of the land subject to such encumbrances, easements, restrictions and conditions endorsed on the title. In support of this submission, the 3rd and 4th Defendants cited *Nyangau & Another v. Mang'era (Suing as an Administratrix of the Estate of Vincent Matwere Mogaka-Deceased)*, ELC Appeal No. E019 of 2022 [2023]eKLR.
27. The 3rd and 4th Defendants submitted that the Plaintiff had not proved that the title of the 1st Defendant was obtained by fraud. The 3rd and 4th Defendants submitted that in the circumstances, the 1st Defendant held a good title in the suit property, which should not be disturbed by this court. The 3rd and 4th Defendants submitted further that since the title held by the 2nd Defendant had not been challenged, the title that was transferred by the 2nd Defendant to the 3rd and 4th Defendants was a good title.
28. The 3rd and 4th Defendants submitted that the Plaintiff did not prove that he ever took possession or used the suit property. The 3rd and 4th Defendants submitted that the Plaintiff could not properly account for the activities on the suit property for the period between when the land adjudication process ended and when he came to court. The 3rd and 4th Defendants submitted that it was not disputed that it was the 3rd and 4th Defendants who were in possession of the suit property, which they had developed. The 3rd and 4th Defendants submitted that the Plaintiff had not proved his claim to the required standard; hence, the claim must fail. The 3rd and 4th Defendants prayed that the Plaintiff's suit be dismissed with costs.

Analysis and Determination

29. I have considered the pleadings, the evidence and the submissions by the parties. I am of the view that the issues arising for determination in this suit are as follows;
 - a. Whether the suit property was lawfully registered in the name of the 1st Defendant.
 - b. If the answer to question (a) is in the negative, whether the 1st Defendant could transfer a valid title in the suit property to the 2nd Defendant which the 2nd Defendant could in turn transfer to the 3rd and 4th Defendants.
 - c. Whether the Plaintiff is entitled to the reliefs sought.
 - d. Who is liable for the costs of the suit?
30. I will consider these issues together since they are interrelated. In Nairobi Civil Appeal No. E789 of 2023, *Mas Construction Ltd. v. Abdul Waheed Sheik & 6 others*, the Court of Appeal stated as follows:
 - “68. It is an indisputable fact that the appellant and the Abduls claim ownership and/or title to the same parcel of land. This Court in *Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023)*



(Judgment) stated as follows regarding a claim over the existence of two titles in respect of the same parcel land:

“The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title, starting with a “good root of title.” A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements: (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question; (b) it must contain a recognizable description of the property; (c) it must not contain anything that casts any doubt on the title.”

69. In the same vein, this Court in *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR held that:
- “We state that when 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.”
31. In Supreme Court Petition No. E033 of 2023, *Harcharan Singh Sehmi & another v. Tarabana Co. Limited & 5 others*, the court stated as follows:
- “(ii) Whether the doctrine of Innocent Purchaser for value Without Notice protects a purchaser of an illegally/irregularly allocated title over public land
- (66) This issue persistently continues to rear its head whenever the legality of a subsequent title over land following a purchase is called into question. The main bone of contention, has always revolved around the concept of “indefeasibility of title” where holders of such titles under challenge, not only erect the latter as a shield, but also tend to fall back upon the doctrine of innocent purchaser for value without notice. This Court has since pronounced itself authoritatively and with finality on the question of indefeasibility of title in circumstances where a title is called into question regarding its legality. Holders of impugned titles, especially those acquired before the promulgation of the 2010 Constitution always call into service the provisions of Section 23 of the Registration of Titles Act Cap 281 (now repealed).
- (67) Pursuant to Section 23 of the repealed Act, a certificate of title was held as conclusive evidence of proprietorship. It read:
- “23.
- (1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”



(68) Upon repeal (of the Registration of Titles Act), the effects of registration are now governed by Section 26 of the [Land Registration Act](#) No. 3 of 2012 which provides;

“26.

- (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.”

This draws from Article 40 that the right to property does not extend to any “property that has been found to have been unlawfully acquired.” See Article 40(1) and (6) of [the Constitution](#).

(69) It is important to take note of the critical shift in terminology from the repealed Act to the current statute. Under the Registration of Titles Act, a certificate of title was to be regarded by courts as conclusive evidence that the person named therein was the absolute and indefeasible owner of the land. However, under current legislation, a certificate of title is to be regarded by courts as prima facie evidence that the person named therein is the absolute and indefeasible owner of the land. It is therefore no longer possible for a title holder to erect the certificate of title as a barrier to an inquiry into its legality or otherwise.

