



**Muriithi (As the administrator of the Estate of Naftaly Muriithi Njuki
aka Naftali M Njuki v Abdilahi & 7 others (Environment & Land Case
66 of 2012) [2024] KEELC 1478 (KLR) (11 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1478 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 66 OF 2012
MAO ODENY, J
MARCH 11, 2024**

BETWEEN

**ROSE WANGU MURIITHI (AS THE ADMINISTRATOR OF THE ESTATE OF
NAFTALY MURIITHI NJUKI AKA NAFTALI M NJUKI PLAINTIFF**

AND

**ABDIRAHMAN ABDILAH I 1ST DEFENDANT
BEATRICE MULI 2ND DEFENDANT
ROBERT MONG'ARE NYAKUREMA 3RD DEFENDANT
ABDALLAH SHAHISI 4TH DEFENDANT
STANLEY M MUTUA 5TH DEFENDANT
THE DISTRICT LAND REGISTRAR, LAMU 6TH DEFENDANT
THE ATTORNEY GENERAL 7TH DEFENDANT
THE LAMU LAND CONTROL BOARD 8TH DEFENDANT**

JUDGMENT

1. By an amended Plaintiff dated 22nd July, 2022 the Plaintiff herein sued the Defendants seeking the following orders:
 - a. A permanent injunction restraining the Defendants first by themselves, their agents, assigns and/or employees or anyone claiming in or through him or otherwise howsoever from selling or purporting to sell or offering to sell, disposing off, charging, mortgaging, subdividing, pledging, entering into, remaining in or in any other manner interfering with the Deceased



Plaintiff's ownership and quiet possession and enjoyment of the said (sic) of that Property known Title Number Lamu/hindi Magogoni/351.

- b. A declaration that the alleged and/or purported consent of the Lamu Land Control Board issued on the 3rd December, 2009 was fraudulently, illegally, unlawfully and wrongfully issued and/or obtained and further that the meeting of the 8th Defendant alleged to have been held on the 2nd December, 2009 was fraudulent, illegal, unlawful and wrongful and in gross abuse of the law of natural justice with regard to the suit property and thus was said consent (sic) was incapable of being used to transfer the suit property from the Deceased Plaintiff to the First Defendant.
- c. A declaration that the alleged and purported Deed of Acknowledgement was fraudulently, illegally, unlawfully and wrongfully obtained from the Deceased Plaintiff and a further Declaration that the said document is incapable of and cannot pass and/or transfer an interest, right or title to the land herein and that the alleged and/or purported transfer of the suit property to the first Defendant was fraudulent, illegal, unlawful, wrongful and void ab initio.
- d. A declaration that the alleged and purported registration of Discharge of Charge of the Settlement Fund Trustees on the 19th January, 2010 and registration of the First Defendant as the proprietor of the suit property were fraudulent, illegal, unlawful and wrongful and that further that entry number 2 on the encumbrances section and numbers 4 and 5 of the proprietorship section of the register (green card) of the suit property/land purporting to transfer the property herein to the First Defendant be cancelled removed and/or revoked and that the Deceased Plaintiff be reregistered as the absolute proprietor of the suit property and a fresh title deed be issued to him with a further order that the Defendants do pay the Plaintiff general damages for interfering with his property herein.
- e. Further and/or in the alternative, an order be made that the alleged and/or purported transfer to the First Defendant registered on the 19th January, 2010 and the Title deed issued on the same date be cancelled and/or lifted forthwith and a Title Deed be issued in favour of the Deceased Plaintiff.
- f. Costs of and incidental to this suit.
- g. Interest thereon at court rates.

Plaintiff's Case

2. PW1 Rose Wangu Mureithi adopted her Witness Statement dated 16th February, 2015 and testified that that they entered the suit land plot No. Hindi/Magogoni/361 in September 1994. That they later got a title deed in 1986.
3. PW1 stated that in 2006 some three people namely Duncan Mboimba, Alex Ngamenya, the village elder and the 2nd Defendant (Beatrice Muli) came to their home and told them that the land belonged to the 2nd Defendant, that they later returned and took her husband away.
4. It was PW1s testimony that her husband never sold the land to anybody and never appeared before the Land Control Board.
5. Upon cross-examination by Mr. Mugambi, PW1 stated that she stays on the suit land together with her son and that they were removed in 2010 but the son went back in 2012. She further stated that her husband was forcefully removed from the suit land by the Chief and the District Officer. On cross-



examination by Mr. Ojwang, PW1 stated that she does not stay on the suit land but cultivates the land and that the son is in occupation.

