



Maingi Muchiri on Behalf of Hura Farmers Self-Help Group & another v Murenga & 2 others (Civil Appeal E161 of 2023) [2025] KECA 577 (KLR) (21 March 2025) (Judgment)

Neutral citation: [2025] KECA 577 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E161 OF 2023
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
MARCH 21, 2025**

BETWEEN

**MAINGI MUCHIRI ON BEHALF OF HURA FARMERS SELF-HELP
GROUP 1ST APPELLANT**

IHITHE COMPANY LIMITED 2ND APPELLANT

AND

LUCY WANGARI MURENGA 1ST RESPONDENT

**GRACE MUTHONI KIHARA (BOTH SUED AS ADMINISTRATRICES OF
THE ESTATE OF JOSEPH NDIRANGU - DECEASED) 2ND RESPONDENT**

CATHERINE NGIMA NDEGWA 3RD RESPONDENT

(Being an appeal from the judgment of the Environment and Land Court at Nyeri (Olola, J.) delivered on 2nd February 2023 in ELC Case No. 270 & 317 of 2014 (Consolidated))

JUDGMENT

1. The background to the appeal is that by a plaint dated 13th October 2010, one Joseph Ndirangu (now deceased) instituted Nyeri HCCC No 140 of 2010 against the Chief Land Registrar, the District Land Registrar Laikipia County and Catherine Ngima Ndegwa (the 3rd Respondent) seeking the following:
 - a. a declaration that the sub-division already done (on LR No. 2760/41) is illegal;
 - b. an order directing the Chief Land Registrar, to resurvey land parcel No. 2760/41 which is the subject matter of this appeal, sub-divide (it) into 11 equal proportions to the eleven rightful proprietors (sic);
 - c. an order directing the Chief Land Registrar and the District Land Registrar Laikipia County to issue a Certificate of Title to Joseph Ndirangu (deceased) for his portion;



- d. an order directing the Chief Land Registrar and the District Land Registrar Laikipia County to cancel the title unlawfully issued to the 3rd respondent;
 - e. general damages for fraud and denial of Joseph Ndirangu (deceased) rights; and
 - f. costs of the suit.
2. The said John Ndirangu's (deceased) alleged that the suit property had been acquired by his father one Kaigua Munyira together with ten (10) other partners as partners in common with equal shares. Later John Ndirangu's (deceased) father passed away in 1984 and Ndirangu was in the year 1996 issued with a certificate of confirmation of grant.
 3. It was John Ndirangu's (deceased) case that following the issuance of the Grant, the Chief Land Registrar issued him with a letter to take to the District Land Registrar Laikipia County to enable him to be issued with a title for his share of his father's land. He accused the District Land Registrar of thereafter illegally proceeding to sub-divide the land into 10 portions instead of 11 portions and thereby denying him his entitlement.
 4. In the said initial suit, John Ndirangu (deceased) further accused the Chief Land Registrar and the District Land Registrar Laikipia County of colluding to register the 10 portions of land in the name of his father's partners and thereafter transferring one portion to the 3rd respondent herein whom he stated had no right to inherit from his father's estate and hence the orders sought in the suit.
 5. Nyeri HCCC No. 140 of 2010 was later on 27th November, 2014 transferred to Nyeri Environment and Land Court (ELC) and registered as ELC No. 247 of 2014. From the record, John Ndirangu (deceased) passed on in June, 2012, two years after instituting the suit.
 6. Subsequently and by a plaint dated 9th August 2012, Maingi Muchiri (1st appellant) instituted the second suit being Nyeri HCCC 177 of 2012. By the said suit expressed to be brought on behalf of Hura Farmers Self Help Group and filed on 10th August 2012, the 1st appellant sought orders against the two widows and the administratrices of the Estate of John Ndirangu being Lucy Wangari Murenga (1st respondent) and Grace Muthoni Kihara (2nd respondent) and against Catherine Ngima Ndegwa (3rd respondent). The 1st appellant sought 2 declarations as follows:
 - a. a declaration that the sub-division, transfer, registration and issuance of title documents in the name of the 3rd respondent was fraudulent and hence are of no legal consequence (worthless); cancellation of her said title documents reversal of the transactions in the Green Cards and a new title for the 400 acres may be issued in the name of the 1st and 2nd respondents in place of the deceased and it may be re-surveyed afresh so that the 1st appellant's group get their 200 acres accordingly, and the original titles of the 3rd respondent may be dispensed with in the processing of the new title documents; specific performance for transfer to the 1st appellant's group of 200 acres and the original titles may also be dispensed with as aforesaid. The Deputy Registrar of this Honourable Court may be authorized to execute the necessary documents in place of the 3rd Respondent to facilitate valid, legal and successful transfer of 200 acres out of the suit premises in the name of the 1st appellant's group and also mesne profits for loss of user thereof with effect from the 25th August, 2000 and also general damages for trespass and delivery of vacant possession of the land by the 3rd respondent, and if need be, by her forcible eviction by court bailiff with the assistance of police to pave way for distribution and possession to the members (sic); and



