



**Ngugi v Huho & 6 others (Environment & Land Case 15 of 2022)
[2024] KEELC 806 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 806 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 15 OF 2022
LN GACHERU, J
FEBRUARY 15, 2024**

BETWEEN

WANJIKU MUCHERU ALIAS WANJIRU NGUGI PLAINTIFF

AND

**ANN WANJIKU HUHO 1ST DEFENDANT
CHARLES KAGONDU MBUI 2ND DEFENDANT
HENRY M GATETE 3RD DEFENDANT
TEDDY IRUNGU MWANGI 4TH DEFENDANT
NUTHU MWANGI 5TH DEFENDANT
JOSEPH KIMEMIA MUTHONDU 6TH DEFENDANT
EDWARD MUIRURI GATETE 7TH DEFENDANT**

JUDGMENT

1. The Plaintiff herein Wanjiru Mucheru alias Wanjiru Ngugi, brought this suit against the Defendants herein vide a Plaint dated 12th May 2022, and prayed for Judgement against them jointly and severally on;
 - a. A declaration that the subdivision and transfer of and parcel Loc.17/Iganjo/296, and registration of the resultant subdivisions in the names of the Defendants herein, was irregular, unlawful and fraudulent and therefore null and void abinitio.
 - b. An Order directing the Land Registrar, Murang'a for cancellation of the registration of the Defendants Ann Wanjiku Huho, Charles Kagondu Mbui, Henry M. Gatete, Teddy Irungu Mwangi, Nuku Mwangi, Joseph Kimemia Muthondu, Edward Muiruri Gatete for the titles of land parcels number LOC.17/Iganjo/1017, LOC.17/Iganjo/1018, LOC.



17/ Iganjo/1019, LOC.17/Iganjo/1021, LOC.17/Iganjo/1022, LOC.17/Iganjo/1066 and LOC.17/Iganjo/1069.

- c. General damage
 - d. Costs of this suit
 - e. Any other Relief this Honourable Court may deem fit to grant.
2. In her claim, the Plaintiff averred that on or around 25th November 1976, she inherited land parcel No. Loc. 15/Iganjo/296, from her late husband Muceru Irungu, who died before independence and the Plaintiff was issued with the certificate of land on 21st November 1977. It was her averment that she did bear any children, and she moved out of the suit property in 1982, when arsonists burnt her house four times. That she feared for her life and consequently, she went to live at Kamuiru, in Mbombo area.
 3. Further, she averred that she would frequently visit the land, before age caught up with her. That she did not spot any actions during the said visits to the suit land.
 4. However, in February 2017, her nephew by the name Evanson Leaky Ngugi Gitau, went looking for her and when they met, she told him about her predicament over the suit land.
 5. That the said nephew conducted an official search on the suit property, only to find that the said land had been subdivided into various parcels of land being Loc.17/Iganjo/1017, Loc.17/Iganjo/1018, Loc.17/Iganjo/1019, Loc.17/Iganjo/1020, Loc.17/Iganjo/1021 and Loc.17/Iganjo/1022.
 6. She also alleged that the said subdivisions had been caused by the Defendants, who also subdivided Loc.17/Iganjo/1020, into further subdivisions being Loc.17/Iganjo/1066 and Loc.17/Iganjo/1069.
 7. That upon realizing the changes on her parcel of land, she sent her nephew Evanson Leaky Ngugi Gitau, to inquire from the Chief's office of Kamahuha Location whether any of the Defendants are known to the area, and the Chief stated that none of the Defendants was known to him. Therefore, the Plaintiff reported the matter to Murang'a Police Station, for investigations but no report has ever been given to her at the time of filing this suit.
 8. The Plaintiff alleged that she has never subdivided, alienated, sold and/or authorised any person or agent to sell any part of the suit property to any person. That she never signed any subdivision or transfer documents, and therefore the acts of such subdivision were fraudulent, and a misrepresentation, and which were committed to occasion the changes that she did not authorize over the suit land, Loc.17/Iganjo/296.
 9. She enumerated the particulars of fraud in Para 13 of the Plaint, wherein she claimed that the suit land Loc.17/Iganjo/296, was subdivided without obtaining a proper procedure and a valid consent of the Land Control Board, which would have required her involvement and the presence of herself. She therefore urged the Court to allow her claim.
 10. The claim is resisted by the Defendants herein who filed their various Statements of Defence. The 1st, 2nd and 3rd Defendants filed their separate Defences through Njoroge Mwaura & Co. Advocates.
 11. In his Defence dated 11th November 2022, the 1st Defendant Ann Wanjiku Huho, denied all allegations made in the Plaint. She also denied that the Plaintiff was in possession and occupation of the suit land until 1982, when she allegedly ran away. The Plaintiff was put to strict proof thereof. She also denied ever subdividing the suit land, and also denied any involvement in the subdivision of the land parcel No. Loc.17/Iganjo/1020, and did put the Plaintiff to strict proof thereof.



12. Further the 1st Defendant denied each and every particular of fraud and she alleged that the said particulars were mere allegations which were baseless and unmerited. She urged the Court to dismiss the Plaintiff's suit with costs plus damages.
13. On the part, the 2nd Defendant, Alpheas Mungai Kagondou, filed the Statement of Defence dated 29th May 2023, on behalf of Charles Kagondou Mbui, and denied all the allegations made in the Plaintiff.
14. He averred that he is the son and administrator of the estate of the late Charles Kagondou Mbui, who died on 17th July 2008. He also averred that the land parcel No. Loc.17/Iganjo/1018, was sold to his late father Charles Kagondou Mbui, by the Plaintiff herein. He further averred that there are cultivation activities on the said parcel of land, and therefore he denied all the allegations made in Para 5 & 13 of the Plaintiff, and did put the Plaintiff to strict proof thereof.
15. He also denied ever subdividing land parcel No. Loc.17/Iganjo/296, nor Loc.17/Iganjo/1020, as Charles Kagondou Mbui, had no interest whatsoever on land parcel No. 1020, and he did put the Plaintiff to strict proof thereof.
16. It was Alpheas's allegations that the Plaintiff could have sold the initial parcel of land, and then relocated to her current parcel of land, by using the proceeds of the sale of the suit land to purchase the current parcel of land where she lives to date. It was his claim that the suit herein is caught up by the doctrine of laches, given that the suit was brought after 12 years had lapsed. He urged the court to dismiss the instant suit with costs to 2nd Defendant.
17. In respect to the 3rd Defendant, Henry M. Gatete, the statement of Defence dated 2nd June 2023, was filed by John Patrick Mwangi Gatete, the son of and one of the administrators of the estate of Henry Maina Gatete, who passed on the 19th June 2019.
18. In the said Defence, John P. Mwangi Gatete, averred that land parcel No. Loc.17/Iganjo/1019, was sold to his father Henry Maina Gatete, by the Plaintiff over 40 years ago. He also averred that there are activities of cultivating the suit land and he denied the contents of Para 5 of the Plaintiff and put the Plaintiff to strict proof thereof.
19. He also denied that his father Henry M. Gatete, was involved in the activity of subdividing land parcel No. Loc. 17/Iganjo/296, nor land parcel Loc.17/Iganjo/1020, since he had no interest whatsoever over the said parcel of land and he also put the Plaintiff to strict proof.
20. It was his further averments, that it was not true that the 3rd Defendant and/or his family does not hail from Kamahuha location and did put the Plaintiff to strict proof. He also claimed that the Plaintiff could have moved out of the suit land after purchasing her current land with proceeds of sale of the suit property. He also denied all the particulars of fraud, and stated that the said particulars are mere allegations, which are baseless and unmerited. It was his allegations that the suit is time barred having been filed after 12 years, had lapsed. He urged the Court to dismiss the instant suit with costs to the 3rd Defendant.
21. The 4th Defendant Teddy Irungu Mwangi, filed his Defence dated 27th June 2023, through the Law Firm of Mwaniki Warima & Co. Advocates. He denied all the allegations made in the Plaintiff, and also denied ever subdividing the land parcel No. Loc.17/Iganjo/296, and its resultant subdivision.
22. It was his allegation that land Parcel No. Loc.17/Iganjo/1021, was registered in the name of his father David Muriigi Machigu, now deceased. He further alleged that the land parcel No. 1021, was a subdivision of Loc.17/Iganjo/296, and that was done with the consent and knowledge of the Plaintiff



