



**Awounda v Muia & 6 others (Environment & Land Case  
200 of 2015) [2024] KEELC 3495 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3495 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 200 OF 2015  
CA OCHIENG, J  
APRIL 30, 2024**

**BETWEEN**

**ASTON OKETCH AWOUNDA ..... PLAINTIFF**

**AND**

**NAOMI MITI MUIA ..... 1<sup>ST</sup> DEFENDANT**

**PHILLIP MUSEMBI MUIA ..... 2<sup>ND</sup> DEFENDANT**

**CHARITY MUTHONI MACHAGA ..... 3<sup>RD</sup> DEFENDANT**

**BENJAMIN IRUNGU MWANGI ..... 4<sup>TH</sup> DEFENDANT**

**JOSEPH MUCHIRI KANGANGI ..... 5<sup>TH</sup> DEFENDANT**

**MUUNGANO SELF HELP GROUP ..... 6<sup>TH</sup> DEFENDANT**

**LAZARUS N. MUIA ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Through a Plaint dated the 1<sup>st</sup> September, 2015, the Plaintiff prays for Judgment against the Defendants jointly and severally for:-
  - a. Breach of contract.
  - b. Specific performance.
  - c. The Registrar of Lands Machakos to de-register title No. Donyo Sabuk/Komarock Block 1/20114 which is in favour of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants and cancel all the relevant documents relating to the same as irregular and fraudulent.
  - d. Costs of the suit.



- e. Interest of the court rates on (a), (b) above.
  - f. Any other relief this court may deem fit to grant.
2. The 1<sup>st</sup> to 6<sup>th</sup> Defendants' filed their Defence dated the 1<sup>st</sup> October, 2015 denying the averments in the Plaint and insisted that the allegations of fraud against them are shambolic, disjointed, vexatious and deeply tainted with fraud and forgeries. They particularized fraud against the Plaintiff and filed a Counter-claim seeking for the following orders:
    - i. The caution placed by the Plaintiff on LR No. Donyo Sabuk/ Komarock Block 1/20114 be removed by the Plaintiff, and in default by the District Land Registrar, Machakos.
    - ii. Costs of the suit, the Counter-claim and interest at court rates.
  3. The Plaintiff filed a reply to Defence and Defence to Counter-claim where he reiterated his averments as per the Plaint. He insisted that he had a legal obligation to caution the suit land which he had purchased. He sought for the Counter-claim to be dismissed with costs.
  4. The matter proceeded for hearing where the Plaintiff had two (2) witnesses while the Defendant called one (1) witness.

### **Evidence of the Plaintiff**

5. The Plaintiff as PW1 testified that he is a jua kali artisan. It was his testimony that he bought suit land, from the 1<sup>st</sup> Defendant, who sold it again. He adopted his witness statement dated the 28<sup>th</sup> August, 2015 as his evidence in chief. PW2 David Omondi who is a Mechanic, testified that he resides in Kariobangi and was present when the transaction in dispute took place. He adopted his witness statement dated the 28<sup>th</sup> August, 2015 as his evidence in chief. The Defendants' Counsel opted not to cross-examine and sought to rely on his skeletal arguments. The Plaintiff produced the following documents as exhibits: Copy of Title Deed No. Donyo Sabuk/Komarock Block 1/13242, measuring 21.707 Ha for Naomi Miti Muia of ID. No. 14xxxxx; Application for Land Control Board. LCR No. 586/08 at Matungulu for Donyo Sabuk/Komarock Block 1/20114 – Naomi Miti to Aston Oketch Awuonda; Letter of consent dated 23<sup>rd</sup> October, 2008 on LR. Donyo Sabuk/ Komarock Block 1/20114; Transfer forms assessed dated 11<sup>th</sup> November, 2008; Copy of Identity Card for Naomi Miti Muia No. 14xxxxx; Pin No. for Naomi Miti Muia No. A0038xxxxxx; Copy of Identify Card for Aston Oketch Awuonda No. 103xxxx; Pin No. for Aston Oketch Awuonda No. A0037xxxxxx; Mutation form for the sub-division of 20114 dated 22<sup>nd</sup> July, 2008; Sale Agreement dated 23<sup>rd</sup> September, 2006 for one and a half acre for Kshs.70,000 and all subsequent payment and dates; Handwritten statement by Lazarus Muia and typed copy; Acknowledgment of payment of Phillip Musembi Muia as having Power of Attorney from Naomi Miti Muia; Demand Letter to Naomi Miti Muia dated 16<sup>th</sup> March, 2012; Demand letter to Lazarus Muai dated 2<sup>nd</sup> April, 2014; Reply to the letter of demand by Lumumba and Kaluma Advocates; Receipt from Lazarus Muia dated 7<sup>th</sup> July, 2007, 23<sup>rd</sup> September, 2006 and 8<sup>th</sup> November, 2006; Letter dated 28<sup>th</sup> October, 2013 from Registrar G.M. Njoroge Machakos; Letter dated 20<sup>th</sup> March, 2014 to the Registrar Machakos Land Office and Letter dated 24<sup>th</sup> October, 2013 to the Registrar Machakos Land Office.