- b. alternatively, a refund of the purchase-money paid by the 1st appellant's group together with the survey fees paid and other related expenses incurred in pursuance thereto with interest at 14% from 25th August 2000.
7. In the suit it was the 1st appellant's contention that by a Land Sale Agreement dated 25th August, 2000 between the 1st appellant and the 1st and 2nd respondent's deceased husband (Joseph Ndirangu), the 1st appellant purchased one half of the deceased's rightful share out of the parcel of land known as L.R. No. 2760/41 – Kimuri at a consideration of Kshs.4,200,000.
8. The 1st appellant avered that pursuant to the said agreement, the deceased undertook to transfer to the appellant's self help group the said portion of land but the same was instead illegally sub- divided and the deceased's entitlement was registered in the name of the 3rd respondent.
9. A third suit was filed in regard to the same land through a plaint dated and filed on 13th August 2012. The 2nd appellant, Ithethe Company Limited instituted Nyeri ELC No. 179 of 2012 against the same three respondents sued in ELC 177 of 2012 seeking against them the same orders as sought in Nyeri ELC 177 of 2012.
10. Following the transfer of the said suits from Nyeri High Court to the ELC in Nyeri in November 2014, Nyeri HCCC No. 177 of 2012 filed by the 1st appellant became ELC No. 270 of 2014 while Nyeri HCCC No. 179 of 2012 filed by the 2nd appellant became ELC No. 317 of 2014. Subsequently and by an order issued on 23rd February 2015, the three suits, Nyeri HCCC No 140 of 2010 (ELC No. 247 of 2014), HCCC No 177 of 2012 (ELC No. 270 of 2014) and HCCC No. 179 of 2012 (ELC No. 317 of 2014) were consolidated for hearing and determination. However, following an application and by a ruling dated 22nd March 2017, L. Waithaka, J. declared ELC 247 OF 2014 to have abated on 7th June, 2013. Consequently ELC No. 270 of 2014 and 317 of 2014 remained the only consolidated suits.
11. In opposition to the consolidated suit, Lucy Wangari Murenga (1st respondent) through a statement of defence denied the 1st appellant's claim and asserted that the 1st appellant's group were mere tenants on the suit land. Further, that the Agreement of Sale relied on by the 1st appellant was not valid as the 1st appellant's group have not provided any evidence of spousal consent to the sale. The 1st respondent denied being part of any dishonest and fraudulent transaction and invited the 1st appellant to strict proof.
12. Catherine Ngima Ndegwa (3rd respondent) filed two statements of defence in response to the two claims. In response to the 2nd appellant's case, vide a statement of defence dated 22nd October, 2012, asserted that she was a stranger to the allegations that the deceased sold any land to the 2nd appellant. She asserted that her father Ephraim Kaigwa Munyuira alias Kaigua Munyuira and 10 others jointly purchased LR No. 2760/41 Kimuri measuring approximately 4,800 acres. The 3rd respondent avered that other than her father and one Mathai Ndikwe Mungatu who were jointly allocated one share, the other partners were each allocated one share of the land.
13. The 3rd respondent avered, further, that prior to her father's death, he had transferred to her his share in the said Kimuri Farm and hence John Ndirangu (the deceased) had no rightful title to transfer as alleged.
14. At the trial the two appellants called a witness each in support of their respective cases. PW1, Maingi Muchiri testified that he is a farmer in Murang'a and the Chairman of Hura Farmers Self Help Group. He testified that on 25th August 2000 they had entered into an agreement with Joseph