herein and that the said transfer was done after following the laid down legal procedures. He did put the Plaintiff to strict proof.

23. He also denied the particulars of fraud, misrepresentation or otherwise, as all the legal procedure had been followed. He contended that he is the absolute registered owner of land parcel No. Loc.17/Iganjo/1021, having acquired the same through transmission vide Nairobi HCCC Succession Cause No. 786 of 2012. That he was not aware of any criminal investigations in respect of the suit property and that he had been in exclusive possession and occupation of the suit property since 1997.
24. It was his further allegation that the Plaintiff has not suffered any loss and damages, and he did put her to strict proof. He also denied receipt of any demand letter and urged the Court to dismiss the Plaintiff's claim.
25. The 5th Defendant did not enter appearance nor file any Defence. Interlocutory Judgement was entered against him.
26. The 6th and 7th Defendants filed a Joint Statement of Defence dated 23rd January 2023, and denied all the allegations made in the Plaint. The 6th Defendant further averred that he bought the land parcel No. Loc. 17/Iganjo/1066, measuring 10 acres from one Mwangi Job, who is still alive and lives in Mpeketoni area at the Coast region.
27. He also averred that he attended the Land Control Board, for consent to subdivide and transfer the land to him, and later, he was issued with the title deed in 1981. The 7th Defendant also averred that he bought land parcel Loc.17/Iganjo/1069, from Mwangi Job for a consideration of 25,000/=, which he fully paid and he obtained the title deed on 15th November 1984.
28. The 7th Defendant also alleged that the said vendor, Mwangi Job's mother Beth Njoki is a sister to the Plaintiff herein, and Mwangi Job had bought from the Plaintiff the subdivision of Loc.17/Iganjo/296, with consent and knowledge of the Plaintiff herein. That any transfer that followed, was done after following the laid down legal procedure and did put the Plaintiff to strict proof thereof.
29. It was there further contention that they are the registered owners of land parcels No. Loc.17/Iganjo/1066 and Loc.17/Iganjo/1069, respectively having acquired clean titles from the vendor Mwangi Job, and therefore they denied all the allegations of fraud, misrepresentation or otherwise, as all the due process had been followed in accordance with law.
30. Further, that the 6th Defendant took possession of his portion of land in the year 1981, and he has been in possession of the same since then, utilizing it and he later charged it to Consolidated Bank of Kenya to obtain loan.
31. On his part, the 7th Defendant averred that he charged the title deed to his parcel of land to Standard Bank, to obtain a loan and therefore the two Defendants are strangers to the particulars of fraud as pleaded in the Plaint and the Plaintiff was put to strict proof thereof.
32. The 6th & 7th Defendants also denied being aware of any criminal investigations in respect of the suit property, and also averred that they have been in exclusive possession and occupation of their respective portions of land from the date of purchase. The Plaintiff was put to strict proof and they urged the court to dismiss the Plaintiff's suit with costs to the 6th & 7th Defendants.
33. The matter proceeded for hearing by way of viva voce evidence. The Plaintiff gave evidence for herself and called one witness to support her claim.
34. The Defendants who filed their Defences gave evidence for themselves and the 6th & 7th Defendants called one witness, Dw7 Joyce Wambui Mburu, to support their defence.



Plaintiff's case.

35. PW 1: Doris Wanjiru Mucheru, gave evidence and adopted her witness statement dated 12th May 2022, as her evidence in Chief. She also produced the list of documents contained in her bundle of documents P Exhibit 1. Her witness statement was a reiteration of her claim as contained in the Plaintiff. It was her evidence that she inherited the suit land in 1976, from her husband Mucheru Irungu, and that she lived on the suit land until 1982, when she re-located to live at Kamuiru, which is in Mbombo area, after arsonists burnt her houses down four times, and she also received threats from her sisters' children who demanded a share of her land on the ground that she was childless.
36. She further testified that even though she lived at Kamuiru area, she could visit the suit land frequently before age caught up with her. That she only revived the visit in 2017, when her nephew Evanson Leakey Ngugi Gitau whose father was a brother to her husband visited her.
37. That she explained to him about land parcel Loc. 17/Iganjo/296, and the reasons why she left the land. That she gave him Power of Attorney to investigate and establish the status of the said land. That her nephew went to the Chief of Kamahuha Location who indicated that he did not know any of the Defendants. That her nephew told her that the Defendants herein had subdivided the suit land without her consent and/or proper use of due procedure and valid consent of the Land Control Board. That she reported the matter to Murang'a Police Station, but no report has ever been given to her. She denied ever subdividing and transferring the suit land No. Loc.17/Iganjo/296, to the Defendants herein and therefore, the whole transaction was a fraud and she urged the Court to allow her claim. She also stated that she did not know the Defendants herein.
38. In cross-examination by Counsel for the 1st, 2nd & 3rd Defendants, the Plaintiff stated that her ID card reads Wanjiru Ngugi and confirmed that Ngugi was her father. She also testified that she had lived on the suit land, but she was evicted and her houses were torched by arsonists.
39. That she moved elsewhere where she purchased another land, but she denied ever selling the suit land. The Plaintiff denied ever knowing one Huho Njuguna, and that she moved out of the suit land in 1980, after her house was torched, but she did not report the incidents of arson to the police.
40. On cross-exam by Counsel for 4th, 6th and 7th Defendants, she admitted that she did not know who had subdivided the land. She also told the court that the title deed was destroyed in the house when it was razed down, but she has never applied for a fresh title deed, which title deed was in her name. She admitted knowing Mwangi Job, who was her nephew. She also told the court that she did not sell the suit land to Mwangi Job, who now lives in Mombasa. She also admitted that she had a Motor vehicle and Mwangi Job sold the suit land without her consent. That she moved out of Iganjo area because she had been disturbed by Mwangi Job, and that was in 1980. She denied that she ever subdivided the land, but she only came to know about the subdivision and transfers of the land to the Defendants recently.
41. On re-exam, she admitted that she has another land in Mbombo area, also known as Kamuiru, and that she only wanted to sell the suit land and is when she found that it had been subdivided and sold to the Defendants. She denied that she was the one who sold the suit land.
42. PW 2: Evanson Leakey Ngugi Gitau who lives in Kirinyaga, and where he is a teacher by profession told the Court that the Plaintiff is her auntie, as she was married to his step-father. He adopted his witness statements as his evidence in Chief.
43. It was his testimony that his father was Gitau Kamau who lived in Muri farm. That he had a brother Known as Mucheru, who was the husband to the Plaintiff. That his father had requested him to look for the Plaintiff so that she could show him the suit land. That he was supposed to inherit that land, and



