



REPUBLIC OF KENYA



**Patel & another v Ougo & 3 others (Environment and Land Case
301 of 2014) [2025] KEELC 5805 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5805 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 301 OF 2014**

MD MWANGI, J

JULY 24, 2025

BETWEEN

BHARAT KUMAR RAOJIBHAI PATEL 1ST PLAINTIFF

LIWAZA LIMITED 2ND PLAINTIFF

AND

CHRISTOPHER OTIENO OUGO 1ST DEFENDANT

RAPHAEL G OTIENO KOPIYO 2ND DEFENDANT

KENNEDY OTIENO ABONYO 3RD DEFENDANT

ROBERT M NYAKUNDI 4TH DEFENDANT

JUDGMENT

1. By way of a Plaint dated 13th March 2014, the 1st Plaintiff, Bharat Kumar Raojibhai Patel, an adult male of sound mind residing and working for gain in Nairobi, and the 2nd Plaintiff, Liwaza Limited, a limited liability company duly incorporated under the *Companies Act*, Cap 486 of the Laws of Kenya, instituted this suit against the Defendants jointly and severally, in which they sought the following orders:
 - a. Restitution of the sum of Kshs. 29,100,000/=;
 - b. Interest thereon at the rate of 20% per annum;
 - c. General damages;
 - d. Costs of this suit; and
 - e. Such further or other relief as this Honourable Court may deem fit and just in the circumstances.



2. It is the Plaintiffs' case that sometimes in 2011, the 1st, 2nd, and 3rd Defendants, acting under the business name of Chrisgo Enterprises, fraudulently represented themselves as duly appointed agents of Harrison Kikui Muambi and Cecilia Anyesi Muambi, the registered proprietors of Land Reference Numbers 12715/623 and 12715/626 (I.R. 46956 and I.R. 46953 respectively). They allege that the Defendants induced the 1st Plaintiff to purchase the two properties by representing that the registered proprietors were desirous of selling the same.
3. Further, the Plaintiffs contend that the 4th Defendant, an advocate practicing as Onyancha Nyakundi & Co. Advocates, represented himself as the advocate duly instructed by the proprietors to act in the transaction. On the basis of these representations, the 1st Plaintiff entered into an agreement for sale dated 28th October 2011 with one Cecilia Anyesi Muambi for the purchase of L.R. No. 12715/626 at an agreed consideration of Kshs. 27,500,000/=. Pursuant to the terms of the sale agreement, the 1st Plaintiff remitted a deposit of Kshs. 2,750,000/= and subsequently paid the balance of Kshs. 24,750,000/= to the 4th Defendant's client account at Prime Bank. The 4th Defendant duly acknowledged receipt of the same on behalf of the alleged vendor.
4. It is pleaded that the Plaintiffs' advocates were furnished with all completion documents, including the original certificate of title, duly executed transfers, consent to transfer, clearance certificates, identification documents of the alleged vendor, and rates and rent receipts, whereupon the transfer was registered in favour of the 2nd Plaintiff on 13th November 2012. Stamp duty was duly assessed at Kshs. 1,600,000/= and paid, and the transfer was returned to the Plaintiffs duly registered.
5. The Plaintiffs aver that on 14th January 2013, Harrison Kikui Muambi notified them that neither he nor his wife, Cecilia Anyesi Muambi, had ever instructed the Defendants to sell the subject properties. By a subsequent letter dated 11th February 2013, the Department of Lands informed the Plaintiffs that the transfer had been expunged from the records on account of fraud. The Plaintiffs thus contend that they suffered loss and damage in the sum of Kshs. 29,100,000/=, attributable to the fraudulent misrepresentations and conduct of the 1st, 2nd, and 3rd Defendants, and the professional negligence of the 4th Defendant, whose failure to exercise due diligence is detailed at paragraph 42 of the plaint.
6. Despite repeated demands and notices of intention to sue, the Defendants have failed, refused, or neglected to refund the monies received. Consequently, the Plaintiffs claim restitution of the amount paid, general damages, interest, and costs of the suit.
7. The 4th Defendant, Robert M. Nyakundi t/a Onyancha Nyakundi & Co. Advocates, entered appearance through Messrs. Mutuku Wambua & Associates and filed a Statement of Defence dated 22nd April 2014. Save for those matters expressly admitted, the 4th Defendant denied each and every allegation set out in the Plaintiffs' pleadings and put the Plaintiffs to strict proof thereof.
8. The 4th Defendant admitted the descriptive averments as to the parties but denied any participation in the alleged fraud or negligence. It was averred that at all material times, the 4th Defendant acted strictly on instructions received from a person who identified herself as Cecilia Anyesi Muambi, the registered proprietor of L.R. No. 12715/626, and who provided the original title and all requisite completion documents. These documents were duly passed to the Plaintiffs' advocates, who undertook the registration and confirmed the successful transfer before requesting the 4th Defendant to release the balance of the purchase price.
9. The 4th Defendant denied having offered the properties for sale or having had any dealings with the Plaintiffs directly, contending that all communications were channeled through the Plaintiffs' advocates. He further denied having received or unlawfully retained Kshs. 3,000,000/= as alleged, maintaining that any sums received were properly accounted for and disbursed on behalf of the vendor.