### **Evidence of the Defendants**

6. DW1 Benjamin Irungu Mwangi explained that he was testifying on behalf of other Defendants. He adopted his witness statement dated the 26<sup>th</sup> October, 2015 as his evidence in chief. He relied on the Defendants' skeletal arguments dated the 5<sup>th</sup> May, 2023. It was his testimony that they bought the suit



land from the 1<sup>st</sup> Defendant and their title is legitimate. Further, that there is no pending case of fraud against them.

7. During cross-examination he explained that they registered their group in 2005. It was his testimony that they bought land from Naomi Miti Muia and not Phillip, who had a Power of Attorney. He contended that they signed a Sale Agreement in 2011 but could not recall the dates. He however confirmed that the Sale Agreement was dated the 18<sup>th</sup> August, 2010. He denied knowledge of the Sale Agreement dated the 1<sup>st</sup> March, 2010, and confirmed that Phillip (2<sup>nd</sup> Defendant) represented Naomi as he had a Power of Attorney. He further confirmed that they bought land parcel No. Donyo Sabuk Block 1/20114 which measured around 3 and ½ acres at Kshs. 250,000 per acre but could not recall, the total purchase price paid. He was emphatic that they got their title in 2010 but got a caution registered on it, when they were trying to subdivide it. It was his further testimony that they went to the Land Control Board but could not recall when they got consent therefrom. He further confirmed that there is a section in the Agreement which Phillip (2<sup>nd</sup> Defendant) signed on behalf of Naomi (1<sup>st</sup> Defendant). Further, he signed acknowledgment of payment as he had a Power of Attorney, since Naomi (1<sup>st</sup> Defendant) was old. He explained that it is Phillip (2<sup>nd</sup> Defendant) who signed the Sale Agreement and not Naomi Miti Muia. Further, that Phillip signed the application for consent. He reiterated that it was Phillip, who was transacting on behalf of Naomi Miti Muia. He averred that they did not engage Naomi's sons' since she had availed Phillip. Further they only met Naomi (1<sup>st</sup> Defendant) and Phillip (2<sup>nd</sup> Defendant) but not the other family members' during the transaction. The Defendants produced the following documents as exhibits: Copy of Title Deed to the suit premises; Letters dated 3<sup>rd</sup> July, 2013 and 22<sup>nd</sup> July, 2012 to Machakos District Land Registrar; Copy of Search Certificate; Notice of Intention to remove Caution dated 18<sup>th</sup> September, 2013; Notice of hearing of an objection dated 19<sup>th</sup> December, 2013; Letter by the Chief Land Registrar dated 2<sup>nd</sup> July, 2014; Letter by the Land Registrar, Machakos dated 31<sup>st</sup> July, 2015; Sale Agreement dated 27<sup>th</sup> July, 2010 and acknowledgement of payment dated 18<sup>th</sup> August, 2010.

