



**Kariuki & another v Murage (Deceased) & 2 others (Environment & Land Case 253 of 2014) [2024] KEELC 1333 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1333 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 253 OF 2014**

**JM MUTUNGI, J  
MARCH 14, 2024**

**BETWEEN**

**MARGARET MUTHONI KARIUKI ..... 1<sup>ST</sup> PLAINTIFF**

**SIPPORAH WAIRIMU KIBUCHI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NELSON KIBUCHI MURAGE (DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**WILLIAM MURIITHI MIGWI ..... 2<sup>ND</sup> DEFENDANT**

**EQUITY BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted the present suit vide a Complaint which was amended and further amended on 6<sup>th</sup> August 2018. By the further Amended Complaint the Plaintiff prayed for orders that:-
  - a. A declaration that the sale of the said parcel of land by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant is null and void for failure of the 1<sup>st</sup> Defendant to seek for spousal consent to seek consent from the 2<sup>nd</sup> Plaintiff.
  - b. That a permanent injunction order be issued against the 2<sup>nd</sup> Defendant to restrain him from interfering with the Plaintiff's peaceful occupation and enjoyment of the land reference No. Inoi/Thuita/975
  - c. General damages.
  - d. Special damages plus interest.
    - i. Cost of the tea bushes as at 8<sup>th</sup> August 2014 -Kshs 704,000/-
    - ii. Total value of trees -Kshs 300,000/-



- iii. Estimated value of the Developments on the said piece of land -Kshs 2,000,000/-
  - iv. Water Installation to the said property - Kshs 70,000/-
  - v. Money advanced to 1<sup>st</sup> Defendant  
By the Plaintiff for electricity installation – Kshs 70,000/-
  - vi. Total loss of income for 2 ½  
Years as at 10<sup>th</sup> May 2018 - Kshs 1,496,000/-
  - vii. Cost of lodging 2 cautions on the  
Suit property - Kshs 2,000/-  
TOTAL -KSHS 4,642,000/-
- e. A declaration that the loan due from the 3<sup>rd</sup> Defendant has been frustrated by the actions of the 3<sup>rd</sup> Defendant who has charged the suit property and did not safeguard its collateral or security being the tea earnings.
  - f. Interest of (d) above at Court rates.
  - g. Cost of the suit.
  - h. Any other relief this Court deem fit.
2. The plaint was predicated upon the grounds that Land Parcel No. LR Inoi/Thuita/975 (the suit land) was until 21<sup>st</sup> March 2014, registered in the names of the 1<sup>st</sup> Defendant before he secretly and fraudulently sold it to the 2<sup>nd</sup> Defendant for the sum of Kshs. 4 million who later charged it to the 3<sup>rd</sup> Defendant as security for a loan of Kshs. 2 million.
  3. The Plaintiffs pleaded that the 1<sup>st</sup> Defendant did not obtain a spousal consent from the 2<sup>nd</sup> Plaintiff before disposing the property and further, that on or about the year 1998, the 1<sup>st</sup> Defendant, with the consent of the 2<sup>nd</sup> Defendant had agreed to gift the suit land to the Plaintiff and had further allowed her to develop the suit land, wherein she put up permanent and semi-permanent houses, carried out subsistence farming, planted trees, coffee and tea bushes valued at Kshs. 2 million. The 1<sup>st</sup> Plaintiff averred that due to the 1<sup>st</sup> Defendant's misrepresentation, she incurred losses of Kshs. 2 million being the value of her development on the suit land. The 2<sup>nd</sup> Plaintiff also averred that she was a co-owner of the suit land as she had contributed towards the acquisition of the suit land through her income and marital services.
  4. On 10<sup>th</sup> October 2014, the 2<sup>nd</sup> Plaintiff withdrew her claim against all the defendants, which necessitated the amendment of the Plaint on 7<sup>th</sup> April 2015, where her name was deleted leaving MARGARET MUTHONI KARIUKI as the only Plaintiff. In her amendment, the Plaintiff averred that the 1<sup>st</sup> Defendant had been given the suit land by his grandfather and was to be gifted to the grandchildren. The Plaintiff however stated that following a family meeting they had, the 1<sup>st</sup> Defendant agreed to sell the suit land to her at the sum of Kshs. 2 million but on 28<sup>th</sup> January 2014, he refused to take the sum of Kshs. 1.5 million that the Plaintiff had offered. She further stated that while she was in Paris, she instructed her daughter to place a caution over the suit land and that in July 2014, the 2<sup>nd</sup> Defendant entered the suit land, demolished her property and kicked out her employees. The prayers in the further amended plaint remained basically the same as in the earlier plaint.