10. It was further pleaded that delays in the completion of the transaction were occasioned by reorganization at the Ministry of Lands, which was communicated to the Plaintiffs' advocates, and that at no time did the 4th Defendant make any misrepresentations to induce the Plaintiffs into the transaction. The 4th Defendant maintained that he exercised reasonable professional care and diligence as an advocate acting for a vendor in a land sale transaction and could not be faulted for the alleged fraud, which if any, was perpetrated by third parties unknown to him.
11. By way of counterclaim, the 4th Defendant sought general damages, costs, and any other relief as the court deemed fit, contending that the Plaintiffs had maliciously held, suggested, and published that he was involved in fraudulent dealings, thereby injuring his professional reputation.
12. The Plaintiffs filed a Reply to the 4th Defendant's Statement of Defence, joining issue with it in its entirety save where expressly admitted. They reiterated that the 4th Defendant, as the advocate acting for the purported vendors, confirmed through their advocates that he had instructions to act on behalf of the registered proprietors of the suit properties. They contend that it was the 4th Defendant who introduced the Plaintiffs to the transaction, obtained all completion documents, and passed them on for registration without verifying their authenticity.
13. The Plaintiffs maintain that the cancellation notice issued by their advocates was necessitated by delays and non-responsiveness on the part of the 4th Defendant, and that it was later withdrawn solely on the 4th Defendant's assurances that the vendor was ready to complete the transaction. They further assert that investigations later revealed that the entire purchase price of Kshs. 29,100,000.00, remitted through the 4th Defendant's account, was disbursed to the 1st and 2nd Defendants, with the 4th Defendant personally retaining Kshs. 3,000,000.00.
14. In reply to the counterclaim, the Plaintiffs categorically deny holding, suggesting, or publishing any information implicating the 4th Defendant in fraud, and aver that their claim as pleaded is meritorious. They therefore pray for dismissal of the counterclaim with costs and for judgment to be entered as prayed in the Plaint.
15. The 1st Defendant, Christopher Otieno Ougo, entered appearance through Messrs. Enonda, Makoloo, Makori & Co. Advocates and filed a Statement of Defence dated 30th May 2014. Save for the descriptive averments regarding the parties, which he admitted, the 1st Defendant denied each and every allegation contained in the Plaint and put the Plaintiffs to strict proof thereof.
16. He averred that he is an independent estate agent carrying on business under the name of Chrisgo Enterprises and not a business associate of the 2nd and 3rd Defendants, denying any collusion or concerted action to defraud the Plaintiffs. He further denied ever making any representations to the Plaintiffs regarding the sale of L.R. Nos. 12715/623 and 12715/626 or having participated in any negotiations, due diligence, or sale agreements. He maintained that he neither received any funds from the Plaintiffs nor benefited in any way from the impugned transaction.
17. The 1st Defendant averred that he had no involvement in the transfer or registration of the suit properties, emphasizing that titles and searches are issued by the Government of Kenya and that he could not be held responsible for any reliance placed upon such official documents by the Plaintiffs. He further contended that the Plaintiffs' suit disclosed no reasonable cause of action against him and that his involvement in the suit was a misjoinder.
18. Consequently, the 1st Defendant prayed that the Plaintiffs' suit against him be dismissed with costs.



19. The Plaintiffs disagree with the 1st Defendant's Defence, saying it is only a blanket denial and has no real answer to their case. They maintain that the 1st Defendant, together with the other Defendants, planned and carried out the fraudulent scheme and he is therefore rightly included as a party in the suit.
20. The Plaintiffs insist that the 1st Defendant knew about all the dealings and documents, received part of the purchase price through his Prime Bank account, and had a duty to confirm the authenticity of the title documents, which he failed to do. The Plaintiffs believe their case has merit and that the Defence of the 1st Defendant does not provide a valid response.
21. The 2nd and 3rd Defendants did not enter appearance or file any defence despite being duly served. Judgement was indeed entered against them for the liquidated claim.

Evidence adduced on behalf of the Plaintiffs

22. The Plaintiffs' case was opened through the testimony of Bharat Kumar Raojibhai Patel, who testified on the genesis and progression of the impugned transactions. He recounted that in mid-2011 he was approached by the 1st and 2nd Defendants, who represented themselves as duly appointed agents of Harrison Kikui Muambi and Cecilia Anyesi Muambi, the registered proprietors of Land Reference Numbers 12715/623 and 12715/626, and informed him that the owners were desirous of disposing of the two parcels for a combined consideration of Kshs. 55,000,000. To support this representation, the Defendants furnished him with photocopies of the title documents. He further stated that the Defendants introduced the 4th Defendant as the advocate retained by the registered owners to act on their behalf in the transaction.
23. Acting on this information, he engaged his advocates, Raffman Dhanji Elms & Virdee Advocates, to act for him. They undertook official searches at the Nairobi Lands Registry. The particulars of Land Reference No. 12715/626 corresponded with those in the copy of the title provided by the Defendants, while the deed file for Land Reference No. 12715/623 was reported to be missing. He instructed his advocates to proceed with the two transactions separately. Upon contacting the 4th Defendant, his advocates received confirmation that he acted for the vendors, and in due course, draft sale agreements were prepared and exchanged, culminating in the execution of a sale agreement dated 28 October 2011 between the supposed vendor, Cecilia Anyesi Muambi, and the plaintiffs, for the purchase of L.R. No. 12715/626 at a price of Kshs. 27,500,000. In accordance with the terms of that agreement, he remitted a deposit of Kshs. 2,750,000 to the 4th Defendant's client account at Prime Bank, which receipt was acknowledged.
24. He described subsequent difficulties in obtaining the Commissioner of Lands' consent to transfer, prompting him to instruct his advocates to issue a cancellation notice and demand a refund of the deposit. The 4th Defendant, however, treated the notice as a completion notice and undertook to complete the transaction within twenty-one days. Around the same period, he was informed that the title deed for L.R. No. 12715/623 had been traced, and he instructed his advocates to proceed with the transaction. On 12 April 2012 the 4th Defendant assured them that the transactions would proceed to completion, later confirming by a letter of 27 July 2012 that all completion documents save for the rates clearance certificate had been obtained.
25. By September 2012, having been furnished with executed transfers and what were represented as original completion documents—including title, land rent and rates receipts, consent to transfer, identification documents, tax compliance certificate and passport photographs, the 1st plaintiff remitted the balance of Kshs. 24,750,000/= to the 4th Defendant, who acknowledged receipt.