- therefor he looked for the Plaintiff and finally traced her at Kamuiru area. That the Plaintiff informed him that the suit land was in Iganjo area, but she had been chased away after her houses were torched down by arsonists and that she did not have title deed for the said land.
44. Further, that though she had reported the matter to the Chief, the said Chief of Kamahuha Location had an interest in the matter and he did not take any action. Then he was sent to Murang'a Lands office, where he carried a search and obtained a copy of the Green Card. That he noted that the said land had been subdivided and transferred to different individuals. That he was given particulars of the subdivisions at Murang'a Lands office and thereafter, he informed the Plaintiff that she did not have any land in her name. Subsequently, the Plaintiff was advised to file this suit.
 45. In cross-examination by Counsel for the 1st, 2nd & 3rd Defendants, the PW 2 confirmed that the Plaintiff did not have Children, but she had a step-daughter. He also stated that he was pursuing his interest in Land Parcel Iganjo/297, but the suit land is Loc 17/ Iganjo/296.
 46. He said he had documents to show the land belonged to his father. That he was informed his aunt was Wanjiru Mucheru and her Identity Card reads Wanjiru Ngugi. He claimed that he was shown the suit land by a neighbour called Nduati, who is not a witness, in this case. He also confirmed that he traced the Plaintiff at Kamuiru (Mbombo area), and Kamuiru is not in Iganjo area. It was his evidence that her traced her in 2017, and this suit was filed in 2022.
 47. It was his further evidence that in 1980, he was still in School, but he started to look for the Plaintiff in 2017. He could not tell the Court what transpired in 1980, but he got information from the Plaintiff that in 1980, she used to farm on the suit land. That she did not sell the suit land, but moved to Kamuiru because she feared for her life. He also confirmed that he paid for the Plaintiff's land in Kamuiru.
 48. The witness further stated that he did not know if the Plaintiff subdivided land in 1980, and he did not have any evidence from Land Control Board to show that the consent was unlawfully obtained. He also did not have any report from Land Registrar Murang'a to show that the subdivision of the suitland was illegal. It was his evidence that the land was above 29.5 hectares, and that the land was initially for the Plaintiff. He however, did not know how the 1st, 2nd & 3rd Defendants obtained their respective parcels of land.
 49. It was his further testimony that he reported the matter to Murang'a Police Station, but he did not have OB number. He also confirmed that the 1st, 2nd and 3rd Defendants have not been charged with any criminal charges. Further, that his Power of Attorney was registered on 27th June 2021, and he had reported the matter to the Police on 9th June 2021.
 50. He confirmed that he has Certificates of official searches for the resultant subdivisions and that land parcel No. 1017, belonged to Kamande Githima, but not Ann Wanjiku, the 1st Defendant herein. He also testified that the Plaintiff has not sued the Attorney General nor the Land Registrar.
 51. On Cross-examination by counsel for 4th, 6th & 7th Defendants, he testified that he came to know about the land in 1970s, as he used to visit thereon as a young man. He also confirmed that the Plaintiff's husband died a long time ago, and he was buried on the suit land. Further, that the Plaintiff relocated to Kamuiru in a year that he could not recall. He clarified that he was assisted to trace the Plaintiff by one Cecilia, who is an interested party herein.
 52. It was his further testimony that the Plaintiff inherited the suit land from her husband, and that she should get her justice. That when he finally met the Plaintiff, he realised that the suitland had been subdivided, but he did not know how the suitland changed hands. That the Plaintiff told him that she did not sell the suit land and the said land was subdivided in 1980, without her consent or knowledge.



53. He also confirmed that the suitland was subdivided in 1980, wherein new title deeds were issued. It was his evidence that the suitland has been cultivated, but not occupied and that the Plaintiff insisted that she did not transfer the said land. However, Plaintiff and PW2, did not report to the Police a case of fraud, but they reported a case of loss of title deed.

54. In re-exam, PW2, stated that he paid the remaining balance of the purchase price for Kamuiru land, which land belongs to the Plaintiff.

He also confirmed that he looked for the Plaintiff from 2016, but he had no evidence that he was looking for her all that time. Further he alleged that the Defendants did not have documents to show that they purchased the suitland. It was his evidence that the Kamuiru land was not in dispute, and thus the reasons why he did not avail its documents. That the Plaintiff's land was parcel No Loc 17/ Iganjo 296, and his father's was Loc 17/ Iganjo 297, thus bordering each other.

Defence Case

1st, 2nd & 3rd Defendants' Case.

55. DW 1: Anne Wanjiku Huho, the 1st Defendant adopted her witness statement dated 11th October 2022, and relief on the list of documents which were produced as DExhibits 1-8. She relied on her witness statement wholly and confirmed that the parcel of land is Loc.17/Iganjo/1017, which she has owned for 10 years now. In her witness statement, she had alleged that her husband was the late James Huho Njoroge who passed on in 1989.

56. She also alleged that her parcel of land, Loc.17/Iganjo/1017, measuring 10 acres was purchased by her late husband sometime between 1980-1981 as is reflected in the Green card.

57. She also testified that the Plaintiff actually subdivided the land parcel Loc 17/ Iganjo/ 296, lawfully, procedurally and then sold the resultant subdivisions to other people, her co-defendants included. That the Plaintiff also gave the purchasers ownership and possession, of the said purchased portions of land including her husband.

58. Further that her husband used to visit the purchased parcel of land, Iganjo 1017, and DW1 would occasionally accompany him. That when her husband died, she filed a Succession Cause, wherein she obtained Letters of Administration, and the Certificate of Grant was confirmed in 1990, and therefore, the said land was registered in her name by transmission.

59. It was her testimony that the suit property was transferred to her name in 2005, as a beneficiary of the said estate and the title deed was issued in her name. She testified that she had been in ownership of the said land parcel without any form of Intrusion, interruption or trespass, having enjoyed peaceful existence and occupancy of the suit and.

60. It was her further claim that from the time her husband purchased the land to now is over 42 years, without any claim from the Plaintiff, and that the Plaintiff has only changed her mind recently by claiming that she never sold and transferred the said land to the Defendants.

61. Dw1 further testified that the Plaintiff has not cultivated nor developed the suit land ever since she sold it to her husband, and the 1st Defendant, urged the court to dismiss the Plaintiff's suit with costs.

