



REPUBLIC OF KENYA



KENYA LAW
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**Malewa Ranching Company Limited v Administrator of the
Estate of the Late Mwangi Kamau Njuguna & 2 others (Land Case
20 of 2023) [2025] KEELC 878 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 878 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
LAND CASE 20 OF 2023
JM KAMAU, J
FEBRUARY 27, 2025
(FORMERLY NYAHURURU ELC NO. E007 OF 2020)**

BETWEEN

MALEWA RANCHING COMPANY LIMITED PLAINTIFF

AND

**ADMINISTRATOR OF THE ESTATE OF THE LATE MWANGI KAMAU
NJUGUNA 1ST DEFENDANT**

JOSEPH KONE KARIUKI 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

JUDGMENT

1. In this suit, the Plaintiff, a limited liability Land Buying Company duly registered and incorporated in Kenya in 1977 with 967 members sues the administrator of the estate of the late Mwangi Kamau Njuguna and Joseph Koina Kariuki, shareholders in the Plaintiff company who are the current registered proprietors of the parcel of land known as LR.No.3777/415 under Certificate of Title No. I.R. 14024 which they allegedly bought from the Plaintiff at a consideration of Kshs.11,950,000/= and had it transferred to them on 13/9/2012. The land had been in the Plaintiff's name since 19/7/1999. The land measures 119.5 acres. There was no resolution from the Plaintiff Company to sell the vast land and the Company never received the alleged purchase price nor ever attended the Land Control Board for its consent and could not trace any copy of the sale agreement of the sale of the said land. At the time of the alleged sale, the Title Deed in respect to the land had disappeared. All those dealings were punctuated by acts of fraud and the Plaintiff prays for:



1. A declaration that the transfer and registration of all the land known as L.R. No.3777/415 under the Certificate of Title No. I.R. 14024 from the proprietorship of the Plaintiff to the 1st and 2nd Defendant's proprietorship was fraudulent and thus null and void.
 2. A declaration that the 1st and 2nd Defendants obtained transfer and registration of all the land known as L.R. No.3777/415 under the Certificate of Title I.R.14024 by fraudulent and corrupt schemes.
 3. An Order cancellation and nullifying the transfer from the Plaintiff and the registration of all the land known as L.R. No.3777/415 under the Certificate of Title No. I.R.14024 to the 1st and 2nd Defendants on 13th September, 2012.
 4. An Order to the 3rd Defendant for correction and rectification of the register of all the land known as L.R. No.3777/415 by cancelling the transfer and registration of the land known as L.R. No.3777/415 under the Certificate of Title No. 1 I.R. 14024 in the names of the 1st and 2nd Defendant and restoring the same in the names of the Plaintiff.
2. Save what is christened "a summary verdict of Judicial Review Defendants/ Responsibilities by the 1st and 2nd Defendants", the Defendant never filed any Defence. In the said document, which one has to read over and over to understand what the authors mean, since the same is in an intelligible language, the 2 said that they are shareholders of the Plaintiff Company. They also claim that the suit land and others were transferred from Muiriland Estate Limited to the Plaintiff and then to the first two Defendants and that they doubt the Directorship, Chairmanship and also the being in office of the Secretary at the time of filing the suit. They claim that the suit in court is not sustainable. When the suit was set down for hearing, the Plaintiff, through her witness, Chairman/Director Raphael Chege Njaga represented the company to give evidence. He relied on his statement recorded on 12/11/2020 as his evidence in chief and produced the bundle of documents vide list of documents of even date.
 3. In his statement, Mr. Njaga described the Plaintiff as a public Company, limited by shares whose main object is to buy land on behalf of its members. He testified that he was elected the Company's Chairman in a meeting held on 8/9/2017. He further states that after conducting a search of the property known as L.A. No. 3777/415 under Certificate of Title No. I.R. 14024 at the Land Registry on the 16/10/2019 they discovered that the same was registered in the joint names of the 1st and 2nd Defendants as from 13/9/2012 which must have been fraudulent since the Plaintiff has never resolved to sell the suit land nor was there any trace of consideration at all passing hands and the same is also not supported by the resolution of the Company. This has occasioned the Plaintiff great loss and must be reversed. He said that the land is situate in Mawingo and that the local administration was involved in the fraud. The Company had bought a further 5300 Acres which had been subdivided and allocated to her members.
 4. Although Stanley Maina Mutehi, the Company's Secretary to the Board of Directors had been earmarked as a witness, he was not called to testify since his testimony would be a replica of the Chairman's.
 5. To buttress the Plaintiff's case, the witness produced the following documents:
 1. Resolution of the Plaintiff to file a suit and authority to Mr. Raphael Chege Njaga to swear the Verifying Affidavit thereto.
 2. Copy of the Certificate of incorporation of the Plaintiff.
 3. A copy of the Memorandum and Articles of Association of the Plaintiff Company.