[70] In *Dina Management Limited vs. County Government of Mombasa & 5 Others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), this Court held that to determine whether a party is a bona fide purchaser for value, a court must first go to the root of the title, we stated:

“94. To establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right from the first allotment, as this is the bone of contention in this matter.””

32. The plaintiff and the 1st Defendant are both said to have acquired their respective interests in the suit property during the land adjudication. For the Plaintiff, the suit property was ancestral land, and during land adjudication in Kisumu Kogony Adjudication Section in the 1980s or thereabouts, the suit property was demarcated and recorded in his name as the owner thereof. According to the Plaintiff, he discovered in 2018 that the Adjudication Record for the suit property was purportedly amended on 11th March 1988 through which amendment, the Plaintiff’s name was cancelled and replaced by



the name of the 1st Defendant as the owner of the property. The Plaintiff's case was that apart from one, Peter Winani, to whom he sold a portion of the suit property, he did not sell the suit property or any part thereof to the 1st Defendant or anyone else. The Plaintiff contended that the purported amendment of the Adjudication Record, which cancelled his name as the owner of the suit property and replaced it with the 1st Defendant, was a fraudulent enterprise undertaken by the 1st Defendant in collusion with the 5th, 6th and 7th Defendants.

33. The Plaintiff produced in evidence a copy of the demarcation register and sketches for Kisumu Kogony Adjudication Section, which showed that the suit property was demarcated in favour of the Plaintiff. The demarcation register also showed that there was an objection to the demarcation of the property in the name of the Plaintiff by Peter Winani. According to the register, the objection (Objection No. 107 of 1983) was allowed and the Adjudication Officer directed that the suit property be subdivided and a portion thereof registered in the name of the said Peter Winani. The Plaintiff also produced an agreement of sale dated 19th February 1983 between the Plaintiff and Peter Winani over the said portion of the suit property with the Adjudication Officer's endorsement. The Plaintiff also produced a copy of the Adjudication Record (AR) for the suit property. The AR showed that the suit property was adjudicated in favour of the Plaintiff, but the name of Plaintiff was cancelled and replaced by that of the 1st Defendant following an amendment that was made on 11th March 1988. The Plaintiff also produced in evidence a copy of the register (Green Card) for the suit property, which showed that instead of the suit property being registered in the name of the Plaintiff, the property was registered in the name of the 1st Defendant on 3rd February 1992. The register also showed that the 1st Defendant transferred the suit property to the 2nd Defendant on 28th August 2016, and the 2nd Defendant, in turn, transferred the property to the 3rd and 4th Defendants on 18th April 2019.
34. The 1st Defendant did not file a defence to the Plaintiff's claim. The court did not, therefore, get the 1st Defendant's explanation of how he acquired the suit property, which was demarcated and recorded in the name of the Plaintiff during the land adjudication. The 2nd Defendant, who acquired the suit property from the 1st Defendant, told the court that the 1st Defendant died in April 2021. In his evidence upon cross-examination by the advocate for the 2nd Defendant, the Plaintiff told the court that the 1st Defendant was served with Summons to Enter Appearance, and he did not know whether the 1st Defendant was alive or not. On cross-examination by the advocate for the 3rd and 4th Defendants, the Plaintiff stated that he was not aware of the death of the 1st Defendant.
35. I am of the opinion that the issue of the alleged death of the 1st Defendant is an important factor in these proceedings as it was alleged that the 1st Defendant had died at the time he was sued. The advocates for the parties nonetheless treated the issue casually. Apart from the testimony of the 2nd Defendant that the 1st Defendant died in April 2021 and the Plaintiff's testimony in cross-examination that the 1st Defendant was alive, none of the parties produced documentary evidence of any nature to prove the death of the 1st Defendant or the fact that he was alive. The 2nd Defendant, in his evidence on cross-examination, stated that the 1st Defendant was a former State House Comptroller. This means that he was a public figure whose death would be public knowledge. I am of the view that the death of such a person in a matter in respect of which the court should take judicial notice under Section 60(1)(o) of the *Evidence Act*, Chapter 80 Laws of Kenya. A Google Search by the court revealed that Abraham Kipsang Kiptanui, who was a former State House Comptroller, died on 4th April 2021 and was buried on 10th April 2021. This supports the 2nd Defendant's evidence that the 1st Defendant died in April 2021. From the court record, this suit was filed on 21st September 2021. That was after the death of the 1st Defendant. The 1st Defendant could not, therefore, have been served with Summons to Enter Appearance in the matter. The court while preparing this judgment noted that there was no