## Submissions

8. The Plaintiff in his submissions relied on the evidence he presented including documents produced as exhibits. He submitted that the consent to transfer land which was given to the 3<sup>rd</sup> to 6<sup>th</sup> Defendants was obtained fraudulently since there was already one in existence issued in his favour, which had not been cancelled. He argued that the 2<sup>nd</sup> Defendant relied on the title that was obtained fraudulently on deceit that the original one had been lost, yet it had been given to Lazarus, the son of Naomi Miti who had it until the time he died, in 2020. It was his further submission that the 2<sup>nd</sup> Defendant failed to testify in court, yet he is still alive and that his Defence cannot serve any purpose in the absence of oral evidence. He reiterated that the Agreement between the deceased and himself was never cancelled and purchase price paid, never refunded after the new agreement with the 3<sup>rd</sup> to 6<sup>th</sup> Defendants, was executed. He reaffirmed that his transfer forms were ready for registration on 11<sup>th</sup> November, 2008 while the Defendants' never presented consent or transfer forms. Further, their title was not obtained procedurally as there is no receipt issued for payment of stamp duty. He challenged the Power of Attorney, the 1<sup>st</sup> Defendant had donated to the 2<sup>nd</sup> Defendant. To buttress his averments, he relied on the following authorities: *Francis Nganga Kabohi v Serah Wanjira Nganga & 3 Others* (2022) eKLR; *Aspire Limited v Zedica Technical Services Limited & 2 others* (2022) eKLR and *Arthi Highway Developers Ltd v Westend Butchery Ltd & 6 Others* (2015) eKLR.
9. The Defendants in their submissions sought for the court to treat their skeletal arguments as the backbone of their submissions. In the skeletal arguments, they contended that they purchased land parcel number Donyo Sabuk/Komarock Block 1/20114 from the 1<sup>st</sup> Defendant and they were issued



with a Certificate of Title dated the 17<sup>th</sup> December, 2010. They insisted that the 1<sup>st</sup> Defendant is long dead and the Plaintiff failed to substitute her. Further, that the suit against the 7<sup>th</sup> Defendant abated as he is also deceased. They argued that the 6<sup>th</sup> Defendant through the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants undertook the sale, obtained consent of the Land Control Board and conducted the transfer process without anyone raising any objection. Further, it is only later when they sought to subdivide the land, that they found a caution registered thereon. They reiterated that the 6<sup>th</sup> Defendant is a *bona fide* purchaser for value without notice. They contended that the 1<sup>st</sup> Defendant in her statement dated the 22<sup>nd</sup> October, 2015 had denied knowledge of the Plaintiff nor transacting with him and acknowledged the title, held by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants. Further, that the Plaintiff's grievances should be with the original owner of the suit land and not against them. They referred to Machakos ELC 198 of 2015 James Kariuki Gichohi & Another v Naomi Miti Muia & 6 Others which is related to the suit herein, as the Plaintiffs therein sued them. They reiterated that if the Plaintiff is unable to technically prove breach of contract and has no one against whom specific performance can be ordered, why would the Court order for cancellation of title.

