



**Mwangi v Githambo Tea Factory Limited & another (Environment and Land Case 53 of 2014) [2025] KEELC 5887 (KLR) (21 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5887 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND CASE 53 OF 2014**

**AK BOR, J  
JULY 21, 2025**

**BETWEEN**

**JULIUS MACHARIA MWANGI ..... PLAINTIFF**

**AND**

**GITHAMBO TEA FACTORY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**KTDA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit seeking performance of contract and for the Defendant to be ordered to pay him Kshs. 1,543,200/= and compensation for the 1000 mango trees on the land known as Nthawa/Riandu/1114 (the suit land). He sought a declaration that the agreement for the sale of the suit land measuring 21 acres between the Plaintiff and the Defendant is null and void on account of the Defendant's failure to perform his obligations under the contract. He also sought an order for cancellation of the Defendant's proprietorship. Alternatively, he sought to have the register rectified to reflect him as proprietor of the suit land and for that order to be served upon the Land Registrar, Embu.
2. The Plaintiff's case is that he agreed to sell the suit land to the 1<sup>st</sup> Defendant for Kshs. 3,529,200/=. He averred that it was agreed that he would take out developments on the land which included 1,000 mango trees. His case was that the 1<sup>st</sup> Defendant only paid him Kshs. 2,076,000/= and that the balance of Kshs. 1,453,200/= was fraudulently paid to a third party who was a stranger to the agreement and to the Plaintiff. The money was paid to the other party under the guise that that party was the Plaintiff's agent. He also claimed that he was prevented from residing on the suit land or harvesting the mango trees or disposing them. He set out the particulars of fraud.
3. The 1<sup>st</sup> Defendant filed a defence in which it denied that the sale agreement dated 8/5/2012 stipulated that the vendor would remove the developments on the suit land including the 1,000 mango trees while relying on the doctrines of cuius est solum eius est usque ad coelom et ad inferos and quic quid



plantatur solo solo credit. The 1<sup>st</sup> Defendant denied the allegations of fraud and averred that the Plaintiff had nominated Evans Matheri Muigai and Salesio I.P Karuga as his agents to procure a buyer for the suit land. That the appointment was evidenced by two Agreements for Commission Agency dated 18/11/2011 executed by the Plaintiff and the agents and that those agreements were presented to the 1<sup>st</sup> Defendant by the nominated agents at the instance of the Plaintiff.

4. The Defendants averred that the agents successfully procured the 1<sup>st</sup> Defendant to buy the suit land at Kshs. 170,000/= per acre. That the agency agreements provided that the Plaintiff was selling the suit land at Kshs. 100,000/= per acre and the agents were entitled to receive any amount that exceeded the Kshs. 100,000/= per acre as their commission. They averred that the agency agreements were ratified in paragraph 3.3 of the sale agreement dated 8/5/2012. The Defendants denied that they owed the Plaintiff any sum of money or compensation for the mango trees.
5. The Plaintiff's evidence was taken on 6/3/2024 by Judge A. Kaniaru. He relied on his witness statement setting out the facts of his claim. It was his evidence that the sale price under the sale agreement was Kshs. 170,000/= per acre for the 21 acres. He stated that he received 10% of the purchase price which was sent to his bank account. That when he went to cut down his mango trees he was stopped by the Chief based on instructions from the 1<sup>st</sup> Defendant's Factory Manager that he was not to be seen on the land. He wrote a letter inquiring about this and got a response that the agreement he had with the agents was void. The 2<sup>nd</sup> Defendant's letter sought to know if he had been paid the balance of the purchase price. When he confirmed that the money had not been paid in full, the 2<sup>nd</sup> Defendant informed him that the balance of the purchase price was paid to Mr. Matheri, his agent. He replied that Mr. Matheri was not his agent since the agency agreement had expired.
6. The Plaintiff produced copies of the search done on the land, two agreements for commission agency dated 18/11/2011 and the correspondence exchanged with the Defendants. He told the court that the Defendants only paid Kshs. 2,760,000/= leaving a balance of Kshs. 1,453,200/=. He claimed that he would have earned Kshs. 300,000/= from the sale of the mango trees which the 1<sup>st</sup> Defendant refused to allow him to cut down.
7. He maintained that he initiated the sale and was selling the land at Kshs. 170,000/= per acre. He conceded that the issue of the mango trees was not in the sale agreement. He was emphatic that the agents were not mentioned in the sale agreement. It was his evidence that the agents did not go back to him after the agreement expired on 28/2/2012.
8. Martin Wachira gave evidence on behalf of the defence on 7/4/2025. He told the court that the Plaintiff had agreed to sell the suit land through brokers called Evans Matheri Muigai and Salesio Karuga at Kshs. 100,000/= per acre and that the agents would get any money that was over and above the agreed purchase price of Kshs. 100,000/=. The Plaintiff and 1<sup>st</sup> Defendant executed the agreement for sale and was paid the deposit of Kshs. 352,920/=. That upon the successful transfer, Kshs. 1,723,080/= was paid into the Plaintiff's bank account while Kshs. 1,453,200/= was paid to the Plaintiff's broker Evans Matheri Muigai as per the Agreement for Commission Agency.
9. He added that the land was sold as it was then meaning that any developments on the land formed part of the land hence the Plaintiff was not entitled to uproot or demolish anything from the land. He maintained that the Defendants' actions were above board. Mr. Wachira produced copies of the title deed, agreement for sale, agreements for commission agency and the correspondence exchanged regarding the sale of the land. He conceded on cross examination that the sale agreement did not mention the broker. He agreed that the bank details where the purchase price was to be paid was indicated at paragraph 3.1 of the sale agreement.