26. The 1st Plaintiff subsequently transferred his interest in L.R. No. 12715/626 to the 2nd Plaintiff and instructed his advocates to amend the transfer accordingly. The amended transfer was returned by the 4th Defendant duly executed by the transferor, signed by him, assessed for stamp duty and lodged for registration, resulting in issuance of a registered transfer and title in favour of the 2nd Plaintiff.
27. PW1 testified that on 21 November 2012, his advocates released the balance of the purchase price to the 4th Defendant, who on the same day remitted Kshs. 24,500,000 to an account held by Chrisgo Enterprises, whose signatories were the 1st and 3rd Defendants. He detailed how, from these funds, the 1st Defendant appropriated Kshs. 6,000,000, the 2nd Defendant Kshs. 9,000,000, the 3rd Defendant Kshs. 5,000,000, and the 4th Defendant Kshs. 3,000,000.
28. PW1 testified that on 14 January 2013 he was informed by Harrison Kikuvi Muambi that neither he nor his wife, Cecilia Anyesi Muambi, had instructed the sale of their properties and that the transactions had been perpetrated by fraudsters. By a letter dated 11 February 2013 the Department of Lands confirmed that the transfer of L.R. No. 12715/626 had been expunged from the records on account of fraud. He asserted that as a result, he and the 2nd Plaintiff suffered loss of Kshs. 29,100,000, being the sum paid to the Defendants. He attributed the loss to the fraudulent misrepresentations of the 1st, 2nd and 3rd Defendants, who posed as agents of the true proprietors, offered the properties for sale without authority, presented forged completion documents and misappropriated the purchase monies. He further alleged that the 4th Defendant facilitated the fraud by falsely representing that he acted for the registered owners, presenting forged completion documents, certifying the identity of a person impersonating Cecilia Anyesi Muambi, procuring the payment of Kshs. 27,500,000 and unjustly retaining Kshs. 3,000,000. He also asserted that the 4th Defendant acted negligently in the discharge of his professional duties by failing to verify the identity of the vendors, the authenticity of the documents presented and the validity of his instructions, thereby enabling the fraud to occur.
29. Responding to questions in cross-examination, PW1 admitted that he had never met the 1st Defendant in the course of the transaction. He said that he met Mr. Opiyo, the 2nd Defendant, who was with another person. PW1 further clarified that accompanying him were; Mr. Hilesh, his consultant and Vicky Vana Patel who is abroad. PW1 clarified that he instructed Raffman Dhanji Els & Virdee Advocates to act for him in the transaction. He paid money in the sum of Ksh. 27,500,000/- to the said firm.
30. The Plaintiffs also relied on the witness statement of David Raffman, a consultant advocate with the firm of Raffman Dhanji Elms & Virdee Advocates, who confirmed that he acted for the 1st Plaintiff in the impugned transactions. He recounted that his firm received instructions on 30 June 2011 to act in the purchase of L.R. Nos. 12715/626 and 12715/623. The 1st Plaintiff provided copies of the titles and informed him that the 4th Defendant acted for the vendors, whom he believed to be Harrison Kikuvi Muambi and Cecilia Anyesi Muambi. He immediately caused official searches to be conducted, obtaining a search for L.R. No. 12715/626 that corresponded with the supplied title, while the deed file for L.R. No. 12715/623 was reported missing.
31. He detailed subsequent correspondence with the 4th Defendant, who provided draft sale agreements and confirmed his instructions to act for the vendors. After exchanging drafts, a sale agreement dated 28 October 2011 was executed between the purported vendor, Cecilia Anyesi Muambi, and the 1st Plaintiff for the purchase of L.R. No. 12715/626 at a price of Kshs. 27,500,000. Pursuant to its terms, his firm remitted a deposit of Kshs. 2,750,000 in the 4th Defendant's client account at Prime Bank to be held as stakeholder pending completion, receipt of which was acknowledged. He described delays in obtaining consent to transfer, which led the Plaintiffs to instruct issuance of a cancellation notice and a demand for refund. The 4th Defendant, however, treated this as a completion notice and promised



completion within 21 days, later assuring that the transactions would proceed and, by his letter of 27 July 2012, reporting that all completion documents save for the rates clearance certificate had been secured.