- Ndirangu (deceased) under which the Hura Farmers Self Group and Ihithe Company Limited (2nd appellant) jointly purchased a total of 400 acres out of LR No. 2760/41–Kimuri Marura at an agreed consideration of Kshs.4,200,000. As at the time of sale the land was not in the name of Joseph Ndirangu Kaigua (deceased) but he had a Certificate of Confirmation of Grant from the High Court at Nairobi to prove that the land belonged to him.
15. PW1 further told the court that their group purchased 200 acres while the 2nd appellant also bought 200 acres. The purchase price was paid in full to Joseph Ndirangu (deceased) from August 2000 to mid-2012 when he passed away. PW1 further told the court that pursuant to the sale agreement, the deceased had allowed them to enter the land and sub-divide the same with the help of a surveyor on 28th February, 2001.
 16. He further testified that they were waiting for the seller to have the land registered in his name and to complete the transfer of the land to the group. In that respect, the group facilitated Joseph Ndirangu (deceased) to travel severally to the Lands Office in Nairobi to follow up on the transaction. That in October 2010, Joseph Ndirangu (deceased) filed a case against the Chief Land Registrar, the Land Registrar Laikipia and the 3rd respondent but he died on 7th June, 2012 before he could transfer the land and hence the claim against his estate.
 17. On cross-examination, PW1 told the court each of the appellants paid a total of Kshs.2,100,000 for the 200 acres that each was purchasing. He told the court that they sued the 1st respondent because the land was sold by her husband. PW1 conceded that he had nothing to show that the 1st respondent was the legal representative of her husband's estate and that the deceased never obtained the Land Control Board consent to sell the land
 18. PW1 testified that when they executed the sale agreement on 25th August 2000, they had not done a search to establish in whose name the land was. That Joseph Ndirangu (deceased) showed them a letter indicating to them that the land was in his name. On being shown the Green Card showing that the land was transferred to Mathai Ndikwe and the 3rd respondent on 16th December 1996, PW1 told the court that they were unaware of that fact. While conceding that the land initially belonged to the Joseph Ndirangu (deceased). PW1 told the court that they were unaware that his estate only owned 200 acres of the land.
 19. PW2, Linus Gitonga Mathenge a director of Ihithe Company Limited (2nd appellant) told the court that together with the 1st appellant they purchased 400 acres of land jointly from Joseph Ndirangu Kaigua (deceased) at a consideration of Kshs.4,200,000. He stated that each of the appellants were to get 200 acres of the land to be hived out of LR No. 2760/41 Kimuri, Marura in Laikipia.
 20. PW2 further told the court that they paid for their 200 acres leaving a balance payable once Joseph Ndirangu (deceased) transferred the land to the Company. He stated that Joseph Ndirangu(deceased) allowed them to enter the land and sub-divide the same with the help of a surveyor on 28th February, 2001. He stated that Joseph Ndirangu (deceased) had been visiting the Lands Office in Nairobi and was making efforts to transfer the land when he passed away on 7th June, 2012. He stated that the Company was now claiming the land from his estate.
 21. On cross-examination, he told the court they paid the purchase price both in cash and by way of cheque. He did not however have a copy of the cheque. They had not however completed payment. Conceding that Kimuri farm falls within an agricultural area, PW2 testified that Joseph Ndirangu (deceased) had told them he had gone to the Land Control Board. He further conceded that he was aware that the 3rd respondent was a sister to Joseph Ndirangu (deceased). He told the court that he was