6. Upon re-examination by Mr. Tindika, PW1 stated that a person by the name Abdallah fenced the suit land while her son was in occupation. That the son was arrested and detained through the instigation of the Abdalla.
7. PW2 Syombua Mwikya adopted her Witness Statement dated 16th February 2015 and stated that she is a neighbour to the Plaintiff and that at the time she got the plot there were no title deeds. It was her evidence that a woman by the name Beatrice was claiming that the land belonged to her husband. She testified that they came later with a vehicle and picked the Plaintiff who took a title deed with him.

Defendants' case

8. DW1 Alfred Omwancha an Advocate of the High Court of Kenya relied on an affidavit sworn on 6th June, 2012 whereby he stated that on 11th November, 2009, a client by the name Abdurahman Abdullahi the 1st Defendant came to his office came with Naftaly Muriithi Njuki and Beatrice Muli.
9. He testified that Abdulrahman had told him that he was looking for land and he got one neighbour by the name Naftaly Njuki but the land belonged to Robert Nyakerama, the 3rd Defendant. That Naftaly Njuki had agreed to be compensated because the title deed had been issued in his name.
10. DW1 further testified that they agreed that Naftaly would be paid Ksh 150,000/= for the developments and he prepared a deed of acknowledgement dated 11th November, 2009. DW1 also stated that Abdallah paid Ksh 150,000/= in cash in the presence of Beatrice Muli (the 2nd Defendant) who was an agent of Robert Nyakerama (the 3rd Defendant) and that the same was signed in his presence.
11. It was DW1's evidence that Naftaly Njuki surrendered the title documents and on 14th January, 2010, he transferred the property to Abdulrahman. That Naftaly Njuki was not under duress when he did the transfer.
12. Upon reexamination by Mr. Tindika, DW1 stated that he was not given any document that the property was ever in the name of Robert Nyakerama (the 3rd Defendant) and further that the 3rd Defendant did not appear before him on 11th November, 2009. He stated that he spoke to him on the phone and he told him that the land belonged to him and he did not give him any evidence. He informed the court that he remembers seeing the title deed but does not remember if it was a copy or the original.
13. DW1 also stated that the title deed was in the name of Naftaly Muriithi and he did not see any agreement between the two for sale. It was his evidence that from the records at the lands office the allottee and owner of plot No. 361 was Naftally Njuki and that he was not aware whether Naftaly Muriithi went to the Land Control Board for consent to transfer.
14. Upon reexamination by Mr. Mugambi, DW1 testified that the Plaintiff acknowledged that the 3rd Defendant was the owner of the land and the money paid as compensation which was deducted from the purchase price.
15. DW2 Alexander Kamenya, adopted his Witness Statement dated 12th October 2015 and stated that he went together with Naftally, the 2nd Defendant and a pastor where Naftally was paid money which was compensation for the trees and his house on the suit plot.
16. Upon cross-examination by Mr. Tindika, DW2 stated that he does not know when Naftaly Muriithi got into the suit land and confirmed that Naftally was staying on the suit land. DW2 stated that he