32. He further testified that on the 4th Defendant's undertaking that all completion documents were in order, his firm gave its professional undertaking to release the balance of the purchase price upon registration of the transfer. On 12 September 2012, they received from the 4th Defendant the original title, executed transfer, consent to transfer, land rent and rates receipts, clearance certificates, and identification and tax documentation for the vendor. At the instruction of the 1st Plaintiff, the transfer was amended to reflect the 2nd Plaintiff as transferee. After fresh execution by the transferor, the transfer was assessed for stamp duty, lodged, and registered, and the duly registered transfer and original title were received from the Lands Registry. His firm then remitted the balance of Kshs. 24,750,000 to the 4th Defendant, who purported to receive it on behalf of Cecilia Anyesi Muambi.
33. Mr. Raffman recounted that on 14 January 2013, they were contacted by Harrison Kikui Muambi, who asserted that neither he nor his wife had instructed any sale and that both transactions had been orchestrated by fraudsters. On 11 February 2013 the Department of Lands confirmed that the transfer of L.R. No. 12715/626 had been expunged for fraud. He concluded that the fraud was perpetrated by the Defendants acting in concert, resulting in the Plaintiffs suffering a loss of Kshs. 29,100,000, the full consideration and stamp duty paid.
34. Mr. Raffman was named as the plaintiff's second witness (PW2). PW2 was to testify virtually considering his age and illness. The parties however agreed that Ms. Caroline Wanjiku Kiarie be cross-examined instead; as Mr. Raffman had instructed her to do the work pertaining to the transaction that is the subject of the suit.
35. The Plaintiffs further called Ms. Caroline Wanjiru Kiarie, an advocate and associate at Raffman Dhanji Elms & Virdee Advocates, who corroborated the testimony of Mr. David Raffman in all material particulars. She testified that she was instructed by Mr. Raffman to conduct official searches on L.R. Nos. 12715/623 and 12715/626 after the 1st Plaintiff expressed his intention to purchase them. She confirmed that the search on L.R. No. 12715/626 was successful and corresponded with the copy of the title supplied, while the deed file for L.R. No. 12715/623 was reported missing. She narrated her direct dealings with the 4th Defendant, who sent draft agreements and later finalized the sale agreement dated 28 October 2011, under which a deposit of Kshs. 2,750,000 was remitted to the 4th Defendant's client account as stakeholder.
36. Ms. Kiarie described persistent delays in obtaining consent to transfer and the consequent issuance of a cancellation notice, which the 4th Defendant treated as a completion notice. She recounted further correspondence in which the 4th Defendant assured them that all completion documents were in order. On his undertaking, their firm issued a professional undertaking to remit the balance of the purchase price upon registration of the transfer. On 12th September 2012, the 4th Defendant supplied them with the original title, executed transfer, commissioner's consent, clearance certificates, identification, and tax documents for the vendor. At the 1st Plaintiff's request, the transfer was amended to name the 2nd Plaintiff as transferee. The amended transfer was duly executed, assessed for stamp duty, lodged, and registered, and the original registered transfer and title were returned to their custody. The firm thereafter remitted the balance of Kshs. 24,750,000 to the 4th Defendant, marking the transaction as complete.
37. Ms. Kiarie further testified that on 14 January 2013, she received a call from Harrison Kikui Muambi, who asserted that he was the true proprietor of L.R. No. 12715/623 and that neither he nor his wife had authorized the sale of the two properties. She convened a meeting on 16th January 2013 attended by



Mr. Muambi, the 4th Defendant, and her firm's partners, where the 4th Defendant admitted that the woman purporting to be the owner of L.R. No. 12715/626 had been introduced to him by land agents and that he had remitted the purchase price to a bank account opened by those agents. The Lands Registry later confirmed by a letter dated 11 February 2013 that the transfer of L.R. No. 12715/626 had been expunged for fraud. She concluded that the Plaintiffs were victims of a fraudulent scheme executed by the Defendants acting in concert, resulting in their loss of Kshs. 29,100,000.

38. In responding to questions during cross-examination, PW3, Caroline Wanjiku Kiarie confirmed that she had not met with the 1st Defendant in the course of the impugned transaction. She confirmed that she had only seen him when she testified as a state witness in Criminal Case No. 371 of 2013.

Defendants' Evidence

39. The 1st and 4th Defendant did not offer any evidence despite filing statements of defence. The 4th Defendant had even filed a counter-claim.

Plaintiffs' Submissions

40. The Plaintiffs in their submissions maintain that they were induced into a fraudulent transaction for the purchase of L.R. No. 12715/623 and L.R. No. 12715/626. They aver that in 2011, the 1st and 2nd Defendants represented themselves as duly authorized agents of the registered proprietors, Harrison Kikui Muambi and Cecilia Anyesi Muambi, and offered the properties for sale. Relying on these representations, the Plaintiffs instructed their advocates, Raffman Dhanji Elms & Virdee Advocates, to act for them. Searches at the Nairobi Lands Registry initially confirmed the ownership details of one of the properties, while the title for the other was noted as missing from the deed file. The Plaintiffs proceeded to execute a sale agreement dated 21st September 2011 for a consideration of Kshs. 27,500,000, remitting a deposit of Kshs. 2,750,000 to the 4th Defendant, who acted as the vendor's advocate.
41. Difficulties arose in completing the transaction when the 4th Defendant delayed in responding to follow-ups and attributed the delays to difficulties in obtaining the Commissioner of Lands' consent. A cancellation notice was subsequently issued by the Plaintiffs' advocates, but the 4th Defendant assured them that the transaction could be completed within 21 days and requested that the Plaintiffs withdraw the notice. On 10 April 2012, the 1st and 2nd Defendants allegedly informed the Plaintiffs that the missing title had been located, and the Plaintiffs instructed their advocates to proceed with the transaction. A professional undertaking was then issued by the Plaintiffs' advocates to remit the balance of the purchase price upon registration of the transfer, and in September 2012 the transfer and completion documents, including a purported original title, were forwarded to the Plaintiffs' advocates. The transfer was registered on 13th November 2012, whereupon the balance of Kshs. 24,750,000 was remitted to the 4th Defendant, who subsequently transferred the funds to the 1st Defendant's account trading as Chrisgo Enterprises.
42. The Plaintiffs later discovered that the transaction was fraudulent when the actual registered proprietors informed them that the properties were not available for sale and had never been transferred. This discovery was confirmed by a letter from the Department of Lands, which expunged the registration of one of the properties on account of fraud. They argue that the 1st Defendant knowingly misrepresented that he had authority to dispose of the properties, and that the 4th Defendant, acting as the advocate for the purported vendors, reinforced these misrepresentations by passing on the same assurances to the Plaintiffs' advocates. The Plaintiffs submit that the Defendants acted in concert, each playing a distinct role in the deception, and that the fraudulent representations induced the Plaintiffs to part with the sum of Kshs. 29,100,000. They further submit that the conduct