- unaware that they were required to do a search before purchasing the land. In this case they had just accepted what Joseph Ndirangu (deceased) had told and shown them.
22. On being shown the Green Card, PW2 conceded it showed that the land was transferred to the 3rd respondent on 16th September, 1996. That Joseph Ndirangu (deceased) had however told them he had won the case he had with his sister, the 3rd respondent and that the title she was holding was a forgery.
 23. In rebuttal the defence called a total of 3 witnesses who testified in support of their respective cases at the trial. DW1, Lucy Wangari Murenga told the court that the suit property belonged to her husband and that as a wife, she was unaware of any sale of the same and she had never consented to any sale to the appellants or anyone else. She testified that her husband merely used to lease the land but he had never sold it to anyone.
 24. In cross-examination, she told the court that the land initially belonged to 11 partners and that her husband Joseph Ndirangu (deceased) was one of them. Ndirangu's father was known as Ephraim Kaigua. DW1 told the court that she had heard of the 3rd respondent but did not know her well. She had, however, heard the 3rd respondent was from the family of Ephraim Kaigua. On further cross-examination, DW1 conceded that Ephraim was one of the 11 partners who had initially bought the land. That the said Ephraim was the father of her husband Joseph Ndirangu (deceased) and the 3rd respondent. She told the court that her father-in-law owned 405 of the 4500 acres comprised in the suit property. She told the court that she was married in 1988 and that her husband used to cultivate maize and beans on the land. She has since heard that it was the 3rd respondent who was using the land. Her husband had obtained letters of administration intestate for her father-in-law's estate but she was unaware if the 3rd respondent had also filed a succession cause in relation to the same estate.
 25. Catherine Ngima Ndegwa (DW3), the 3rd respondent testified that she was the owner of the suit property. She stated that in 1962 her father summoned her with her brother Joseph Ndirangu (deceased) and told them that he had 10 shares of land in Kimuri. He asked the two to help him pay for the land as he had no money having just come from detention. She stated that Joseph (deceased) declined saying he did not want land in the dry area of Kieni. She told the court that she agreed to help her father and paid from the year 1965. She went on to state that before his death, her father transferred the half-share of the land to her and that her late father also made a Will indicating the share of land to be hers. She was unaware if anyone had bought any land from her brother.
 26. In cross-examination, the 3rd respondent told the court that she had produced a cheque and bank statements to show she paid for the land. She, however, conceded that the bank statements did not show what the payments were for. She told the court that she paid Kshs.16,000 and a further Kshs.500 for the farm. That her father transferred the half-share to herself in 1983 although she did not register the transfer in the Lands Office. DW2 further told the court that after the death of her father in 1984 she had filed for probate but abandoned the same since her father had already left the land to her. It was eventually transferred to her name in 1996. DW2 told the court that she used her father's Will and other documents to have the land transferred to her name.
 27. On further cross-examination, DW2 testified that though she had not produced a Land Control Board Consent in court, she had obtained the same before transfer. She further told the court that she was aware her brother had filed a succession cause in Nairobi. She told the court that she applied for revocation of the grant obtained in the cause but did not follow it up after the land was transferred to her name. She denied that she had obtained registration of the land illegally.
 28. Her witness, Stanley Karori Gakoge told the court that he had known the 3rd respondent for a long time, he stated that he was one of the 11 partners who had jointly bought the suit property. He stated