- cannot remember whether he signed a document and he does not know the parcels of land that the 3rd Defendant owns. Further that he was not present when the transfer was done.
17. DW3 Abdirahman Abdilahi adopted his statement dated 2nd June, 2012 and stated that he was informed that the suit parcel which belonged to the 3rd Defendant was for sale and produced the bundle of documents dated 2nd June, 2012.
 18. DW3 produced the letter of offer, allotment letter is dated 4th November, 1992 which and informed the court that the 3rd Defendant took a loan vide a charge dated 4th November, 2002 and the same was discharged 12th February, 2009.
 19. DW3 stated that he had asked the 3rd Defendant how he was going to resolve the issue of squatters as the title deed was in the squatter's name and was told by the 3rd Defendant to leave the issue to him. It was his evidence that they went with the late Naftaly Muriithi Njuki, went to Lamu land office and signed a deed of acknowledgement and gave him Ksh 150,000/=. He stated that this was a private affair between Naftaly Muriithi and the 3rd Defendant as he was not buying the land for Naftaly Muriithi but facilitation for transfer for him to leave the land.
 20. DW3 informed the court that he got a consent of the Land Control Board and appeared before Omwancha advocates for the transfer, further that the photograph is different from the one that was affixed by Naftaly Muriithi Njuki. DW3 testified that a police abstract dated 1st December, 2009 was given to him by Naftaly Muriithi who had misplaced his identity card.
 21. Upon cross-examination by Mr. Tindika, DW3 stated that he has not produced the agreement between himself and the 3rd Defendant and he cannot recall how much he paid the 3rd Defendant. DW3 stated that he met the 3rd Defendant twice in Nairobi and that he works for the Land Adjudication Section as an in charge of the Adjudication Section.
 22. He stated that the letter is addressed to the Land Adjudication and Settlement indicates that plot No 361 was allocated to Naftaly Muriithi and the acreage is 7.7 acres. He stated that there is a loan repayment form No 487/36 dated 17th December, 2009 and it was issued in the name of Naftaly Muriithi.
 23. It was DW3's evidence that Naftaly Muriithi never sold him any land and he met him in Lamu for the first time in Omwancha's office. DW3 further stated that the Land Control Board minutes dated 2nd December, 2009 does not show that Naftaly Muriithi was present.

Plaintiff's Submissions

24. Counsel identified the following issues for determination:
 - a. Whether the Plaintiff was the registered owner of the suit land?
 - b. Whether there was an agreement between the Plaintiff and the 1st Defendant for the sale of the suit property?
 - c. Whether the process of obtaining the consent of the Land Control Board was lawful and or legal or was it fraudulent?
 - d. Whether the transfer of land was legally executed?
 - e. Whether the Plaintiff has proved his case against the Defendants?



25. On the first issue, counsel submitted that the Plaintiff is the legal and lawful owner of the suit property having been issued with the title deed on 28th August, 2006 having produced a copy of the title deed number 450770 and the list of allottees of Hindi/ Magongoni Settlement Scheme dated 25th August, 2006. Counsel submitted that the land was registered under Section 28 of the repealed Registered [Land Act](#).
26. On the second issue, counsel submitted that the deed of acknowledgment dated 11th November, 2009 was a nullity, void ab initio and incapable of passing title to land from the Plaintiff to the 1st Defendant and relied on the case of Peter Muiruri Kamau v Mary Mwhaki Kamau [2017] eKLR.
27. On the third issue, counsel submitted that the consent of the Land Control Board was fraudulently issued and cannot stand. Counsel further submitted that the Plaintiff and his wife were never invited hence never appeared before the Lamu Land Control Board and relied on the cases of Nyakinyua and Kang’ei Farmers Company Ltd v Kariuki & Gathecha Resources Ltd (No 2) [1984] KLR 110 and Karuri v Gituru [1981] KLR 247.
28. On the fourth issue, counsel submitted that all the documents purportedly executed by the Plaintiff were illegally done and thus cannot stand. On the fifth issue, counsel relied on the cases of Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR, Kinyanjui Kamau vs George Kamau [2015] eKLR and Dhalla v Meralli [1995-98] EA 84. Counsel also relied on Article 40 of [the Constitution](#) of Kenya and submitted that the Plaintiff has surmounted the higher degree required to establish averments of fraud and illegalities against the Defendants.
29. Counsel for the Plaintiff also filed supplementary submissions and reiterated the earlier submissions and relied on Section 3 (3) of the [Law of Contract Act](#) and the case of Jane Catherine K Karani v Daniel Mureithi Wachira, Civil Appeal No 26A of 2013, Nyeri [2014] eKLR, and submitted that there was no legal agreement between the 1st Defendant and Robert Nyakeruma. Further cited the case of Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & another 2015 eKLR and submitted that there was no privity of contact between the Plaintiff and the 1st Defendant.
30. Mr. Tindika also relied on the cases of Stephen Mburu & 4 others v Comat Merchant Ltd & Another [2012] eKLR, Shadrack Kuria Kimani v Stephen Gitau Nganga & another [2017] eKLR and Lilian Waithera Gachuhi vs David Shikuku Mzee [2005] eKLR and submitted that the letter of allotment cannot be the basis of defeating the Deceased Plaintiff’s ownership of the suit property.