- of the 4th Defendant amounted to negligence, given that he failed to confirm the instructions of his alleged clients or verify the authenticity of the completion documents before transmitting them to the Plaintiffs' advocates.
43. To buttress their arguments, the Plaintiffs rely on statutory provisions, including section 157 of the *Land Act* and section 103 of the *Land Registration Act*, which criminalize fraudulent dealings with land, as well as authorities such as *Arthi Highway Developers Ltd v West End Butchery Ltd & Others* [2015] eKLR and *Mikooh Exquisite Ltd v Simple Homes Development Consortium Ltd & Others* [2019] eKLR. These authorities underscore that fraud is a serious allegation that must be distinctly pleaded and proved to a standard higher than a balance of probabilities. The Plaintiffs argue that the evidence before the court demonstrates deliberate misrepresentation, concealment of material facts, and an intentional scheme to defraud them of substantial sums of money, and that the impugned transaction was nullified by the Land Registrar on the grounds of fraud.
 44. The Plaintiffs further contend that the 1st Defendant procured the payment of the entire purchase price of Kshs. 27,500,000 through a series of fraudulent misrepresentations. They relied on photocopies of completion documents and what was purported to be an original certificate of title, later revealed to be forged. A letter from the National Registration Bureau dated 11th February 2013 confirmed that the identification number used did not belong to Cecilia Anyesi Muambi, and the passport photographs appended to the transfer documents were not hers, as she confirmed in her testimony. By dint of these misrepresentations, the Plaintiffs paid the full purchase price to the 4th Defendant, who transferred Kshs. 24,170,000 to the 1st Defendant's sole proprietorship, Chrisgo Enterprises, leaving the 1st Defendant unjustly enriched in that amount.
 45. The Plaintiffs also maintain that the 4th Defendant, acting as the advocate for the purported vendors, played an active role in facilitating the fraud. By letters dated 27th July 2011, the 4th Defendant represented that Harrison Kikui Muambi and Cecilia Anyesi Muambi were selling the properties and that he held instructions to act on their behalf. He went on to certify that the purported Cecilia had appeared before him to execute the sale agreement, a fact later shown to be false. The 4th Defendant offered the properties for sale without ever meeting the true proprietors and without verifying the validity of his instructions, thereby purporting to have authority to dispose of land over which he had no mandate. On 10 August 2012 he asserted that he was in possession of all completion documents, which later turned out to have been forgeries.
 46. The 4th Defendant later forwarded these documents to the Plaintiffs' advocates, certifying the authenticity of the identification and tax details of the supposed vendor. The Plaintiffs submit that the 4th Defendant also suppressed from the Commissioner of Lands the fact that he lacked authority to transfer the properties, thereby fraudulently procuring the consent to transfer.
 47. The Plaintiffs assert that the 4th Defendant received and disbursed the purchase monies, remitting Kshs. 24,170,000 to the 1st Defendant and retaining Kshs. 3,000,000 for himself, amounts which they claim constitute unjust enrichment obtained through fraudulent conduct. They argue that both the 1st and 4th Defendants acted in concert to devise and implement a covert scheme to defraud them, concealing material facts and misrepresenting their authority over the properties. Consequently, the Plaintiffs parted with Kshs. 29,100,000 without acquiring any proprietary interest in the properties. They urge the Court to find that they have proved fraud to the required standard, being one higher than the ordinary balance of probabilities, and that the Defendants are liable in restitution.
 48. In the alternative, the Plaintiffs submit that the 4th Defendant was professionally negligent. As an advocate of the High Court of Kenya, he owed a duty of care to exercise reasonable skill, diligence and competence, a duty that extends to all persons relying on his professional judgment. Citing



National Bank of Kenya Ltd v E. Muriu Kamau & Another [2009] eKLR, they argue that an advocate who assumes responsibility in a transaction must take steps commensurate with the standards of his profession to safeguard the interests of those who will rely on his work. The Plaintiffs maintain that the 4th Defendant failed to verify the identities of the true proprietors or the authenticity of the documents presented, a lapse that fell far below the required standard. They argue that a simple inquiry to the Lands Registry would have revealed that the identification number used did not belong to Cecilia Anyesi Muambi and that the vendors whose instructions he claimed to hold had not authorized the sale.