10. The Defendants filed written submissions which the court has read and considered. The Defendants relied on clause 5 of the Commission Agreement which provided that the Plaintiff was ready to sell the land at Kshs. 100,000/= per acre and whatever amount that was over and above this would be paid to the brokers as commission. That this was the basis upon which the 1<sup>st</sup> Defendant paid Kshs. 1,453,200/= to Evans Matheri as the commission fee for the sale. They maintained that clause 3.3 provided that the balance of the purchase price stipulated that the balance of the purchase price after payment of the deposit was payable to the vendor or his nominee.
11. The Defendants submitted that the Plaintiff failed to prove fraud or that the Defendants colluded with the agents to defraud him of part of the purchase price. They maintained that the trees were attached to the land and that since they formed part of the immovable land, ownership passed with the suit land to the Defendants.
12. The issue for determination is whether the Plaintiff is entitled to the reliefs sought in the plaint. It is not in dispute that parties entered into a sale agreement dated 8/5/2012 for the sale of the suit land measuring 21 acres. The agreement was between the Plaintiff and the 1<sup>st</sup> Defendant, and was signed by the Plaintiff and two directors of the 1<sup>st</sup> Defendant. It was witnessed by Duncan Okwaro Advocate and Caroline M. Mukiira advocate. Clause 1.1 (c) of the agreement provided that the purchase price for the land was Kshs. 3,529,200/=, at Kshs. 170,000/= per acre. Clause 3.1 provided that the 1<sup>st</sup> Defendant would pay Kshs. 352,920/= being a 10% deposit into the vendor's bank account provided upon execution of the agreement.
13. Clause 3.2 of the agreement provided that on the completion date, the purchaser would pay the balance of the purchase price of Kshs. 3,176,280/= through Real Time Gross Settlement (RTGS) to the vendor's bank account provided. The completion date was defined under clause 1.1 to mean 30 days from the date of the successful registration of the transfer documents and the issuance of a title deed in the name of the purchaser.
14. The Plaintiff received a deposit of Kshs. 352,920/= upon execution of the agreement and a further sum of Kshs. 1,723,080/= was paid to him after the successful transfer of the land. It is common ground that the balance of Kshs. 1,453,200/= was paid to third parties who the Defendants believed to be the Plaintiff's nominees or authorised agents.
15. The Plaintiff testified that he had initially entered into two agency agreements with Salesio Irungu and Evans Matheri, both dated 18/11/2011. Under one of those agreements, he authorised the agents to scout for a buyer for the suit land, which he was offering at Kshs. 100,000/= per acre. The agreement provided that any amount over and above that price would be retained by the agents as their commission. The second agreement restated the agency arrangement and provided that it would remain valid until 28/2/2012. It also named Duncan Muyodi & Co. Advocates as the advocates for the transaction and stipulated that legal fees would be borne by the commission agents. The Plaintiff testified that the agency agreements expired before the sale agreement was entered into on 8/5/2012 and that the agents never returned to him. He asserted that he entered into the sale agreement with the 1<sup>st</sup> Defendant without involving the agents.
16. The Defendants argued that the balance of the purchase price was paid to the Plaintiff's nominees pursuant to clause 3.3 of the sale agreement. Clause 3.3 provided that on payment of the sums under clause 3.1, which is the 10% deposit by the purchaser, the vendor would forward the transfer documents to the purchasers' advocate upon the undertaking by the purchasers' advocate to pay the balance of the purchase price to the vendor or his nominee. The Defendants argued that they made payment to the Plaintiff's agents on the basis of their being the Plaintiff's nominees. Nominee is defined