5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their defence on 22<sup>nd</sup> October 2014. They denied the content of the plaint. The 2<sup>nd</sup> Defendant averred that he purchased the suit land with all the developments thereon from the 1<sup>st</sup> Defendant vide the sale agreement dated 12<sup>th</sup> May 2014 at the cost of Kshs. 3.5 million and with the 2<sup>nd</sup> Plaintiff's consent. The Defendants stated that the transaction was legally binding and averred the Plaintiff had not come to court with clean hands as she had previously attempted to defraud the 1<sup>st</sup> Defendant by preparing a sale agreement dated 30<sup>th</sup> December 2013, which matter was reported to Kerugoya Police Station vide OB/NO 26/17/01/2013. They also stated that the orders that the plaintiff was seeking were not available as the 2<sup>nd</sup> Defendant was the absolute registered owner of the suit land.
6. The 3<sup>rd</sup> Defendant filed its statement of defence dated 10<sup>th</sup> April 2015. The 3<sup>rd</sup> Defendant denied the plaintiff's claim and averred that if the Plaintiff's position was true then her claim was time barred and unenforceable in law. The 3<sup>rd</sup> Defendant further averred that the Plaintiff's claim against it was misconceived as the 3<sup>rd</sup> Defendant was not at all responsible for the loss she incurred.

### **Evidence of the Parties**

7. When the matter came up for hearing on 13<sup>th</sup> June 2022, Counsel for the 1<sup>st</sup> Defendant informed the court that the 1<sup>st</sup> Defendant had passed on and that he had not received any instructions to substitute from the 1<sup>st</sup> Defendant's estate. Counsel for the Plaintiff confirmed that the 1<sup>st</sup> Defendant had indeed passed on and letters of administration of the estate had not been taken out. The Plaintiff's Counsel affirmed that the suit as against the 1<sup>st</sup> Defendant had abated and he sought leave to withdraw the suit against the 1<sup>st</sup> Defendant and proceed with the suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. On his part, counsel for the 1<sup>st</sup> Defendant informed the Court that he had no objection to the withdrawal of the suit as against his deceased client. The Court marked the 1<sup>st</sup> Defendant's suit as withdrawn and granted the Plaintiff liberty to proceed with the hearing.
8. The Plaintiff, Margaret Muthoni Kibuchu Kariuki testified as PWI. She adopted her witness statement dated 6.08.2018 and also produced her bundle of documents of even date as Plaintiff's Exhibit 1-13. Counsel for the 2<sup>nd</sup> Defendant objected to the production of the supplementary list of 9/1/2017 comprising 2 documents on the basis that the documents were expert reports and were duplicates of items 1 and 5 on the lists of documents dated 6.08.2018. The Supplementary list of documents was expunged from the Court record and the documents itemized as 1 and 8 on the list of documents dated 6.08.2018 were marked for identification as Plaintiff's exhibit 1 and 8. The Plaintiff testified that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant did not obtain a spousal consent and the Land Control Board consent from the relevant persons and or bodies. She further testified that contrary to what the 1<sup>st</sup> and 2<sup>nd</sup> Defendant averred, the suit land was not vacant as at the time it was sold, as she had been in possession of the suit land for a period of 20 years. She stated that she had planted trees and tea bushes, had constructed cow sheds and a chicken coop. On Cross examination, the Plaintiff stated that the 2<sup>nd</sup> Plaintiff and 1<sup>st</sup> Defendant were her parents. She explained that the 1<sup>st</sup> Defendant was the initial registered owner of the suit land having acquired it from her grandfather. She stated that she had been given the land by her father, the 1<sup>st</sup> Defendant but the transfer to her had not been effected. The Plaintiff admitted that she had not paid any consideration for the suit land and that she was aware that her father had sold the suit land to the 2<sup>nd</sup> Defendant. She took the position that she ought to have been notified when the suit land was being sold.
9. The Plaintiff explained that her claim was for the developments that she had effected on the suit property. As against the 3<sup>rd</sup> Defendant, the Plaintiff stated that the 3<sup>rd</sup> Defendant had advanced her



loan on the security of the tea that was on the suit land yet the 3<sup>rd</sup> Defendant went ahead and advanced the 2<sup>nd</sup> Defendant a loan on the security of the same land where the tea was growing. She stated that though the land was not in her name and she had not charged the same as security, the 3<sup>rd</sup> Defendant acted unlawfully and frustrated her ability to repay the loan advanced to her.