affidavit of service of Summons to Enter Appearance upon the 1st Defendant on record. The affidavit was necessary to confirm that the Plaintiff indeed served the 1st Defendant with Summons to Enter Appearance as he claimed in his testimony. The Deputy Registrar of the court on the instructions from the court wrote to the Plaintiff's advocates on 10th July 2025 requesting for a copy of the affidavit of service of Summons to Enter Appearance upon the 1st Defendant. The Plaintiff's advocates forwarded to the court an affidavit of service sworn by a process server, one, Felix Omondi Owino, on 6th October 2021. In the affidavit, the said process server claimed to have served the 1st Defendant with Summons to Enter Appearance on 29th September 2021. As mentioned earlier, the 1st Defendant died on 4th April 2021, several months before he was purportedly served. The 1st Defendant was therefore not served with Summons to Enter Appearance by the Plaintiff.

36. Due to the foregoing, I agree with the 2nd Defendant that the 1st Defendant is deceased and that he died before the filing of this suit. The suit against the 1st Defendant was therefore filed against a deceased person and as such was a nullity. What is the effect of this finding? The effect of the finding is that the 1st Defendant was not sued by the Plaintiff. The 1st Defendant not being a party to the suit, all the allegations made against him by the Plaintiff cannot be determined by the court. The court cannot determine whether the cancellation of the name of the Plaintiff from the Adjudication Record and the insertion of the name of the 1st Defendant as the owner of the suit property pursuant to an alleged Objection No. 753 of 1988 was fraudulent and illegal. The court cannot determine also whether or not the registration of the 1st Defendant as the first registered owner of the suit property was lawful or not. It would be against the rules of natural justice to determine these issues without hearing the administrators of the estate of the deceased. It follows from the foregoing that all the reliefs sought by the Plaintiff against the 1st Defendant cannot be granted by the court.
37. The 2nd Defendant told the court that he did not inquire from the 1st Defendant how he acquired the suit property. According to the 2nd Defendant, the due diligence he conducted confirmed that the 1st Defendant was the registered owner of the suit property. The 3rd and 4th Defendants, on their part, did not have information on the history of the suit property. They purchased the suit property through an attorney. They purchased the property on the strength of an assurance that was given by their attorney that the title to the land was clean.
38. I am satisfied from the evidence on record that the Plaintiff has established that the suit property was originally demarcated and recorded in his name as the owner thereof during the land adjudication. The Plaintiff has also established that his name was cancelled from the Adjudication Record and replaced with the name of the 1st Defendant in whose favour the suit property was subsequently registered. Since the 1st Defendant is not a party to the suit, having been sued after his death, the Plaintiff has not established that the cancellation of his name in the Adjudication Record and the subsequent registration of the suit property in the name of the 1st Defendant were fraudulent and illegal. The court can only reach such a finding upon hearing the administrators of the estate of the deceased, 1st Defendant. I am therefore not convinced that the title that was held by the 1st Defendant in respect of the suit property was invalid.
39. The Plaintiff having failed to establish that the 1st Defendant acquired the suit property, fraudulently and as such held an invalid title to the suit property, there is no basis upon which the Plaintiff can attack the validity of the 2nd Defendant's, and the 3rd and 4th Defendants' titles which they derived from the 1st Defendant who was the first registered owner of the suit property. It is my finding that the Plaintiff has not proved his case against the 2nd, 3rd and 4th Defendants, which was anchored on the premise that the 1st Defendant held an invalid title to the suit property and as such could not pass a good title to the 2nd Defendant who could similarly not have transferred a valid title to the 3rd and 4th Defendants. A



case has also not been established against the 5th, 6th and 7th Defendants. The Plaintiff has not proved any wrongdoing on their part.

40. From the foregoing analysis of the parties' respective cases, it is my finding that the Plaintiff's suit against the 1st Defendant is incompetent and is for striking out, while the case against the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants has not been proved to the required standard. The Plaintiff is therefore not entitled to the reliefs sought in the plaint.

Conclusion

41. In conclusion, I hereby make the following orders in the matter;
1. The Plaintiff's suit against the 1st Defendant is struck out.
 2. The Plaintiff's suit against the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants is dismissed.
 3. The Plaintiff shall pay the costs of the suit to the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants.

DELIVERED AND SIGNED AT KISUMU ON THIS 24TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Judgement delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Anyul for the Plaintiff

N/A for the 1st Defendant

Mr. Ochanyo for the 2nd Defendant

Mr. Ariho h/b for Mr. Ogonda for the 3rd and 4th Defendants

N/A for the 5th, 6th and 7th Defendants

Ms. J. Omondi-Court Assistant