62. On the date of defence hearing, the Plaintiff and her Advocate were absent without giving reasons for their absence, and there was no one to hold the counsel's brief. Consequently, the Defendants were not cross-examined.



63. DW 2 Alpheas Mungai Kagundu, told the Court that he was representing the 2nd Defendant, Charles Kagundu Mbui, his late father, who passed on the 17th July 2008. He testified that he is the administrator of his father's estate, and he relied on his witness statement dated 29th May 2023, and the list of documents which he produced as DW II Exhibits 1-5.
64. It was his evidence that the land parcel No. Loc.17/Iganjo/1018, was purchased by his father Charles Kagundu Mbui, which is approximate 10 acres, and it was also registered in the name of his late father Charles Kagundu Mbui. That after his father died, the family filed a Succession Cause, and Alpheas is one of the administrators. That the family intends to register the land in the name of their Company, and that his father has held the land for the last 40 years.
65. It was his further evidence that he came to know about this case in May 2023, and he urged the Court to dismiss the Plaintiff's claim. He further testified that his father, Charles Kagundu had purchased the suitland for value and the same was transferred to him without any issue. DW 2 was also not cross-examined since the Plaintiff's and/or her advocate were absent and Counsel for 4th, 6th & 7th Defendants had no questions for him.
66. DW 3: John Patrick Mwangi Gatete, told the Court that he represents the family of Gatete and that his father was Henry Maina Gatete, sued as 3rd Defendant is deceased. He relied entirely on his witness statement dated 2nd June 2023.
67. In his witness statement of 2nd June 2023, which he relied on fully, he alleged that he is a son of, and one of the legal representative together with two others of the estate of Henry Maina Gatete vide Letters of Administration issued on 20th September 2022.
68. It was his testimony that Henry Maina Gatete, his father passed on the 19th June 2019, and that the family of late Henry M. Gatete was never served with summons to enter appearance, and they only learnt about the case from DW2.
69. It was his further evidence that land parcel No. Loc.17/Iganjo/1019, measuring about 10 acres, was purchased by his father in 1980s and he has owned the said land for over 40 years. That the said land was charged to Standard Chartered Bank in 1983 and it is being discharged following Succession Case NO. 59 of 2020.
70. It was his claim that their father purchased the suit land Loc.17/Iganjo/1019, and has been farming and cultivating on it all along. That there was a transfer that was effected in favour of his father and therefore the suitland could not have been subdivided irregularly or through misrepresentation. He urged the court to dismiss the Plaintiffs suit as Henry Maina Gatete obtained the suit land lawfully legally.
71. DW 2 was also not cross-examined as the Plaintiff and/or her advocate were absent and Counsel for 4th, 6th and 7th Defendants opted not cross examine him.

4th, 6th & 7th Defendants' Case.

72. DW 4: Teddy Irungu Murigi, the 4th Defendants told the Court that he recorded his witness statement on 27th July 2023. He adopted it fully, and also produced his bundle of documents as DW 4: Exhibits 1-4. It was his evidence that he got the suit land through transmission. That his father was the late David Murigi Machugu, and the said David Murigi, had purchased the suitland from the Plaintiff. That his father died on 11th September 1998, and vide Nairobi High Court Succession Cause No. 786 of 2012, wherein there was no protest, he got the land transmitted to him. He confirmed that he uses the suit land, and that he did not obtain the said land illegally. He urged the Court to dismiss the Plaintiff's suit with costs.



73. DW 5: Joseph Kimemia Muthondu from Kigumo area, also adopted his witness statement dated 23rd January 2023. He produced his list of documents as DW 5 Exhibits 1-2. It was his evidence that the land in question is Loc.17/Iganjo/1066, which he acquired in 1981. He testified that he bought the said land and since then, he has been in occupation and possession of the same. He confirmed that as a purchaser, he went before the Land Control Board together with the vendor, where they obtained consent to transfer. That there was no objection from anyone and he denied that he acquired the said land illegally or fraudulently.
74. DW 6: Edward Muiruri Gatete Mburu from Kigumo area testified that he recorded his witness statement on 23rd January 2023, which he adopted fully. He also produced his list of documents as DW 6 Exhibits 1-2. It was his further testimony that the land in question, Loc.17/Iganjo/1069, which is about 20 acres, was purchased by him in 1984, and he has been in occupation and ownership of the same since then, and there has been no complaint or claim over the suit land. He also testified that he has utilized the said land for over 40 years and he is still using it to date. He was also not cross-examined.
75. DW 7: Joyce Wambui Mburu, from Kamahuha area, testified that she had recorded her witness statement on 23rd January 2023. She adopted it fully and further stated the Plaintiff is her aunt, and she lives at Kamuiru area. It was her further evidence that she knows the suit land, which was original owned by Mucheru Irungu, (deceased), the husband to the Plaintiff.
76. It was her further evidence that the Plaintiff subdivided the said land and sold it to different people and then moved out of the suit land. That the suit land was initially Land Parcel No. 296, but after subdivision, it changed and the resultant subdivisions have different numbers and are owned by different persons, who have their title deeds.
77. In cross-examination, DW 7 confirmed that the Plaintiff used to live with her mother, after her house was torched down. That when the Plaintiff sold the land, she was mentally sound and she subdivided and transferred the land voluntarily. It was her further testimony that the Plaintiff sold the suit land to the Defendants and that she never complained. That the Plaintiff raised the present complaint recently, but before that, there was no objection raised by her.
78. After the close of viva voce evidence, the parties through their advocates filed and exchanged written submissions. The Plaintiff filed her submissions on 6th September 2023 through Gitau Kaigai & Co. Advocates. Reliance was placed on Sections 24 and 26 of the Land Registration Act. It was submitted that the Plaintiff was not involved in the subdivision, sale and transfer of her land parcel No. Loc.17/Iganjo/296. It was also submitted that the said subdivision and transfer was fraudulent, illegal and irregular. The Plaintiff urged the Court to allow her claim.
79. The 1st, 2nd & 3rd Defendants filed their submissions on 18th July 2023 and submitted that the Plaintiff has sued the wrong parties and that she did not prove her case on the required standard of balance of probabilities. These written submissions were filed through Njoroge Mwaura & Co. Advocates. They relied on various cases among them; East African Court of Justice Appeal case No. 2 Of 2012, Attorney General of Uganda & Another vs Omar Awadh & 6 others(2013) eklr, Vijay Morjaria vs Nansiigh Mahusingh Darbar & another (2000) eklr, where the court held that particulars of fraud must be distinctly alleged and proved, and fraud cannot be inferred from the facts. Kinyanjui Kamau vs George Kamau(2015) eklr, where the court held that “ it is trite law that any allegations of fraud must be pleaded and strictly proved”
80. The 1st, 2nd, and 3rd Defendants urged the Court to dismiss the Plaintiff's suit with costs to them.