10. The Plaintiff called Christine Nyawira Mwangi (PW2) a Ward Agricultural Officer who testified that on 4.08.2014 she visited the suit land and carried out a crop valuation. She informed the court that the suit land had 4,200 tea bushes with mature tea bushes being 160. She stated that she prepared the crop valuation report on 8.08.2014 and did an updated report on 10.05.2016 for the tea bushes and for the damaged eucalyptus trees. On Cross examination, PW2 stated that she was informed that the Plaintiff was the owner of the tea bushes. She informed the Court that the tea bushes as per the report were 4,400 and that she counted the tea bushes by sampling.
11. The Plaintiff called her 3<sup>rd</sup> witness, Samuel Mugo Njenga, who testified as PW3. He adopted his witness statement dated 5.09.2016 as his evidence. He testified that he had been employed by the Plaintiff as a farm manager in the suit land from 2011. He confirmed that the suit land had tea bushes, trees, permanent and semi-permanent structures. He also confirmed that he was the one who took the Ward Agricultural Officer around at the time of valuing the crops in the suit land. He stated that the tea bushes were planted in 1995 by the Plaintiff on the suit land.
12. The 2<sup>nd</sup> Defendant testified as DWI and he adopted his witness statement dated 5.06.2017 as his evidence in chief and also produced his bundle of documents dated 14.6.2017 as Defendant's Exhibit 1-5.
13. The 2<sup>nd</sup> Defendant testified that before purchasing the suit land, he carried out a search which revealed that the 1<sup>st</sup> Defendant was the registered owner and that there were no encumbrances registered against the land. He confirmed that there was tea bushes and trees, permanent and semi-permanent houses on the suit land. The 2<sup>nd</sup> Defendant informed the Court that the agreement between him and the seller was that he would get vacant possession of the land. He testified that he paid the full purchase price of Kshs. 3.5 million as consideration for the land and all developments thereon and took possession immediately after payment of the purchase price.
14. Rogers Peterson Ireri, a Credit Manager at Equity Bank, Limuru testified on behalf of the 3<sup>rd</sup> Defendant. He adopted his witness statement dated 22.6.2017 as his evidence in chief. He testified that they advanced money to the 2<sup>nd</sup> Defendant and charged the suit land as security after undertaking all the due diligence. He stated the loan was procedurally advanced to the 2<sup>nd</sup> Defendant and affirmed that all the necessary approvals and consents were procured. He further admitted that the 3<sup>rd</sup> Defendant had advanced the Plaintiff money against her KTDA receipts and stated that the 3<sup>rd</sup> Defendant does not usually visit land where paylips are involved and where no charge is required as security.

### **Submissions, Analysis and Determination**

15. The parties filed their written submissions pursuant to the Court's directions. The Plaintiff filed her written submissions on 30<sup>th</sup> May 2023. She submitted that the transaction between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant was null and void as the same was procured without a spousal consent. She further submitted that she was entitled to compensation for unlawful eviction and for the destruction of her property in the suit land as the same was done without notice or any valid Court orders. She claimed that the 2<sup>nd</sup> Defendant did not acquire a good title over the suit land for the reason that it was transferred to his name while there existed a caution that had been registered against it. Concerning the 3<sup>rd</sup> Defendant, the Counsel for the Plaintiff submitted that the 3<sup>rd</sup> Defendant charged the suit land



to the 2<sup>nd</sup> Defendant despite knowing that it had advanced the Plaintiff money on the basis that her earnings from the tea was the collateral.