4. Certificate of search of the suit property dated 16/10/2019.
 5. Copy of the Land Records dated 16/10/2019.
 6. Abstract from Kipipiri Police Station for O.B. No. 20/6/2020.
 7. The Company Register of the Plaintiff.
6. Having heard the Plaintiff in the absence of the Defendants who had been served and informed of the existence of this suit but failed to defend the same, the court has observed that there is no agreement for the sale of the suit land, that is, Land Reference No. 3777/415 as is required by law.
 7. There is also no resolution to sell the land from the Plaintiff and worse still there are no records showing how the massive consideration was paid and where it went. It is the court's conclusion that such consideration was never paid. The sum of Kshs.11,950,000/= attracted a Stamp Duty of Kshs.239,000/= at the rate of 2%, the land being agricultural. From the documents from the Lands Office, no such Stamp Duty nor registration fee was ever paid. This must therefore have been a boardroom decision where if any money ever changed hands, then the same was not above board and it found its way into the wrong pockets. The same cannot be accounted for. It never reached the Plaintiff, the legitimate owner of the land. It is also to be observed that before the alleged sale, the Title Deed in respect to the parcel of land had conveniently disappeared only to have the land transferred on 13/9/2012.
 8. Secondly, the suit land is agricultural. Section 6 of the [Land Control Act](#), CAP 302, Laws of Kenya provides for any such transaction to take place, consent of the Land Control Board must be obtained.
 9. Under the heading, Transactions affecting agricultural land Section 6 of the [Land Control Act](#),
 1. Each of the following transactions that is to say
 - a. the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area
 - b. the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply
 - c. the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act
 10. Section 38 (1) of the [Land Act](#), No. 6 of 2012 under the heading "Validity of contracts in sale of land" provides:
 1. Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land:-
 - a. the contract upon which the suit is founded:-
 - i. is in writing;
 - ii. is signed by all the parties thereto; and



- b. the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.
11. In essence, the Act provides that no suit shall be brought upon a contract for disposition of an interest in land unless the contract on which the suit is founded is in writing, is signed by all parties thereto and the signature of each party has been attested by a witness who was present when the contract was signed.
12. Likewise, the *Law of Contract Act*, Chapter 23 of the Laws of Kenya provides in Section 3 that:
No suit shall be brought upon a contract for the disposition of an interest in land unless-
- (a) the contract on which the suit is founded –
- (i) is in writing.
- (ii) is signed by all parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.
13. In Civil Appeal Number 22 of 2013, Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, the Court held;
- Section 3(3) of the *Law of Contract Act* provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is in writing, executed by the parties and attested. Section 3(7) of the *Law of Contract Act* excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection. Section 3(3) of the *Law of Contract Act*, came into effect on 1st June, 2003. Prior to the amendment of Section 3(3) of the *Law of Contract Act* in 2003, the subsection read as follows: -
- (3) No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which, the suit is founded, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some person authorized by him to sign it;
- Provided that such a suit shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-
- (i) Has in part performance of the contract taken possession of the property or any part thereof; or
- (ii) Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.”
14. There is no evidence that the 1st and 2nd Defendants have taken possession.
15. The upshot of the above is that the Plaintiff has proved her case on a balance of probability since the Title Deed L.R. No. 3777/415 measuring 119.5 Acres in the name of the 1st and 2nd Defendants must have been so transferred fraudulently and this court Orders that the same be cancelled forthwith. The Court further Orders that L.R. No. 3777/415 under the certificate of Title No. I.R. 14024 be rectified



to read the name of the Plaintiff herein. The same still belongs to the Plaintiff Company for the benefit of its shareholders and more particularly, those who did not benefit from earlier allotment.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 27TH DAY OF FEBRUARY 2025.

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MUGO KAMAU

JUDGE

In the presence of:

Mr. Kago for the Plaintiff

Ms. Nyambura holding brief for Shirika for the 2nd Defendant

C/A – Eric