81. The 4th, 6th & 7th Defendants filed their written submissions dated 6th September 2023, through Mwaniki Warima & Co. Advocate, and submitted that the Plaintiff failed to prove her case on the required standard of balance of probabilities. They relied on the case of Kinyanjui Kamau vs George Kamau (2015), eKLR, where the Court held;

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

82. They urged the Court to dismiss the Plaintiff’s case with costs to the 4th, 6th and 7th Defendants.

83. The above being the available evidence and the written submissions, this court has carefully considered them together with the exhibits produced in Court, and the relevant provisions of law and finds as follows; -

84. There is no dispute that land parcel No. Loc.17/Iganjo/296, which measured approximate 29.52 Ha. was initially registered in the name of Mucheru Irungu on 9th July 1962, and this was a first registration and therefore Mucheru Irungu was registered as the proprietor during land demarcation and consolidation in 1962.

85. The Plaintiff in her evidence in court averred that she was a wife of Mucheru Irungu, who died before independence. It is also evident that the Plaintiff herein Wanjiru Mucheru became the registered owner of the suit land on 25th November 1976, and the land certificate was issued on 21st November 1977. The said parcel of land was registered under the Registered Land Act, Cap 300 (now repealed).

86. Therefore, the said suit land is administered under the Registered Land Act regime. Under section 27 of the said Cap 300, a proprietor of land who is issued with a certificate of title is vested with the absolute ownership of that land together with all rights and privilege belonging on appurtenant thereto.

87. Therefore, when Wanjiru Mucheru was registered as the proprietor of the suit land on 21st November 1977, she became the absolute and indefeasible owner of the suit land. Further, as provided by section 28 of the said Cap 300, her rights could only be defeated as provided by the Act.

88. From the Green card produced as exhibit by the Plaintiff, it is evident that this title on Loc.17/Iganjo/296, in the name of Wanjiru Mucheru was closed on subdivision on 31st August 1980. The resultant subdivisions were Loc.17/Iganjo/1017, 1018, 1019, 1020, 1021 and 1022, which parcels of land are owned by different persons, the Defendants herein included.

89. With the above subdivision, it is clear that land parcel No. Loc.17/Iganjo/296, is not in existence, but in its place there are various land parcels which are owned by different proprietors. Most of these subdivisions were registered in the 1980s, under Cap 300(repealed), and therefore, the said registered owners too are the absolute proprietors. However, their rights can be defeated as provided in the Act.

90. Further from the certificates of official search produced by the Plaintiff, the resultant subdivisions are owned by different individuals among them; Loc.17/Iganjo/1018 was issued to Charles Kagondu Mbui, on 31st August 1980, and title deed was re-issued to him on 3rd March 1994. However, from the evidence of DW 2, Alpheas Mungai Kagondu, this land parcel is in the process of being transmitted to



a Company since the proprietor Charles Kagundu Mbui passed on 17th July 2008, and his estate has now been distributed as is evident from the certificate of Confirmation of grant.

91. Further, it is clear for the certificate of official search for land parcel No. Loc.17/Iganjo/1019, that this parcel of land was registered in the name of Henry Maina Gitete on 31st December 1980, and Certificate of title was issued to him on 24th February 1981.
92. However, as per the evidence of DW3 John Patrick Mwangi Gatete, the said proprietor, Henry M. Gatete, is deceased, having died on 19th June 2019, and his estate is undergoing the succession proceedings. It is evident that DW3, is one of the administrators of his estate, and therefore the 3rd Defendant is deceased, and not living.
93. It is also evident that land parcel No. Loc.17/Iganjo/1021, is registered in the name of Teddy Irungu Murigi as from 29th October 2014, under the [Land Registration Act](#) regime. However, before then, the said land parcel was registered in the name of David Murigi Machugu as from 12th November 1997. Teddy Irungu Murigi (not Mwangi), the 4th Defendant, became registered as proprietor under the [Land Registration Act](#) 2012, and as provided by Section 24 of the said Act, he is deemed to be the absolute and indefeasible owner of the suit land with all privileges appurtenant thereto.
94. The other subdivisions is Loc.17/Iganjo/1022, in the name of Nuthu Mwangi, as from 1st August 2004. The said Nuthu Mwangi, did not enter appearance nor file defence. He did not oppose the suit herein.
95. The evidence on record shows that land parcel No.Loc.17/Iganjo/1066, was registered in the name of Joseph Kimemia Muthondu, on 26th February 1981, and a certificate of title was issued. Joseph Kimemia, testified as DW5, wherein, he told the court that he bought this parcel of land from Mwangi Job, who was the registered owner of the said parcel of land.
96. Finally, land parcel No. Loc.17/Iganjo/1069, is in the name of Edward Muiruri Gatete, who testified as DW6, and told the Court that he bought the said parcel of land in 1984, from Mwangi Job, who is still alive and he lives in Mpeketoni.
97. It is clear that the above persons are registered as the owners of their respective parcels of land and therefore prima-faciely, they are deemed to be the absolute and indefeasible owners of their respective parcels of lands as provided by Section 27, of the Registered [Land Act](#), Cap 300 (repealed), and which provision of land is now found in Section 24 of the [Land Registration Act](#) 2012.
98. The above properties also have their respective certificates of titles or the title deeds and as provided by Section 26 of the said [Land Registration Act](#), 2012, the said certificate of titles which are issued by Land Registrar upon registration shall be deemed to be prima facie evidence that the said proprietors are the absolute and indefeasible owners, and the said titles shall not be subject to challenge, except on the conditions set in section 26(1) a & b of the said Act.
99. Once these exceptions are proved, it is apparent that the said certificates of titles can be impugned. These exceptions are; -
 - (a) on the ground is fraud or misrepresentation, to which the person is proved to be a party; -
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.



100. The Plaintiff's claim is that she did not subdivide her land parcel No. Loc.17/Iganjo/296, and that the Defendants who are the registered owners of the resultant subdivisions of land parcel No. 296 are registered so through fraud.
101. The Plaintiff enumerated the particulars of frauds as follows: -Subdividing the said land Loc.17/Iganjo/296, without proper procedure.Processing registration of their respective parcels of land without obtaining proper procedure.Forging all or most of the necessary documents.Misdirecting the land surveyor, Land Control Board and Land Registrar.Submitting mutation forms without consent of the PlaintiffImpersonating the Plaintiff.
102. It is apparent from the statements of Defence filed by all the Defendants herein except 5th Defendant that they denied the Plaintiff's allegations. With that denial, obviously, then the Plaintiff who had alleged had the onus of calling sufficient evidence to prove her allegations, and prove on the required standard.
103. It is trite law that the burden of proof is upon the person who alleges existence of certain facts. See sections 107, 108 and 109 of the *Evidence Act*, which provides; -
- “ 107. Whoever desires any court to give judgment as to any legal right or liability
(1) dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
104. The above being the background of this claim, the Court finds the issues for determination are;
- i. Whether the suit is time barred?
 - ii. Whether the Plaintiff's has proved her case on the required standard?
 - iii. Whether the Plaintiff's has sued the proper parties?

i. Whether the suit is time barred?