49. The Plaintiffs further rely on the warranty clauses in the sale agreement, which warranted that the vendors' ownership was unencumbered and would indemnify the purchasers against loss. They contend that the 4th Defendant, by certifying that the supposed vendors appeared before him and executed the transfer, assumed a duty to undertake proper verification, which he did not perform. They emphasize that the 4th Defendant himself admitted in his Defence that he made representations as to the vendors' authority to sell, yet the proceeds of the sale were disbursed among the Defendants without any payment reaching the true proprietors. They further point to the testimony of the Plaintiffs' advocates, who confirmed that Harrison Kikui Muambi had been alerted about the purported sale by a third party and that a forged identification card purporting to be his had been shown to him, a circumstance that a reasonably competent advocate would have uncovered.
50. The Plaintiffs also draw the Court's attention to the 4th Defendant's conduct before the Advocates Disciplinary Tribunal, where he did not participate in the proceedings that culminated in orders that he refund Kshs. 29,100,000 and be struck off the Roll of Advocates. They argue that his inaction in the present proceedings mirrors his previous conduct and underscores his failure to account for the purchase monies. It is the Plaintiffs' submissions that the 4th Defendant's conduct amounts to negligence of a degree that renders him liable for the Plaintiffs' loss.
51. The Plaintiffs invite the Court to find that the 1st and 4th Defendants engaged in fraud and, in the case of the 4th Defendant, professional negligence, resulting in the Plaintiffs' loss of Kshs. 29,100,000. They pray that judgment be entered as prayed in their Complaint, with interest and costs.

1st Defendant's Submissions

52. The 1st Defendant urged the Court to dismiss the suit against him, relying on his defence and witness statement filed on 3rd June 2014. He argued that no case had been made out against him. He emphasized that he was acquitted in Kibera Criminal Case No. 371 of 2013, where he was charged with obtaining money by false pretence on the same facts, the court finding that he neither received the Plaintiffs' funds nor had any connection to the account in question.
53. He contended that the Plaintiffs never met him, nor did their advocate or witnesses, and no evidence showed his participation in negotiations or misrepresentations. All this according to the 1st Defendant came out through the cross-examination. He faulted the Plaintiffs for failing to call key witnesses, including the alleged vendors and the Land Registrar.
54. He further relied on authorities including *Ndolo v Ndolo* [2008] 1 KLR (G & F) 742 and *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* [2016] eKLR, maintaining that fraud must be strictly proved, and the Plaintiffs had not discharged this burden. He therefore prayed that the suit against him be dismissed with costs.



Issues of Determination

55. Having carefully considered the pleadings, the evidence adduced by the parties, and the submissions filed, the Court finds that the following issues arise for determination:
- I. Whether the Plaintiffs have proved that the impugned sale transactions relating to L.R. Nos. 12715/623 and 12715/626 were tainted by fraud.
 - II. Whether the 1st, 2nd, and 3rd Defendants were involved in or can be held liable for the alleged fraudulent transactions.
 - III. Whether liability was established against the 4th Defendant in his capacity as an advocate acting for the purported vendors, including whether he concealed material facts or breached his professional duty of care to the Plaintiffs.
 - IV. Whether the Plaintiffs suffered loss as a result of the said transactions and, if so, the quantum of loss recoverable.
 - V. Whether the Plaintiffs are entitled to the reliefs sought.

Analysis and Determination

i. Whether the Plaintiffs have proved that the impugned sale transactions relating to L.R. Nos. 12715/623 and 12715/626 were tainted by fraud.

56. It is trite law that allegations of fraud are of a serious nature and must not only be specifically pleaded but also strictly proved. The Court of Appeal in *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, underscored this principle in the following terms:
- “It is well established that fraud must be specifically pleaded and that particulars of fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is not allowable to leave fraud to be inferred from the facts.”
57. Similarly, in *Kinyanjui Kamau v George Kamau* [2015] eKLR, the court reiterated that:
- “The standard of proof required where fraud is alleged is certainly higher than that required in ordinary civil cases, but the burden remains that of the plaintiff to discharge.”
58. This heightened standard derives from the gravity of the allegations, as fraud connotes a willful act intended to deceive, cause injury, or deprive another of a right. The statutory framework under section 157 of the *Land Act* and section 103 of the *Land Registration Act* criminalizes fraudulent dealing with titles and procurement of registration through forged or deceitful instruments, reinforcing the judiciary’s cautious approach in determining claims founded on fraud.
59. Applying these principles to the facts before the court, the Plaintiffs set out with particularity the acts constituting the alleged fraud. They pleaded that the Defendants falsely represented themselves as duly authorized agents of Harrison Kikuvi Muambi and Cecilia Anyesi Muambi, the registered proprietors of the suit properties, and on that basis induced them to part with substantial sums of money amounting to Kshs. 29,100,000. The Plaintiffs adduced oral and documentary evidence demonstrating that at all material times, the said registered proprietors neither sold nor authorized the sale of the properties. This is borne out by the testimony of Harrison Muambi, who, upon learning of



the purported transfers, disclaimed any knowledge of the transactions and reported the matter to the police. Further, the Department of Lands, by a letter dated 11th February 2013, informed the Plaintiffs that the transfer of L.R. No. 12715/626 had been expunged from the register on account of fraud, a fact that corroborates the Plaintiffs' claim that the instruments used in the transfer were forgeries.

60. The Plaintiffs also tendered evidence of the flow of funds. The payments were transmitted to accounts nominated by the 4th Defendant, acting ostensibly for the vendors, and were subsequently disbursed without the Plaintiffs ever obtaining good and indefeasible title. It is significant that the National Registration Bureau confirmed that the identification documents used to transact in the name of Cecilia Anyesi Muambi were forgeries. These elements—false representation, reliance by the Plaintiffs, and resultant loss—satisfy the classical indicia of fraud as defined in *Arthi Highway Developers Ltd v West End Butchery Ltd & Others* [2015] eKLR, where the Court held that:

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury.”

61. In the totality of the evidence adduced, this court is persuaded that the Plaintiffs have, on the heightened standard required in civil cases where fraud is alleged, established that the impugned transactions relating to L.R. Nos. 12715/623 and 12715/626 were tainted by deliberate and fraudulent misrepresentation. The acts complained of were neither accidental nor the product of mistake; they were calculated to deceive the Plaintiffs and thereby cause them pecuniary loss. I accordingly find and hold that the Plaintiffs have discharged their burden of proving fraud as required by law.

ii. Whether the 1st, 2nd, and 3rd Defendants were involved in or can be held liable for the alleged fraudulent transactions.