1st Defendant’s Submissions

31. Counsel identified the following issues for determination:
 - a. Whether the 1st Defendant acquired title to the suit property by fraudulent means?
 - b. Whether the plaintiff is entitled to the prayers sought?
 - c. Who is to bear the costs of the suit?
32. Counsel submitted that by 1994 the suit land had been allocate to the 3rd Defendant and that is why the Plaintiff left the suit land peacefully. Further that in light of the 3rd Defendant’s letter of allotment to the suit land, the title in the deceased’s name cannot stand and relied on the case of Republic vs City Council of Nairobi & 3 others (2014) eKLR on standard of proof on a balance of probability which the plaintiff has not met.



33. Counsel relied on the case of Eviline Karigu (Suing as Administratrix of Estate of Late Muriungi M' Chuka alias Muriungi M' Gichuga) v M' Chabari Kinoro [2022] eKLR and submitted that allegations of fraud are serious and that the plaintiff did not report the matter to the police.
34. The 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Defendants did not file submissions.

Analysis and Determination

35. The issues for determination are as follows:
 - a. Whether the 1st Defendant acquired title to the suit property by fraudulent means?
 - b. Whether the plaintiff is entitled to the prayers sought?
 - c. Who should bear the costs of the suit?
36. The Plaintiff claims that he is the rightful owner of the suit land and alleges that the 1st Defendant got the same registered in his name fraudulently. Fraud is defined in Black's Law Dictionary 11th Edition as;

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”
37. It is trite that fraud must be specifically pleaded and proved for a party to succeed in such a claim. In the Court of Appeal case of Vijay Morjaria vs Nansingh, Madhusingh Darbar & another [2000] eKLR the court held that;

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also 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.”
38. The Plaintiff specifically pleaded at paragraph 15A of the re-amended Plaintiff and particularized the allegations of fraud and illegality against the Defendants which meets the requirement of the need to plead the particulars of fraud.
39. From the evidence on record it is only the 1st Defendant who gave evidence amongst the Defendants that were listed. The 3rd Defendant who was the purported or alleged owner who sold the land to the 1st Defendant never showed up to help the 1st Defendant to defend his title having been the root cause of the current problem. The 2nd Defendant who also played a part in this transaction also never gave any evidence.
40. The plaintiff gave evidence to establish the root of the title and the way it was fraudulently transferred to the 1st defendant. DW1, the advocate who dealt with the transaction informed the court that the title was in the name of Naftally Njuki and that he was never shown any agreement between him and the 3rd defendant who was purportedly the owner of the suit land.
41. The 1st Defendant also confirmed that he never met Robert Nyakerama who was a Land Adjudication officer in Nairobi, that he dealt with the 2nd Defendant who was purportedly his agent. He did not state whether the 2nd Defendant had a power of attorney to act in a land transaction on behalf of the 3rd Defendant. The way this transaction was done left a lot to be desired as it was disjointed without



allowing the laid down procedures. The Plaintiff neither applied nor appeared for the issuance of the Land Control Board consent. The Defendant admits this.

42. Section 26 of the [Land Registration Act](#) provides as follows:

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.

43. The court notes that it is uncontroverted that the suit property was registered in the name of the deceased plaintiff (Naftaly Muriithi Njuki). The circumstances of the execution of the deed of acknowledgment raise suspicion as he was taken by unknown people and returned to the home and was forced to surrender his title deed.