105. The Defendants in their Statements of Defence had alleged that the suit herein has been caught by the doctrine of Laches, as it was filed after 12 years had lapsed. The Plaintiff denied the allegations and alleged that her suit though founded on fraud, is not time barred as she discovered fraud on 9th December 2020.
106. Under the *Limitation of Actions Act*, it is clear that an action founded on Fraud cannot be brought to court after three years. Further, a suit for a claim of land cannot be brought after a lapse of 12 years. See section 7 of *Limitation of Actions Act*, which provides;



Actions to recover land

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

107. Further, it is evident that if a suit is time barred, it cannot stand, as such limitation goes to the jurisdiction of the court. See the case, *Bosire Ogero vs Royal Media Services (2015) eKLR*, where the Court held;

“The issue of limitation goes to the jurisdiction of Court to entertain claims and therefore if a matter is statute barred, the Court has no jurisdiction to entertain the same. And even if the issue of limitation is not raised by a party to the proceedings, since it is a jurisdictional issue, the Court cannot entertain a suit which it has no jurisdiction over.”

108. The purpose barring suits which are time barred is to prevent stale suits from being prosecuted. See the case of *Gathoni vs Kenya Co-operative Creameries Ltd (1982) eKLR*, 104, where the Court of Appeal held as follows;

“The law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest”

109. The Defendants have alleged that the Plaintiff's suit was brought after lapse of 12 years, and therefore it is time barred. From the Plaintiff's allegations in the Plaintiff, her claim is founded on Fraud. She alleged that she discovered this fraud in the year 2020. This suit was filed in on 22nd June 2022.

110. It is not in doubt that for actions founded on fraud, time starts running from the time alleged fraud is discovered. Since the alleged fraud was allegedly discovered in the year 2020, then three years would have lapsed in 2023. By the time the suit was filed on 22nd June 2022, the limitation of actions had not caught up with the Plaintiff. She was still within time, and thus the suit is not time barred. See the case of *Javed Gabal Rahim & Another vs Benard Alfred Wekesa Sambu & Another*. CA No. 11 of 2001 LLR 6088 (CAK) the court is said to have held as follows;

“In a claim for land on the basis that registration was done by way of fraud, the time starts to run when the said registration is discovered and the limitation is a period of three years.”

111. Consequently, this Court finds and holds that the suit is not time barred, and will proceed to determine it on merit.

ii. Whether the Plaintiff's has proved her case on the required standard.

112. It is trite that he who alleges must prove and that the burden of proof is upon the person who alleges existence of certain facts.

Further, it is evident that for one to discharge the burden of proof, the person alleging must call sufficient evidence to prove case on the required standard of balance of probabilities see the case of *Miller Vs Minister of Pensions (1947) 2 ALL ER 372*, where court held;

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it



more probable than not; the burden is discharged, but if the probability is equal, it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will loose, because the requisite standard will not have been attained.”

113. The Plaintiff herein is the one who has alleged, and therefore the burden of proof is upon her to avail sufficient evidence to prove her case on the required standard. See section 108 of the *Evidence Act*.
114. In an attempt to discharge her burden of proof, the Plaintiff alleged that she did not subdivide her land Parcel No. Loc.17/Iganjo/296, and that the said subdivision was done fraudulently, and she set out the particulars of the said fraud in Para 13 of her claim.
115. Having set out the particulars of fraud, it was upon the Plaintiff to call sufficient evidence to prove each and every alleged particulars of fraud distinctly. The evidence needed to prove that these acts were committed by the Defendants here. See section 109 of the *Evidence Act* and also the case of Vijay Morjan vs Nansingh Darbar(supra) where the court held that; it is settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”
116. The Defendants denied the commission of the particulars of fraud, and they did put the Plaintiff to strict prove. Therefore, the Plaintiff needed to discharge the burden of proof as captured in Sections 109 and 112 of the *Evidence Act*. See also the case of Hellen Wangari Wangeshi – Carumera Muthini Gathua (2005) eklr, where the court held:- it is well established rule of evidence that whoever asserts a fact is under an obligation to prove it in order to succeed .As observed above, the appellant made an allegation in the plaint , hence she was under an obligation to support the allegation. For since there was a denial in the defence, it was necessary to adduce evidence to show how the amount was arrived at”
117. Similarly, the Plaintiff herein had an obligation to adduce evidence to support her allegations. It was her evidence that the Defendants presented themselves before the Land Control Board and Land Registrar and misrepresented facts. It was incumbent upon her to call those persons as her witnesses. See Section112 of the *Evidence Act*, which provides; - In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”
118. See also the case of Jennifer Nyambura Kamau vs Humphery Mbaka Nandi (NYR CA Civil Appeal No. 342 of 2010(2013) eklr, where the court held that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.
119. With the above in mind, this Court will now scrutinize the evidence of the Plaintiff as presented in Court and her claim as contained in Plaint, together with the Defence tendered by the Defendants and determines whether the Plaintiff herein has discharged her duty.
120. The Plaintiff alleged that the Defendants caused the land parcel No. Loc.17/Iganjo/296, to be subdivided without her knowledge and her consent and as a result, they illegally acquired the resultant subdivisions of the original parcel of land.
121. From the available evidence, it is evident that land parcel NO. Loc. 17/Iganjo/296, was subdivided in 1980 and the same was closed upon subdivisions. The Plaintiff has alleged that she did not cause the said subdivisions. However, PW7, Joyce Wambui Mburu, testified that the Plaintiff is her aunt and she caused the above stated subdivisions, and thereafter sold the resultant subdivisions to different



- persons. That the Plaintiff bought her present parcel of land from the proceeds of sale of the resultant subdivisions.
122. Since the Plaintiff herein alleged that the subdivision of her parcel of land was done without her consent, she ought to have called evidence of the officials from the relevant Land Control Board, to confirm whether there was any application for subdivision and if so, the said application was by who, and whether the said consent was given or not. Further, she ought to have called evidence from the Lands office to confirm whether there were transfer forms signed, and who had signed them.
123. The Plaintiff also alleged that she did not have her original title deed because it was burned to ashes when her house was torched in 1980s. The Defendants alleged that the Plaintiff sold the resulted subdivisions of her original parcel land, and she is just denying this transaction now.
124. Since Plaintiff was put to strict proof by the Defendants, she ought to have called evidence from Murang'a lands office to confirm whether the original title deed was available or not available during the subdivision and transfers. Without calling the above witnesses, the court will have no option but to find and hold that there was no sufficient evidence to discharge the burden of proof.
125. Further, the Plaintiff alleged fraud on the part of the Defendants. With that allegation of fraud, it was incumbent upon her as required by Sections 107 & 109 of the *Evidence Act* to avail sufficient evidence to prove that indeed the subdivision of Loc.17/Iganjo/296, was fraudulent and thereto the registration of the suit property in the name of the Defendants was fraudulent and was done through misrepresentation.
126. In the Particulars of fraud, the Plaintiff alleged that the Defendants subdivided land Parcel No. Loc.17/Iganjo/296, without obtaining proper procedure and a valid consent of the Land Control Board. For the Plaintiff to prove that there was no valid consent from the Land Control Board, and that she was not involved, she ought to have availed evidence from the relevant Land Control Board to confirm that indeed, before the suit land was subdivided, there was no consent from the Land Control Board and/or the Plaintiff was not present or did not present the application. How could she have done this? By calling a witness from the relevant Land Control Board to support her allegations.
127. The Plaintiffs also alleged that the Defendants did process registration of the resulted subdivisions of Loc. 17/Iganjo/296, being Loc. 17/Iganjo/1017 to 1022, without obtaining proper procedural and valid consent of the Land Control Board. How could the Plaintiff have proved these allegations? Firstly, the Plaintiff ought to have called evidenced from Murang'a lands office, to confirm that indeed the Defendants are the ones who processed the said registration. The witness/witnesses from the said lands office also ought to have testified on whether there was any consent presented from the Land Control Board, and whether the same was valid or not. The Plaintiff failed to call such evidence and therefore this fact was not proved.
128. The Plaintiff also alleged that the Defendants forged all or most of the necessary documents by alleging that they were signed by the Plaintiff whereas she did not sign them. Forgery or Fraud is a serious allegation which ought to be proved by calling sufficient evidence to prove it. see the case of "Railal Gordhanbhai Patel Vs Lalji Makanji (1957) E.A 314, the Court held as;
- “ ... allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, but something more than a mere balance of probabilities is required.”
129. The Plaintiff alleged that there was forgery of all or most of the necessary documents and that she did not sign them. Which were these documents? For Plaintiff to prove that there was forgery, she needed