62. Fraud is a grave allegation which must be specifically pleaded and strictly proved. As held in *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR:

“Fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading ... fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

63. Similarly, in *Ndolo v Ndolo* [2008] 1 KLR (G & F) 742, the Court reaffirmed that,

“the burden to prove a fraud allegation lay squarely on the one who alleges ... the standard of proof ... is however higher than that required in ordinary civil cases ... but not beyond reasonable doubt.

64. I turn first to consider the evidence against the First Defendant, Christopher Otieno Ougo. There is no compelling or credible testimony linking him to any representations, participation in the transaction, receipt of funds, or acquittance with the ‘vendors’. The Plaintiffs called no witnesses who saw him engage with them or their advocates. The Plaintiffs’ witnesses who testified in this case admitted that they did not interact with him at any point of the transaction. In the absence of direct testimony or documentary records implicating him, the Plaintiffs have not discharged their burden. The Court of Appeal in *Wanjiru Njuguna v Joseph Wangonde & Another* [2021] eKLR, noted that where the entire scheme centered on one principal suspect and the other party was uninvolved and unconnected, fraud could not simply be attributed to both.

65. The Plaintiffs’ pleadings lump together all the Defendants as perpetrators of fraud, yet their evidence does not identify or demonstrate the 1st Defendant’s role. A pall of doubt remains over his alleged



complicity. In Civil Case 1833 of 2007 – Gitway Investment Limited vs Tajmal Limited & Others, the Court found that there was no evidence linking one Defendant to the fraud and thus held that he was not culpable.

66. I accordingly find that the Plaintiffs did not prove fraud on the part of the First Defendant. His name appears in the scheme, but absence of evidence renders that appearance hollow. I find in favour of the First Defendant; the fraud allegation fails as against him.
67. By contrast, the Plaintiffs have adduced cogent evidence against the Second and Third Defendants. The chain of banking evidence reflects that the Fourth Defendant transferred Kshs. 24,500,000/- to an account held in the name of “Chrisgo Enterprises”, of which the Second and Third Defendants were signatories. From there, cheques were drawn: Kshs. 9 million to the Second Defendant, Kshs. 5 million to the Third Defendant. The Plaintiffs testified that neither of the real proprietors of the suit property ever received any benefit, and they remained oblivious to the purported sale. Further, the Plaintiffs’ documentary records show that the identification documents presented were forged (e.g. the ID number was confirmed to belong to someone else), and that the transaction was voided by the Lands Department due to fraud.
68. The Second and Third Defendants derived direct benefit from the impugned sale. Their names and signatures appear on the banking documents. They offered no explanation or rebuttal in evidence. They did not testify nor file a statement of Defence.
69. It is well established that a person who participates in or benefits from a fraudulent transaction is liable even where they did not author or execute the initial acts. In *Mwangi James Njehia v Janetta Wanjiku Mwangi & another*, the Court of Appeal held that where the Second Defendant was a party to the fraud and benefited, liability attaches notwithstanding lack of direct evidence of wrongdoing by the first actor.
70. Moreover, the principle that fraud must be shown specifically applies equally to all Defendants. The Plaintiffs have supplied particulars: representation that property was not for sale by genuine owners; bogus identity documents; forging of proprietors’ signatures; misrepresentation of title documents; pocketing of funds. The particulars against the Second and Third Defendants demonstrate direct evidence — bank transfers, identity forgeries, expungement orders — and are not left to inference alone.
71. The Plaintiffs have met the necessary standard — heavier than mere balance of probabilities — in demonstrating fraud against the Second and Third Defendants. They benefited financially, received principal sums, remained unaccounted for, and the integrity of the transaction was conclusively voided by expungement. I therefore find the Second and Third Defendants liable for the fraud alleged.

iii. Whether liability was established against the 4th Defendant in his capacity as an advocate, including concealment of material facts or breach of professional duty.

72. Under Section 55 of the *Advocates Act*, Cap 16, every advocate is an officer of the Court and owes a duty to exercise “a fair, reasonable and competent degree of skill” to his clients. In *National Bank of Kenya Ltd v E. Muriu Kamau & Another* [2009] eKLR, the High Court held that advocates must exercise exceptional care in handling matters, failing which they may be professionally negligent. Decisions such as *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Co Ltd* [2017] eKLR found that where advocates conduct official searches, meet clients, and have no reason to suspect fraud, they are not negligent