in Black's Law Dictionary, 10th Edition, as a person designated to act in place of another, usually in a very limited way; or a party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

17. By the time the sale agreement was executed on 8/5/2012, the agency agreements had already lapsed on 18/2/2012 by effluxion of time and the agents no longer had authority to act for the Plaintiff. There is no evidence to demonstrate that the Plaintiff had renewed or extended the agents' authority by the time the sale agreement was executed. Moreover, the agency agreements were not binding upon the 1<sup>st</sup> Defendant, who was not a party to them and was thus not privy to their terms, the same way the agents were not privy to the sale agreement between the Plaintiff and the 1<sup>st</sup> Defendant, nor were they parties thereto.
18. A plain reading of the agency agreements suggests that the agents were retained solely for the limited purpose of sourcing a buyer for the Plaintiff's land but they were not authorised to receive or handle any portion of the purchase price on the Plaintiff's behalf. Clause 3.2 of the sale agreement required the balance of the purchase price to be paid to the vendor's bank account through RTGS. The clause contained the vendor's bank details. No evidence was tendered by the Defendants to prove that indeed the sum of Kshs. 1,453,200/= was paid to the agents as the Defendants contend.
19. The Plaintiff contended that the parties had agreed that the mango trees and the worker's house on the suit land were to remain his. It was his contention that he was to sell the mango trees to Bidco Company at Thika as wood which would have earned him Kshs. 300,000/=. The Defendants maintained that that was not reflected in the sale agreement. They urged that the mango trees formed part of the land transactions as captured in the Latin maxim *quicquid plantatur solo, solo cedit* which means whatever is attached to the land becomes part of the land.
20. The court agrees with the Defendants that the mango trees were not incorporated into the sale agreement. Had it been the intention of the parties to include such a provision, it would have been clearly reflected in the written agreement. As a general rule, a court of law cannot rewrite a contract between parties and parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. See *Pius Kimaiyo Langat versus Co-operative Bank of Kenya Ltd* [2017] eKLR.
21. The Plaintiff pleaded particulars of fraud against the Defendants. These included paying Kshs 1,453,200/= to a party who was not a party to the agreement; involving other parties in the sale of the Plaintiff's land actively and paying other parties the purchase price meant for the Plaintiff; deliberately failing to pay the Plaintiff his due share and paying the price to a total stranger to the contract without his consent; and acting contrary to the Defendant's own stipulation that the agreement signed between the parties constituted the entire agreement and any representations warranties and statements made by an agent were excluded.
22. Allegations of fraud must not only be specifically pleaded, but must also be proved to a standard higher than the balance of probabilities, although not as high as beyond reasonable doubt. In *Ardhi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR where the court observed that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. That the statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of. That it is not allowable to leave fraud to be inferred from the facts pleaded.
23. The Plaintiff did not adduce evidence to prove fraud on the part of the Defendants. There is no evidence that the Defendants knowingly conspired with the agents to deprive the Plaintiff of his dues.



Similarly, no material was placed before the court to show that the payments to the third parties were made to defraud the Plaintiff. The court finds that although there was a clear breach of the agreement, the claim of fraud was not proved.

24. The court finds that the Plaintiff is entitled to the unpaid balance of the purchase price amounting to Kshs. 1,453,200/=. The claim for compensation for the 1,000 mango trees fails because there was no such term in the agreement.
25. The court enters judgment for the Plaintiff for Kshs. 1,453,200/= against the 1<sup>st</sup> Defendant, plus interest at court rates from the date of filing suit until payment in full. The Plaintiff will have the costs of the suit.

**DELIVERED VIRTUALLY AT EMBU THIS 21<sup>ST</sup> DAY OF JULY 2025.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Josphat Kimwere for the Plaintiff

Ms. Susan Rigaga for the Defendant

Diana Kemboi-Court Assistant