to call evidence to prove that she did not sign the alleged documents. Firstly, she needed to identify the alleged signed documents and then identify out the signature/s that she is contesting, and thereafter avail evidence of an expert witness to confirm that the signature/s thereon was not by the Plaintiff. The Plaintiff did not call such evidence and there was no evidence at all to prove that indeed there was forgery of all or most of the necessary documents, and that the said documents were not signed by the Plaintiff herein.

130. The Plaintiff also alleged that the Defendants misdirected the Land Surveyor, the Land Control Board and the Land Registrar that the Plaintiff had signed the relevant documents to effect subdivision transfer of Land Parcel No. Loc.17/Iganjo/296, whereas the Plaintiff had not signed them. This allegation was vehemently denied by the Defendants.
131. For the Plaintiff to prove the above allegation, she ought to have availed evidence from the said Land Surveyor, Land Control Board and the Land Registrar, Murang'a, to confirm that indeed the Defendants did misdirect them as alleged. The Defendants had denied this allegation and put the Plaintiff strict proof. The Plaintiff failed to call the relevant witnesses to support her claim and the presumption is, their evidence would have been prejudicial to her case. See the case of Court in the case of *Bukenya & Another vs Uganda* (1972) E.A 549, Where the Court held;

“where the evidence called is barely adequate, the Court may infer that the evidence of uncalled witness would have tended to be adverse to the prosecution”
132. The Plaintiff had also alleged that the Defendants submitted the Mutation Forms without the consent of the Plaintiff, nor her signature for closure of the register relating to land parcel No. Loc.17/Iganjo/296. These Mutations Forms were presented to who? The said Mutation Forms were not produced as exhibits in Court. The person who allegedly received the said Mutation Forms did not give evidence in Court to confirm that indeed the Defendants presented the said Mutation Forms, and not the Plaintiff herself. Therefore, the Plaintiff did not discharge her burden on this allegation.
133. The last allegation of fact was impersonating the Plaintiff. The Defendants also denied this allegation and did put the Plaintiff to strict proof. The Plaintiff alleged that the Defendants impersonated themselves before the persons whose presence of the Plaintiff was required. So, who were there persons?
134. There was no evidence of whom the Defendants impersonated themselves to, and that due to the said impersonation, the necessary documents were executed and as a result thereof, there was subdivision and transfer of the suit land to the Defendants. The Plaintiff failed to avail these crucial evidence and failure to call sufficient evidence meant that the Plaintiff failed to discharge the burden of proof on the required standard, and consequently, her case was not proved.
135. From the evidence adduced by the parties, what is evident is that the resultant subdivisions of land parcel no. Loc 17/ Iganjo/ 296. are now registered in the names of the Defendants herein. Some of the Defendant are deceased but the titles deeds are still in their respective names.
136. Most of the title deeds were issued under the regime of the Registered *Land Act* Cap 300 (repealed). Under the Section 27 of the said Act, now mirrored in Section 24 of the *Land Registration Act*, the registration of the said persons as proprietors of the respective parcels of land vested in those persons absolute ownership of that land together with all rights and privileges belonging on appurtenant thereto.
137. The Defendants herein here are the registered owners and therefore this court holds that the Defendants have absolute ownership, unless the contrary is proved. Further as provided by Section 28



of the said Cap 300, now section 25 of the [Land Registration Act](#), nothing can defeat their right excepts as provided by the Act.

138. All the Defendants availed exhibits to show that they hold title deeds to the respective parcels of land, which are subdivisions of Loc.17/Iganjo/296. There was no evidence from the lands office to dispute that these title deeds are not genuine certificates of land. In fact, there are Certificates of official searches produced by the Plaintiff to confirm the registered owners of the parcels of land.

139. Therefore, the title deeds held by the Defendants are genuine and as provided by Section 26 of the [Land Registration Act](#), their holding of such certificate of titles shall be taken to be prima-facie evidence that they are the proprietors of their respective parcels of land. These proprietorships can only be challenged as provided by Section 26(1) A & B, which states:-

- “26. 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.”

140. However, as analysed by this Court above the Plaintiff did not avail sufficient evidence to prove that there was fraud, misrepresentation on the part of the Defendants herein. Further, there was no evidence to prove that the title deeds held by the Defendants were acquired illegally, unprocedurally or through corrupt scheme, so that the Court can proceed to impeach the Defendants Certificates of titles.

141. Though the Plaintiff alleged that she could not produce original title deed because it was destroyed in her house when the house was razed down, there was no evidence of whether she reported such arson to the police. No Police Abstract was produced to the effect that the Plaintiff had ever reported that her title deed was destroyed by the fire. Plaintiff also did not avail evidence of application for renewal of the destroyed/burnt title deed. The Police Abstract produced by her is dated 9th June 2021, and it was “for loss of the title deed,” but not destruction by fire.

142. It was the Plaintiff evidence that she moved out of the suit land after her house was torched down, and that she did not sell nor transfer the suit land. The Plaintiff needed to call evidence to support this allegation. She did not call evidence from the neighbourhood to confirm that indeed she owned the suit property, and that she did not sell the said suit land, but only moved out of the area due to threats on her life, and that her house had been torched several times.

143. The court has noted the evidence on DW7 – Joy Wambui, who was called as a witness for the Defence and who testified that the Plaintiff sold her land parcel Loc.17/Iganjo/296, and then relocated to Kamuiru area where she remarried. The evidence of DW7, was not controverted. It is evident that uncontroverted evidence is weighty courts will rely on it to prove facts in dispute. This was the finding



of the Supreme Court of Kenya in Pet. No. 9 of 2021 (Mary Nyambura Kangara vs Paul Ogari Moyake & Another), where the court held;

“(63) Uncontroverted evidence is weighty and courts will rely on it to prove facts in dispute”.