73. The Plaintiffs alleged that the 4th Defendant concealed material facts, knowingly advanced forged identity and title documents, and failed to discharge due diligence. However, the evidence shows that the 4th Defendant obtained official searches, received a certificate of title, consent to transfer, rates clearance, ID, PIN, and passport photos. He disclosed delays to Plaintiffs' advocates and explained them as registry and rates clearance issues. It worth noting that the Plaintiffs had their own Advocate. The 4th Defendant was not their Advocate.
74. There is no evidentiary claim indicating that he personally witnessed forgery, had actual knowledge of false documents, or suppressed material facts concerning vendor authority. The Plaintiffs' own advocate also conducted independent searches confirming the title as presented. No expert testimony was adduced to suggest that a competent advocate would have identified the forgery at the time.
75. In *Matiri Mburu v Harilal Velji Shah & Another* the Court found no negligence when the advocate obtained searches and documents, met the vendor introduced by the client, and had no indication of fraud. The situation here is analogous.
76. The Plaintiffs' allegations hinge on hindsight and speculative wrongdoing. There is no direct evidence of concealment as alleged. The 4th Defendant received title documents which he passed on to the Plaintiffs Advocate who verified them from his end. These actions fall within the bounds of competent conveyancing practice under *National Bank of Kenya Ltd v E. Muriu Kamau*.
77. The Plaintiffs have failed to establish liability on the part of the 4th Defendant. There is no evidence of concealment or professional impropriety. His role in the transaction, including communication and processing of documents, was consistent with the duties of an advocate under section 55 of the *Advocates Act*. Accordingly, the claim against him for fraud or negligence is dismissed.
78. The 4th Defendant's counterclaim, seeking damages for alleged defamatory allegations fails since he did not adduce any evidence in support of it. No specific evidence was tendered to show that the Plaintiffs made false assertions damaging his reputation. In the absence of any supporting proof, his counterclaim is dismissed with costs to the Plaintiffs.

iii. Whether the Plaintiffs suffered loss as a result of the said transactions and, if so, the quantum of loss recoverable

79. The Plaintiffs have pleaded and led evidence demonstrating that they parted with the sum of Kshs. 29,100,000.00 in the impugned sale transaction. The Plaintiffs' witness statements and documentary evidence, notably the professional undertakings, RTGS slips, and receipts of transfers, clearly show that the funds were remitted to the 4th Defendant's client account on account of the vendors, and that the Plaintiffs never received a valid title or possession of the suit properties. Subsequent inquiries at the Lands Registry revealed that the transfer of L.R. No. 12715/626 had been expunged on account of fraud, and L.R. No. 12715/623 had never been available for sale by the purported vendors.
80. Fraudulent misrepresentation led to the total failure of consideration. The Plaintiffs were thus left without the properties or the funds they had paid. Loss naturally flowed from these facts. The Court is satisfied that the Plaintiffs suffered pecuniary loss amounting to the sum of Kshs. 29,100,000.00. This head of claim was pleaded as a liquidated demand, and judgment has already been entered for the same; accordingly, the Court will not re-litigate it here.
81. On the claim for general damages, the Court is mindful that in actions for deceit or fraud, damages may be awarded to compensate the Plaintiffs for the inconvenience, anxiety, and other non-pecuniary loss occasioned by the fraudulent conduct. The Plaintiffs were deprived of a significant investment, were dragged into prolonged investigations and litigation, and have endured the uncertainty surrounding



recovery of their funds. To adequately compensate for this distress, I award the Plaintiffs general damages in the sum of Kenya Shillings Five Million (Kshs. 5,000,000.00), together with interest thereon at the court's rate from the date of this judgment until payment in full.

v. Whether the Plaintiffs are entitled to the reliefs sought, including interest at 20% per annum

82. The Plaintiffs have also prayed for interest at the rate of 20% per annum. Section 26(1) of the *Civil Procedure Act* vests the Court with discretion to award and fix interest in two instances: from the date of filing the suit to the date of judgment, and from the date of judgment until payment in full. The exercise of this discretion must be judicious.

83. In *Adhiambo & 2 others v Ambrose Rachier, Otiende Amollo & Jotham Arwa All t/a Rachier & Amollo Advocates & 5 others (Environment & Land Case 1135 of 2016) [2023] KEELC 17475 (KLR)* (11 May 2023), the Court stated:

“First, at all times a Trial Court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial Court with utmost respect and should refrain from interference with it unless it is satisfied that the Lower Court proceeded upon some erroneous principle or was plainly and obviously wrong... Second, Under Section 26(1) of the *Civil Procedure Act*, the Court has discretion to award and fix the rate of interests to cover two stages namely: (a) The period from the date the suit is filed to the date when the Court gives its judgment; and (b) The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the Court may, in its discretion fix... Third, when it comes to the period before the filing of the suit, Section 26 of the *Civil Procedure Act* has no application. Instead, interest prior to the date of the suit is a matter of substantive law and is only claimable where under an agreement there is stipulation for the rate of interest... or where there is statutory right to interest.”

84. The Plaintiffs have not adduced any agreement or evidence of mercantile usage entitling them to interest at 20% per annum; neither have they pleaded or proved a contractual stipulation binding the Defendants to this rate. In the absence of such contractual or statutory foundation, the Court finds that the claim for interest at 20% per annum is not justified.

85. Nevertheless, given that the Plaintiffs were unlawfully deprived of substantial funds, they are entitled to interest at court rates on the liquidated sum of Kshs. 29,100,000.00 from the date of filing the suit until payment in full. Similarly, interest at court rates shall accrue on the general damages awarded herein from the date of this judgment until payment in full.

86. In the result, judgment for the Plaintiffs against the 2nd and 3rd Defendants is entered as follows:

- A. Restitution of the sum of Kshs. 29,100,000/= with interest at court rates from the date of filing suit until payment in full;
- B. General damages in the sum of Kshs. 5,000,000.00, together with interest thereon at court rates from the date of this judgment until payment in full.
- C. Costs of the suit are awarded to the Plaintiffs as against the 2nd and 3rd Defendants jointly and severally, together with interest thereon at court rates from the date of filing.
- D. The 4th Defendant's counter-claim is dismissed with costs to the Plaintiffs.

It is so ordered.



DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Njuguna for the Plaintiffs

Mr. Onderi h/b for Mr. Makori for the 1st Defendant

N/A for the 2nd, 3rd & 4th Defendants

Court Assistant: Edwin

M.D. MWANGI

JUDGE