- that two of the partners shared one share while the others had one share each. He further told the court he was aware it was the 3rd respondent who had helped the father to pay for the suit land. Further, that Joseph Ndirangu (deceased) who was a brother to the 3rd respondent could not sell the land as he had no title thereto. He could also not inherit the land as he already had his inherited portion in Gatung'ang'a. He stated that the Kimuri farm belonged to the 3rd respondent as she is the one who had helped her father pay for the same.
29. On cross-examination, Gakoge conceded that he could not tell how much money the 3rd respondent had contributed toward the purchase. He also did not know when the 3rd respondent was registered as the owner and how the registration was procured.
 30. John Wambugu (DW4), a friend of the 3rd respondent's family testified that the 3rd respondent's father had two wives. The 1st wife had one son, Joseph Ndirangu (deceased) and one daughter. The 2nd wife had two daughters with the 3rd respondent being one of them. DW4 told the court that he was a witness to a Will executed by the 3rd respondent's father in 1984. On cross-examination, DW4 stated that the 3rd respondent's father Ephraim called him to Nairobi to witness the Will. They went with Ephraim and the 3rd respondent to a lawyer who prepared the Will. On further cross-examination, DW4 told the court that the Will was prepared by a lawyer but in the 3rd respondent's house somewhere near Kenyatta Hospital. He told the court that the Will was prepared in English and the lawyer explained it to him. He did not see the Gikuyu version of the Will.
 31. John Wachira Maathai (DW5) told the court the 3rd respondent was his aunt. He testified that the 3rd respondent's father and one Ndikwe held one share of Kimuri Farm and that it was the 3rd respondent who paid for her father's half share of the farm. DW5 further told the court that he sat in a committee in Kimuri Farm which dealt with sub-divisions and that he is the one who assisted the 3rd respondent to transfer the shares.
 32. On cross-examination, DW5 insisted that it was the 3rd respondent who used to send money to his father Ephraim to pay for the shares even though he had no documents to prove it. He told the court that he saw the evidence of the payment while serving in the Kimuri farm Sub-division Committee.
 33. DW6, Margaret Watetu Nduriri told the court that she is a neighbour of the 3rd respondent. She knew the 3rd respondent's father Ephraim. She further told the court that the late Ephraim told her that he had left the land called Kimuri Farm to the 3rd respondent as it was the 3rd respondent who had assisted him in paying the purchase of the same.
 34. Upon considering the evidence and the submissions filed by the parties' respective counsel, the learned Judge framed the following issues for determination; whether there was a Sale Agreement executed on 25th August, 2000 between the deceased and the two appellants; and if so, whether the same were valid, legal and binding; whether the 3rd respondent had a valid title over the suit property; and, who should bear the costs of this suit.
 35. On the first issue as to whether there was a Sale Agreement executed on 25th August, 2000 between the deceased and the two appellants, and if so, whether the same was valid, legal and binding, the learned Judge held that as it were, the existence of the Sale Agreement was not much of a matter of doubt as the appellants produced in evidence the Sale Agreement executed between themselves as joint purchasers and the 1st respondent's husband Joseph Ndirangu (deceased) as the vendor on 25th day of August, 2000.
 36. Based on his satisfaction that there was indeed a valid sale agreement entered between the appellants and 1st respondent's deceased husband, the learned Judge held that from the material before the court



it was evident that the appellants did not bother to conduct due diligence before entering into the Sale Agreement. The Judge held that if the appellants had done a little due diligence, they would have discovered that some four (4) years prior to the execution of the sale agreement, the suit property had been registered in the name of the 3rd respondent and one Mathai Ndikwe Mungatu. They would also have discovered that contrary to the misrepresentation by the late Joseph Ndirangu (deceased) that he was capable of disposing 400 acres of land to them, the late Ndirangu's father Ephraim Kaigwa Munyira (also known as Kaigwa Manyuira) from whom the deceased vendor purported to derive his entitlement had only owned half a share being equivalent to 200 acres of the land.