144. Since the evidence of DW7, was uncontroverted, this Court finds it weighty and thus the Court holds that indeed the Plaintiff herein sold her land parcel No. Loc.17/Iganjo/296, in 1980. The resultant subdivisions were sold to some of the Defendants herein, and other Defendants bought their respective parcels of land from the initial purchasers. The Defendants are holders of genuine certificates of titles, and there is no reason to impeach their titles.
145. In fact, 6th and 7th Defendants purchased their parcels of land Loc.17/Iganjo/1066 and 1069, respectively from Mwangi Job, who was the initial holder of land parcel No. Loc.17/Iganjo/1020, which parcel of land was subdivided to produce 1066 and 1069. The 6th & 7th Defendants cannot be held responsible for causing subdivision of Loc.17/Iganjo/1020, resulting in Loc.12/Iganjo/1066 & 1069. The 6th & 7th Defendants have been wrongly sued for the said subdivisions.
146. Consequently, this court having now carefully analysed the available evidence, finds and holds that the Plaintiff has failed to prove her case on the required standard of balance of probabilities.

i. Whether the Plaintiff has sued the Proper parties?

147. The Defendants herein were sued by the Plaintiff because they are the holders of the resultant subdivisions of Loc.17/Iganjo/296. This is evident from the certificate of official searches that were produced as exhibits by the Plaintiff herein.
148. However, from the Defence filed by the 2nd and 3rd Defendants, it is evident that Charles Kagundu Mbui and Henry M Gatete are deceased. Their death Certificates and the succession proceedings for their estates were produced as exhibits. Indeed, though there is a Defence by the 2nd Defendant, the witness statement is signed by Alpheas Mungai Kagundu, one of the administrators of the Estate of Charles Kagundu Mbui. There is evidence that Charles Kagundu Mbui, died on 17th July 2008, and there were succession proceedings from his estate which culminated in a confirmed grant of 16th February 2011. Therefore, Charles Kagundu Mbui, is a deceased and a deceased person cannot be sued in person but only through the administrator of her estate. See the case of Geeta Bharat Shah & 4 Others V Omar Said Mwatayari & Another [2009] eKLR when concluding that a suit against a deceased person was a nullity held:

“We have no doubt whatsoever that the learned Judge, in refusing to allow the application as in favour of the deceased against whom a suit was filed after his demise, was plainly wrong. Indeed, in our view, there was no need for the administrators of the deceased’s estate to urge the court to do so for once the respondent also admitted that he sued a dead person, the court was duty bound to down its tools as it had no jurisdiction to proceed to hear a suit filed against a person who was already dead by the time the suit was filed.

149. Even after the defence was filed, the Plaintiff did not amend her claim to sue the right person. Therefore, the 2nd Defendant Charles Kagundu Mbui, is deceased and is wrongly sued and the suit against him is a nullity.
150. The same applies to 3rd Defendant Henry M Gatete. Though there is a Defence filed on behalf of 3rd Defendant, the witness statement was filed by John Patrick Mwangi Gatete, also one of the



administrators of the Estate of Henry Maina Gatete, who died on 19th June 2019. There are Succession proceedings ongoing in respect of the said estate. The Plaintiff too did not amend the Plaint to sue the administrator of the estate even after the Defence and list of documents were filed to confirm that indeed Henry Maina Gatete is deceased. The said Henry M Gatete has been wrongly sued as such a claim against him cannot stand as a deceased person cannot be sued. See the case of Viktar Maina Ngunjiri & 4 others ...Vs... Attorney General & 6 others [2018] eKLR where the Court held;

“ if a suit is filed against a dead person then it is a nullity and we cannot join any legal representative; you cannot even join any other party, because, it is just as if no suit had been filed. On the other hand, if a suit has been filed against a number of persons one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void but the court has to strike out the name of the party who has been wrongly joined. If the case has been instituted against a dead person and that person happened to be the only person then the proceedings are a nullity and even Order 1 Rule 10 or Order 6 Rule 17 cannot be availed of to bring about amendment.”

151. Further, according to particulars of fraud as enumerated by the Plaintiff, the alleged fraud was committed, by the persons who were the initial beneficiaries of the resultant subdivisions. From the certificate of official search, Loc. 17/Iganjo/1017, was initially registered in the name of James Huho Njoroge, who died in 1989. He allegedly bought the Suitland in 1980. The 1st Defendant, Ann Wanjiku Huho, was granted Letters of administration after the death of James Huho Njoroge. The Grant was confirmed in 1990, and thereafter she obtained her title deed on 2nd September 2005.
152. In respect of the 4th Defendant, Teddy Irungu Mwangi – who is Teddy Irungu Murigi, the land parcel No. Loc. 17/Iganjo/1021, was initially registered in the name of his father David Murigi Machugu, who was the initial registered owner of this parcel of land. The alleged fraud was therefore in respect of the initial registered owner. Teddy Irungu became the registered owner on 29th October 2014, after going through the Succession proceedings in respect of the estate of his father David Murigi Machugu.
153. Ann Wanjiku Huho, the 1st Defendant and Teddy Irungu, the 4th Defendant who inherited the respective parcels of land have not been sued as administrators of the estate of the initial registered owners of the resultant subdivisions. Certainly the particulars of fraud cannot attach to them and therefore they have been wrongly sued in respect of the particulars of fraud as enumerated by the Plaintiff.
154. In respect of the 6th and 7th Defendants, they purchased their respective parcels of land from Mwangi Job. It was alleged that Mwangi Job, is alive and he lives in Mpeketoni. The particulars of fraud were therefore in respect of the initial registered owners and Mwangi Job, was one of the initial registered proprietors of Loc.17/Iganjo/1020, as is evident from the Green cards produced in Court by the 6th and 7th Defendants, which evidenced that land parcels No.1066 and 1069, were subdivisions of Loc.17/Iganjo/1020, which was initially registered in the name of Mwangi Job. Mwangi Job has not been sued as one of the Defendant herein. Without joining Mwangi Job as a Defendant in the suit herein, the particulars of fraud cannot attach to the 6th and 7th Defendants herein.
155. From the available evidence, the Court finds and holds that the deceased proprietors have been wrongly sued as Defendants herein and this suit cannot stand against them and thus the claim herein against deceased proprietors as Defendants is null and void.
156. For the above reasons the Court finds that the Plaintiff has failed to prove her case against all the Defendants herein on the required standard of the balance of probabilities.



157. Consequently, the Plaintiffs claim as contained in the Plaint dated 12th May 2022, is found not merited and the same is dismissed entirely with costs to the Defendants herein.

It is so ordered.

DATED, SIGNED AND DELIVERED IN MURANG'A THIS 15TH DAY OF FEBRUARY, 2024.

L. GACHERU

JUDGE

Delivered online in the presence of;

Plaintiff – Mr Kinuthia H/b Mr Gitau Kaigai.

Defendants - 1st

2nd M/s Mvita H/B for Mr Mwaura

3rd

4th

6th M/s Waititu

7th

8th - Absent

Joel Njonjo - Court Assistant

L. GACHERU

JUDGE

15/2/2024