16. The 2<sup>nd</sup> Defendant filed his submissions on 18<sup>th</sup> September 2023. Counsel for the 2<sup>nd</sup> Defendant submitted that the alleged gift of the suit land to the Plaintiff was not completed and did not confer any interest to the Plaintiff over the suit land as the parties involved had not complied with the substantive law and statutory procedures relating to transactions affecting agricultural land. The Counsel further submitted that the 2<sup>nd</sup> Defendant's title could not be defeated as the Plaintiff had not pleaded or proven any allegation of fraud as required under the law. In regard to the issue of compensation, Counsel submitted that the purchase price paid by the 2<sup>nd</sup> Defendant for the suit land included all the developments that were on the land. Counsel further submitted that the 2<sup>nd</sup> Defendant would not be liable to the Plaintiff for damages as he never had any dealings with her.
17. The 3<sup>rd</sup> Defendant filed its submissions on 7<sup>th</sup> September 2023 and submitted that the Plaintiff could not claim that the suit land was sold without a spousal consent while she failed to prove that the suit land was matrimonial property. Counsel for the 3<sup>rd</sup> Defendant further submitted that the Plaintiff could not rely on Section 93(2) of the [Land Registration Act](#), due to the fact she was not a spouse of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Plaintiff withdrew her case against all the defendants while the Plaintiff also withdrew her case against the 1<sup>st</sup> Defendant following his death. As to whether the Plaintiff was entitled to compensation, Counsel for the 3<sup>rd</sup> Defendant submitted that the Plaintiff had failed to prove that her property in the suit land had been destroyed. Counsel further submitted that the loan facility advanced to the Plaintiff by the 3<sup>rd</sup> Defendant was to be repaid from the Plaintiff's tea remittance from KTDA and the same did not amount to a charge over the suit land as the Plaintiff had claimed. Counsel further submitted that despite alleging fraud and frustration, the Plaintiff had failed to give the particulars of fraud as is required under the law and it was the 3<sup>rd</sup> Defendant's position that the Plaintiff had failed to prove her case against the 3<sup>rd</sup> Defendant on a balance of probabilities and prayed for the dismissal of the suit against the 3<sup>rd</sup> Defendant with costs.
18. The Court has considered the Parties' rival pleadings, affidavits and submissions and identifies the issues for determination are;
  - a. Who owns the suit land?
  - b. Whether the 2<sup>ND</sup> Defendant acquired a valid land title to the suit land.
  - c. Whether the Plaintiff's eviction from the suit land was unlawful.
  - d. Whether the Plaintiff is entitled to compensation for the destruction of her developments in the suit land.
  - e. Whether or not the 3<sup>rd</sup> Defendant's action to charge the suit land to the 2<sup>nd</sup> Defendant vitiated the contract between the 3<sup>rd</sup> Defendant and the Plaintiff.

### **Who owns the suit land**

19. The Plaintiff's claim over the suit land is based on a purported gift by the 1<sup>st</sup> Defendant who was her father. The gift was not perfected by having the land transferred to her. That although the Plaintiff claimed she and the 1<sup>st</sup> Defendant had entered into an agreement where she was to purchase the suit land, the agreement was equally not completed. The 2<sup>nd</sup> Defendant's ownership claim is predicted on the fact that he entered into an agreement of sale dated 12<sup>th</sup> May, 2014 with the 1<sup>st</sup> Defendant for the purchase of the suit property, paid the purchase and had the title transferred to his name. The 2<sup>nd</sup> Defendant was issued title in his name on 11<sup>th</sup> June 2014. Upon registration as the proprietor, the 2<sup>nd</sup>



Defendant became vested with absolute rights of ownership. He acquired an indefeasible title which could only be challenged as provided under the law.

20. The law protects title to land that is shown to have been lawfully acquired by the registered proprietor. Section 26(1) of the [Land Registration Act](#), 2012 provides as follows:
- 26(1) “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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 , ... 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.”
21. The 2<sup>nd</sup> Defendant’s title in respect of the suit land has not been challenged on any of the grounds enumerated in the above legal provision. That being the case, the Court finds that the 2<sup>nd</sup> Defendant is indeed the registered owner of the suit property.