37. Finally, the learned Judge held that while the appellants had entered into a valid contract with the late Joseph Ndirangu, he was not persuaded that they had acquired any valid title over the suit property as the vendor was not the registered owner of the property and he had no title to the 400 acres of land that he purported to dispose to them.
38. As regards the second issue on whether the 3rd respondent had a valid title over the suit property, the learned Judge held that from the material placed before the court, the 3rd respondent and one Mathai Ndikwe Mungatu were registered as joint proprietors of the suit land on 16th December, 1996. And that subsequently upon sub-division of the parcels of land the 3rd respondent was registered as the proprietor of the parcels of land now known as Nanyuki/Marura Block 4/96 (Kimuri) measuring 86.215 Ha. and Nanyuki/Marura Block 4/94 (Kimuri) measuring 6.65 Ha on 30th December, 2010.
39. On the issue that the 3rd respondent had fraudulently transferred the above parcels in her name as alleged by the appellants, the learned Judge held that he was persuaded under the circumstances that the 3rd respondent was not guilty of any fraud in the registration of the suit property into her name and that in the circumstances of the case it was apparent that the property was gifted to the 3rd respondent during her father's lifetime. The learned Judge finally dismissed the suit with costs to the respondents.
40. Being dissatisfied with the judgment, the appellants lodged the present appeal in which they raised seven (7) grounds of appeal, to wit, that the learned Judge, erred in law and in fact: by failing to interrogate the title history, or the process of the 3rd respondent's registration of the suit property; failing to address, the overarching twin issue of whether the Grant of Letters of Administration Intestate in the Nanyuki SRM Court issued to the 3rd respondent on the 10th of December, 1996, in Succession Cause No. 8 of 1996, and which grant, she used and managed, to transfer the suit premises to herself, could take precedence over the Certificate of Confirmation of Grant which the Nairobi High Court had issued, to Joseph Ndirangu a.k.a Joseph Ndirangu, earlier on the 19th July 1991, in Succession Cause Number 647 of 1991; for finding that, the third respondent's father had gifted, the suit property to her during his lifetime; in unjustly dismissing the appellants' suit as, misconceived and incompetent, despite their placing sufficient pertinent and material evidence on record; In peremptorily and unjustly condemning both appellants, as authors of their own misfortune, in regards to the 25th August 2000 sale agreement, despite their having been serious investors, and besides, the learned Judge did not even observe the alternative prayer, of refund and/or opportunity cost; in finding that both appellants had filed the suit against the 1st and 2nd respondents as the legal representatives of the estate of the said Joseph Ndirangu, without Grant ad Litem, or Limited Grant of Letters of Administration for the said Estate, despite the appellants' exhibiting a Grant Ad Litem dated 26th July 2012 in evidence; and by finding that the appellants had not acquired any valid title to the land which was a non-issue, and grossly failed to evaluate, all the evidence adduced and the law, meaningfully, misapprehending the law, and hence decided the case on extraneous matters.
41. When the appeal came up for hearing on 20th May 2024, learned counsel Mr. Peter M. Muthoni appeared for the appellants while Ms. Hellen Njoki, learned counsel, appeared for the 3rd respondent.



- Counsel relied on their respective written submissions. Learned counsel for the 1st and 2nd respondents Ms Maina did not file any submissions but informed the Court that they were supporting the appeal.
42. In conclusion, we were urged to dismiss the appeal with costs to the 3rd respondents for lack of merit.
43. This is a first appeal and, as provided under Rule 31(1) of this Court's Rules, we are enjoined to re-appraise the evidence adduced before the trial court in its entirety and draw inferences of fact. See also the holding in *Selle & another v Associated Motor Boat Co Ltd & others* [1968] EA 123 with respect to the duty of the court on a first appeal.
44. We have considered the Record of Appeal in its entirety, the parties' submissions and the relevant law, particularly as espoused in the authorities filed before us, we decipher the germane issues for consideration to be:
- a. whether the appellants were bona fide purchasers for value;
 - b. whether they acquired good title to the property; and
 - c. whether the 3rd respondent had acquired good title to the suit property.
45. Black's law Dictionary (8th Edition) defines a "bona fide purchaser" as:
- "One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims."
46. In the case of *Dina Management Limited vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), the Supreme Court stated that, for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The Court upheld the dicta in *Samuel Kamere -vs- Lands Registrar, Kajiado* [2015] eKLR and stated that:
- "...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property ..." (Emphasis added).
- See also this Court's decision in *Said -vs- Shume & 2 Others* (Civil Appeal E050 of 2023) [2024] KECA 866 (KLR) (26 July 2024) (Judgment).
47. Did the appellants acquire a valid and legal title to the suit property? There are a few pertinent issues arising from the authorities we have cited above which work against the appellants in this case. Firstly, although the Sale Agreement between the appellants and the late Joseph Ndirangu (the seller) is not contested, the appellants conceded that they did not see the Title documents nor they did not carry out a search at the lands Registry to ascertain who the registered owner of the land they were buying was. They did not carry out any due diligence whatsoever. It is not clear whether that was out of ignorance, negligence or misplaced trust. That expressly removes the appellants from the ambit of innocent purchasers for value without notice as enunciated by the Supreme Court in *Dina Management Limited -vs- County Government of Mombasa & 5 others* (*supra*).
48. The casual manner in which appellants handled the transaction is worrisome, and the results regrettable. They cannot blame anyone but themselves. We reiterate that a certificate of confirmation,