44. Based on the testimony of PW1 and PW2, the deceased Plaintiff did not go to offices of DW1 (the advocate) voluntarily to execute the deed of acknowledgment. It appears to the court that the Plaintiff was coerced into signing the deed of acknowledgment and surrendering the title deed in respect of the suit property.

45. In the case of [Elijah Makeri Nyangwra _vs- Stephen Mungai Njuguna & Another \[2013\] eKLR](#), the court stated the following in respect of Section 26 1(b) of the [Land Registration act](#):

First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unproceduarally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”

46. DW1 informed the court that he was not given any document that the property was ever registered in the name of Robert Nyakerama (the 3rd Defendant) and the said Robert never appeared before him on 11th November, 200 as he only spoke to him on phone. This was unprocedural, how sure was the advocate that the person he was speaking to on phone was the real owner of the suit land. He never at any time met the said owner during the transaction. The question is, was there some mischief that the defendants were upto. It should be noted that the 3rd Defendant Robert was an employee of Land Adjudication and Settlement, did he acquire the suit land fraudulently and escalated the fraud by selling it to the 1st Defendant.

47. The Plaintiff is therefore entitled to general damages of Kshs 500,000/ which the court finds to be a reasonable amount. The Plaintiff was forcefully ejected from his parcel of land which was admitted by



DW3 who stated that he had voluntarily moved out the land which the court found not to be truthful. DW3 were part of the scheme to defraud the Plaintiff of his land.

48. The court is empowered under Section 80 (1) of the [Land Registration Act](#), 2012 to order the rectification of the register by directing that any registration to be cancelled or amended if it is satisfied that any registration was obtained, made or committed by fraud or mistake.
49. Section 80 (1) of the [Land Registration Act](#), 2021 provides as follows:
- “Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or committed by fraud or mistake.”
50. I have considered the pleadings, the evidence, the submissions by counsel and the relevant authorities and find that the Plaintiff has proved her case on a balance of probabilities. I therefore make the following specific orders:
- a. A permanent injunction is hereby issued restraining the Defendants by themselves, their agents, assigns and/or employees or anyone claiming in or through him or otherwise howsoever from selling or purporting to sell or offering to sell, disposing off, charging, mortgaging, subdividing, pledging, entering into, remaining in or in any other manner interfering with the Deceased Plaintiff’s ownership and quiet possession and enjoyment of the Property known as Title Number Lamu/hindi Magogoni/361.
 - b. A declaration is hereby made that the alleged and/or purported consent of the Lamu Land Control Board issued on the 3rd December, 2009 was fraudulently, illegally, unlawfully and wrongfully issued and/or obtained and further that the meeting of the 8th Defendant alleged to have been held on the 2nd December, 2009 was fraudulent, illegal, unlawful with regard to the suit property and thus the said consent was incapable of being used to transfer the suit property from the Deceased Plaintiff to the 1st Defendant.
 - c. A declaration is hereby made that the alleged and purported Deed of Acknowledgement was fraudulently, illegally, unlawfully and wrongfully obtained from the Deceased Plaintiff and was incapable of transferring an interest, right or title to the land herein and that the alleged and/or purported transfer of the suit property to the 1st Defendant was fraudulent, illegal, unlawful, wrongful and void ab initio.
 - d. A declaration is hereby made that the alleged and purported registration of Discharge of Charge of the Settlement Fund Trustees on the 19th January, 2010 and registration of the 1st Defendant as the proprietor of the suit property was fraudulent, illegal, unlawful and wrongful and that further that entry number 2 on the encumbrances section and numbers 4 and 5 of the proprietorship section of the register (green card) of the suit property/land purporting to transfer the property herein to the 1st Defendant is hereby cancelled and/or revoked.
 - e. An order is hereby issued directing the Land Registrar Lamu County to cancel the title deed issued on 19th January, 2010 and the same be issued in the name of the Deceased Plaintiff.
 - f. An order is hereby issued that the 1st 2nd 3rd 4th and 5th Defendants to pay the Plaintiff general damages of Kshs 500, 000/ plus costs of the suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 11TH DAY OF MARCH 2024.

M.A. ODENY



JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