**Whether the 2<sup>ND</sup> Defendant acquired a valid land title to the suit land.**

22. There is no dispute as to the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant entered into a sale agreement dated 12<sup>th</sup> May 2014. The Court has scrutinized the Sale Agreement that was produced by the 2<sup>nd</sup> Defendant as part of his bundle of documents. The parties thereon executed it and neither the 1<sup>st</sup> Defendant, nor the 2<sup>nd</sup> Defendant deny signing it. This Sale Agreement is clear and specific on the terms of the sale of the suit land. The sale agreement stipulates the purchase price agreed upon and the mode of payment. The sale agreement provided that the property was sold in vacant possession together with the developments thereon. The validity of the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant though questioned by the Plaintiff, cannot be impugned as the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as the contracting parties had the capacity to contract and the terms of the contract were satisfied.
23. The Plaintiff raised concern that the 1<sup>st</sup> Defendant had not obtained a spousal consent before disposing of the suit land to the 2<sup>nd</sup> Defendant. Counsel for the Plaintiff submitted that the suit land was matrimonial property and that her mother fell under the protection of Section 93 (2) of the [Land Registration Act](#). She submitted that the suit land was ancestral and that she being the daughter of the 1<sup>st</sup> Defendant had developed the land with the consent of her mother, and that her father ought to have obtained a spousal consent from her mother. She relied on the Case of Kadzo Mukutano Versus Mukutano Mwamboje Kadosho & 2 Others (2016) eKLR where it was held that: “Section 28 of the [Land Registration Act](#) recognizes spousal rights over matrimonial property as an overriding interest. Spousal consent, is therefore required before a spouse can sell matrimonial property. in the absence of such a consent, the sell becomes null and void.”
24. In response, the 2<sup>nd</sup> Defendant submitted that he was the registered owner of the suit land vide a certificate of title issued on 11<sup>th</sup> June 2014 which title had not been challenged by anyone. He further submitted that the Plaintiff’s mother who was the 2<sup>nd</sup> Plaintiff withdrew her claim against all the defendants and based on the foregoing and her admission in Court, Counsel submitted that the Plaintiff was not a spouse to the 1<sup>st</sup> Defendant and as such she could not benefit from or rely on Section 93 (2) of the [Land Registration Act](#). On the issue, the 3<sup>rd</sup> Defendant submitted that the Plaintiff was not a spouse and the suit land was not matrimonial property. It was the 3<sup>rd</sup> Defendant’s position that the issue of spousal consent did not arise in this matter. The Plaintiff’s other concern relating to the



validity of the sale of the suit land was that the suit land was sold when the caution she had lodged on the title was subsisting. She blamed the 2<sup>nd</sup> Defendant for not exercising due diligence at the time of purchase and participating in the unlawful acquisition of the suit land. The 2<sup>nd</sup> Defendant on his part submitted that he had procedurally acquired the suit land and that his title could only be challenged as provided under Section 26(1) (a) and (b) of the [Land Registration Act](#). He submitted that the Plaintiff had neither pleaded fraud nor particularized it.

25. As observed earlier in this Judgment, titles of proprietors of land are protected by the law under Section 26 of the [Land Registration Act](#), 2012.

In the Case of Chemei Investments Limited –vs- The Attorney General & Others Nairobi Petition No. 94 of 2005 Kiage JA held that:

“[The Constitution](#) protects a higher value, that of integrity and the rule of law. These values cannot be sidestepped by imposing legal blinders based on indefeasibility. I therefore adopt the sentiments of the court in the Case of Milan Kumar Shah & 2 Others – vs – City Council of Nairobi & Another (supra) where the court stated as follows, “ we hold that the registration of title to land is absolute and indefeasible to the extent, firstly, that the creation of such title was in accordance with the applicable law and secondly, where it is demonstrated to a degree higher than the balance of probability that such registration was procured through persons or body which claims and relies on that principal has not himself or itself been part of a cartel which schemed to disregard the applicable law and the public interest.”

26. The Court of Appeal specifically referred to the law as stated in the Case of Dr. Joseph Arap Ngok – Vs – Justice Moiwo Ole Keiwua & 5 Others, Nai. Civil Appeal No. 60 of 1997 where the Court categorically declared that:-

“Section 23(1) of the then Registration of Titles Act (Repealed) (now reproduced substantially as Section 25 and 26 of the [Land Registration Act](#)) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the titleholder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact, the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

27. In this case the Plaintiff alleges that the 2<sup>nd</sup> Defendant’s Certificate of Title was acquired illegally and unprocedurally but has not demonstrated how that happened. The Plaintiff alleged that the suit land was sold without a spousal consent and that the caution she had lodged over the suit land, was removed without her being notified. She did not prove these allegations by way of evidence. To this end, I agree with both the defendants that the Plaintiff was not the spouse of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Plaintiff, who was the wife to the 1<sup>st</sup> Defendant, withdrew her claim against the Defendants and was not called as a witness by the Plaintiff. There was no proof the 2<sup>nd</sup> Defendant acquired title to the suit land fraudulently and/or unprocedurally and therefore the Court holds he was a bonafide purchaser for value without any notice of any defect in the title and that he acquired a valid title to the land.