### Analysis and Determination

10. Upon consideration of the Plaintiff, Defence, Testimony of the Witnesses, Defendants' skeletal arguments and rivaling submissions, the following are the issues for determination:
  - a. Whether the Plaintiff is entitled to the orders as sought in the Plaintiff.
  - b. Whether the 3<sup>rd</sup> to 6<sup>th</sup> Defendants can be deemed as *bona fide* purchasers' for value without notice.
11. As to whether the Plaintiff is entitled to orders as sought in the Plaintiff and if the 3<sup>rd</sup> to 6<sup>th</sup> Defendants' can be deemed as *bona fide* purchasers for value without notice.
12. The Plaintiff sought for various orders including breach of contract, specific performance as well as cancellation of the 3<sup>rd</sup> to 6<sup>th</sup> Defendant's title in respect to land parcel number Donyo Sabuk/Komarock Block 1/20113, hereinafter referred to as the 'suit land'. The Plaintiff claims to have bought the suit land from the 1<sup>st</sup> Defendant and paid the full purchase price. He produced the Sale Agreement dated 23<sup>rd</sup> September, 2006 for one and a half acre being purchased for Kshs. 70,000 and all subsequent acknowledgements of payment made thereafter which, were thumb printed by the deceased 1<sup>st</sup> Defendant. It was PW1's testimony that he had procured consent of the Land Control Board and the Vendor signed the Transfer Form, however when he took the documents for registration, he found when the land had been sold to the 3<sup>rd</sup> to 6<sup>th</sup> Defendants'. PW2 confirmed he was present during the transaction, the Plaintiff had with the 1<sup>st</sup> Defendant. I note the 1<sup>st</sup> Defendant is deceased and the Plaintiff filed a citation in respect to her estate which was produced as an exhibit. However, legally since she had not been substituted after one (1) year of her demise, I find that the suit against her, has abated. In support of his claim, the Plaintiff further produced the Copy of Title Deed No. Donyo Sabuk/Komarock Block 1/13242, measuring 21.707 Ha; ID Card No. 14xxxxx for Naomi Miti Muia; Application for Land Control Board - LCR No. 586/08 at Matungulu for Donyo Sabuk/Komarock Block 1/20114 – Naomi Miti to Aston Oketch Awuonda; Letter of Consent dated 23<sup>rd</sup> October, 2008 on LR. Donyo Sabuk/Komarock Block 1/20114; Transfer forms assessed dated 11<sup>th</sup> November, 2008; Mutation form for the sub-division of 20114 dated 22<sup>nd</sup> July, 2008; and handwritten statement by Lazarus Muia and typed copy.
13. The 3<sup>rd</sup> to 6<sup>th</sup> Defendants insisted that they owned the suit land and produced their Certificate of Title, various correspondence and Sale Agreement dated the 27<sup>th</sup> July, 2010 between 1<sup>st</sup> Defendant



and themselves but signed by the 2<sup>nd</sup> Defendant confirming he received Kshs. 255,000 as purchase price. DW1 in his testimony confirmed that the 2<sup>nd</sup> Defendant held a Power of Attorney for the 1<sup>st</sup> Defendant and executed their Sale Agreement, produced consent of the Land Control Board as well as signed Transfer Form, I note the 2<sup>nd</sup> Defendant who was the main person in the transaction between 1<sup>st</sup> Defendant with 3<sup>rd</sup> to 6<sup>th</sup> Defendants actually failed to attend court to corroborate his Defence. It is trite that failure for a Defendant to attend court to corroborate his Defence, the Plaintiff's claim will remain undefended. In the circumstances, I find that the Plaintiff's claim as against the 2<sup>nd</sup> Defendant is undefended.

14. The 3<sup>rd</sup> to 6<sup>th</sup> Defendants' have argued that since the Plaintiff never substituted the 1<sup>st</sup> Defendant, his claim for specific performance must fail. I however opine that since the 2<sup>nd</sup> Defendant held a Power of Attorney for the 1<sup>st</sup> Defendant and even transacted with the 3<sup>rd</sup> to 6<sup>th</sup> Defendants over the suit land by executing the Sale Agreement, receiving purchase price and procuring the aforementioned documents and noting that the 1<sup>st</sup> Defendant died during the pendency of this suit, I opine that the claim for specific performance cannot fail and can be sustained as against the 2<sup>nd</sup> Defendant.
15. Looking at the documents produced by both parties as exhibits, I note the Certificate of Title produced by the 3<sup>rd</sup> to 6<sup>th</sup> Defendants, was issued on the 17<sup>th</sup> December, 2010. Further, I note the Sale Agreement they entered into with the 2<sup>nd</sup> Defendant was subsequent to the Sale Agreement which the Plaintiff had entered into with the 1<sup>st</sup> Defendant. Further, the Plaintiff obtained consent of Land Control Board as well as procured duly signed Transfer Form and paid the full purchase price, before the 3<sup>rd</sup> to 6<sup>th</sup> Defendants, entered into their Sale Agreement. From the evidence before Court, it is worthnoting that the deceased 1<sup>st</sup> Defendant was initially the registered as the proprietor of LR No. Donyo Sabuk/Komarock Block 1/13242 on 27<sup>th</sup> March, 2003 but subdivided it as per the mutation form which was produced as an exhibit. Further, as per the Application for Consent of Land Control Board reference LCR 586/08, she sought to transfer LR Number Donyo Sabuk/Komarock Block 1/20114 to the Plaintiff. She obtained consent of the land control board dated the 23<sup>rd</sup> October, 2008 and executed Transfer Forms which were assessed and dated the 11<sup>th</sup> November, 2008.
16. The Defendants have insisted that the 1<sup>st</sup> Defendant in her Defence stated that she did not know the Plaintiff and that the Plaintiff presented fraudulent documents. However, it is trite that her Defence alone cannot stand, unless its veracity was tested through viva voce evidence. From all the documents the Plaintiff produced including acknowledgements of receipt of the purchase price from the Vendor and her sons, as well as a letter dated the 10<sup>th</sup> March, 2012 written by the 7<sup>th</sup> Defendant confirming their mother sold the suit land to the Plaintiff, as a court I cannot disregard them. It is trite that transaction to land is a process and not one off. I opine that since there was even a mutation form showing subdivision of the larger parcel of land belonging to the 1<sup>st</sup> Defendant, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed to explain how the Plaintiff accessed all these documents.
17. In my view, I find that the Plaintiff has indeed demonstrated through documentation that he entered into a valid Sale Agreement with the deceased, paid the full purchase price, obtained consent of the Land Control Board as well as duly executed Transfer Form. The only issue left, was, for him to obtain a Certificate of Title, which was not possible since the 3<sup>rd</sup> to 6<sup>th</sup> Defendants' were later sold for the suit land, by the 2<sup>nd</sup> Defendant using the Power of Attorney donated to him by the Vendor (late 1<sup>st</sup> Defendant). The key question we need to ponder is hence whether once the deceased had duly executed Transfer Forms and obtained Consent of the Land Control Board, was the suit land available again for disposal to third parties through an alleged Power of Attorney. Further, did the 2<sup>nd</sup> Defendant who was a Donee of a Power of Attorney have capacity to subsequently sell the suit land, to the 3<sup>rd</sup>