per se, cannot confer proprietary rights to land to anyone. Such beneficiary needs to take the next step to have his/her entitlement in the inherited land in the said certificate of confirmation of grant registered in the Lands Registry for the ownership to crystallize. We note that as at the time the parties entered into the Sale Agreement for the suit land, the same had, prior thereto, been transferred to the 3rd respondent. This was precisely four years earlier. A simple search at the Land's Office could have brought all these facts to the fore. We find it unnecessary to say more on this issue save to emphasize that the deceased had no good proprietary title to pass to the appellants as at the time he purported to sell the suit land to them. The learned Judge did not err in his decision in that regard.

49. On the ground that the learned Judge erred in not giving the alternative prayer, Linus Gitonga Mathenge, a director of Ihithe Company Limited (2nd appellant), told the Court that they had paid part of the purchase price in cash and by cheque. He could, however, not produce a copy of the cheques in question. He also conceded that they had not completed payment of the purchase price. There was paucity of evidence placed before the trial court on the amount of money paid by the appellants to the deceased and that could explain why the learned Judge made no orders on the alternative claim for refund of the purchase price.
50. The appellants also faulted the learned Judge for finding that the transfer of the suit land to the 3rd respondent was not fraudulent. The appellants' evidence was that the 3rd respondent's registration as the proprietor of the land was fraudulent, irregular and unlawful. The appellants asserted that the transfer of the suit property to the 3rd respondent did not follow the process of transmission provided for in law. It was their case that the 3rd respondent committed a glaring fraud by transferring the property belonging to her deceased father to herself in a bid to defeat and/or frustrate her step-brother's rightful inheritance.
51. On her part, the 3rd respondent told the court that she is the one who assisted her father Ephraim Kaigwa Munyira to pay for the half-share of the property he was entitled to in the Kimuri Farm and that her now deceased step-brother Joseph Ndirangu had refused to co-operate with their father following his request for help.
52. The learned Judge, after hearing the 3rd respondent and her witnesses found that particulars of fraud were not specifically pleaded and proved through the evidence adduced in court. We have looked at the plaint. The particulars of fraud given in paragraph 7 of the plaint were in our view insufficient to support a claim of fraud against the 3rd respondent.
53. We note too that the appellants stated that the deceased had filed Nyeri H.C.C.C No.140 of 2010 in which the 3rd respondent's title to the suit property was challenged. The said suit was nonetheless marked as having abated vide a ruling delivered by L. Waithaka J. on 7th June, 2013 and the issues raised therein, therefore remained unresolved. That, in our view, was the right forum for the determination of the process through which the 3rd respondent obtained her title deed to the suit land. In any event, whether fraud was proved or not in this suit would not impact the appellants' claim, as invalidation of the 3rd respondent's title would still not confer good title to them for reasons given earlier in regard to the deceased's want of good title to the suit property before he purported to sell it to the appellants.
54. In conclusion, for foregoing reasons, we find this appeal devoid of merit and dismiss it with costs to the 3rd respondent. We award no costs to the 1st and 2nd respondents as they were supporting the appeal.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF MARCH, 2025.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