### **Whether the Plaintiff's eviction from the suit land was unlawful.**

28. Having made a finding that the 2<sup>nd</sup> Defendant is the duly registered proprietor of the suit property, it follows that at the time the suit land was transferred in his name, he acquired the rights of a proprietor over the suit property as set out in Section 24(a) of the [Land Registration Act](#) which provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

The 2<sup>nd</sup> Defendant is entitled to have exclusive use and possession of the suit property to the exclusion of the Plaintiff.

### **Whether the Plaintiff is entitled to compensation for the destruction of her developments in the suit land.**

29. The 2<sup>nd</sup> Defendant as per Clause 1 of the Agreement of sale entered into with the 1<sup>st</sup> Defendant on 12<sup>th</sup> May 2014 purchased the suit property together with the developments. Clause 1 of the agreement provide as follows:-

1. The property sold is Title No. Inoi/Thaita/975 containing by measurements Nought Decimal Seven Seven (0.77 Ha) Hectares or thereabouts together with the developments being thereon (if any).

30. The suit property was in the 1<sup>st</sup> Defendant's name and at the time of purchase had no encumbrances registered against the title. The 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant dealt with the suit property on the basis of willing seller and willing buyer. To the extent that the sale included any developments that were on the land, all that was attached to the soil went with the land. The Latin principle “Quicquid Plantatur solo, solo cedit” that is – something that is or becomes affixed to the land becomes part of the land and title to the fixture is part of the land and passes with title to the land. In the present case tea crops, coffee and any structures on the land formed part of the sale unless they were expressly excluded. The Plaintiff being the daughter of the 1<sup>st</sup> Defendant, may have had the permission to effect developments on the suit property but in doing so she was acting as agent of the 1<sup>st</sup> Defendant and/or a licensee. The Plaintiff's claim, if any, could in the circumstances of this case, only lie against her father, the 1<sup>st</sup> Defendant. It is him who would have needed to account the sale proceeds attributable to developments to the Plaintiff. The Plaintiff's claim for compensatory damages against the 2<sup>nd</sup> Defendant cannot lie and the same is declined.

31. The claim by the Plaintiff against the 3<sup>rd</sup> Defendant, just like the claim against the 2<sup>nd</sup> Defendant is unsustainable. The 3<sup>rd</sup> Defendant procedurally and regularly advanced the 2<sup>nd</sup> Defendant a loan against the security of land parcel Inoi/Thuita/975. The 2<sup>nd</sup> Defendant having validly purchased the property from the 1<sup>st</sup> Defendant was entitled to use the property as he pleased including to charge the same as he did. The Plaintiff's claim that the suit property was security for the loan the 3<sup>rd</sup> Defendant advanced to her was not proved as the 3<sup>rd</sup> Defendant never took a charge over the property and no charge was registered against the title of the suit property to secure any borrowing by the Plaintiff from the 3<sup>rd</sup> Defendant. The Plaintiff did not adduce any credible evidence to illustrate that the 3<sup>rd</sup> Defendant held any collateral over the suit land to secure any lending they had made to the Plaintiff. At any rate at the time the Plaintiff got any loan from the bank, the suit property was in the name of her father, the 1<sup>st</sup> Defendant (now deceased). The father would have been required to execute a guarantee in her favour and it was not demonstrated that he had done so.



32. The Plaintiff's claims that the 3<sup>rd</sup> Defendant frustrated her loan agreement with them was not proved and a declaration to that effect cannot issue.
33. Upon consideration of the evidence and evaluation and analysis of the same it is my determination that the Plaintiff failed to prove her case on a balance of probabilities and accordingly order the suit dismissed with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA VIDEO LINK THIS 14<sup>TH</sup> DAY OF MARCH 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