to 6<sup>th</sup> Defendant, and did the 3<sup>rd</sup> to 6<sup>th</sup> Defendants hence legally acquire a proper title through the 2<sup>nd</sup> Defendant.

18. It is my considered view that, since the Plaintiff obtained the requisite consent of the Land Control Board in accordance with Section 6 of the Land Control Act, which was not withdrawn and had the duly executed transfer forms, noting that under the repealed Registered Land Act and Land Registration Act, a duly executed Transfer Form is a contract for disposition of land and is registrable, I find that this created a proprietary interest on the said land, on behalf of the Plaintiff and he was not wrong to register a caution over it, so as to protect his interest.

19. On validity of title, Section 26 of the Land Registration Act of 2012 provides that:

26.

(1) 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.” Emphasis mine

20. Based on the facts before me, noting that the 2<sup>nd</sup> Defendant did not controvert the Plaintiff’s averments by adducing oral evidence, I find that the Plaintiff has proved he legally acquired the suit land. Further, even though the 3<sup>rd</sup> to 6<sup>th</sup> Defendants obtained their title, I opine that this was unprocedural and through a corrupt scheme since the Vendor had already procured Consent of Land Control Board and signed the Transfer Form before her demise. I even note that the Defendants did not produce consent of Land Control Board, proof of payment of Stamp Duty and duly executed transfer forms in support of their title. To my mind, the processing of the 3<sup>rd</sup> to 6<sup>th</sup> Defendants title by the 2<sup>nd</sup> Defendant using the Power of Attorney was a pointer enough to decipher elements of fraud.

21. In the case of Karugu (Suing as the Personal Representative of Peter Karugu Guandai - Deceased) v Kiburu & 3 others (Environment & Land Case 1375 of 2014) [2023] KEELC 18137 (eKLR) (15 June 2023) (Judgment), the Learned Judge observed that:-

” At this juncture, it is pertinent to interrogate the legal frame work which governs the execution of documents in order to determine the validity of the transfer document dated 14<sup>th</sup> September, 2009. The provisions of Section 108 of the Registered Land Act Cap 300 (Repealed) stipulated that; “Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form...”

80. While Section 109 thereof provided that; (1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument. (2) Subject to section 124 (2), an instrument shall be deemed to have been executed only –a. by a natural person, if signed by him ....”

81. The verification of the execution was provided for under Section 110 of the aforementioned statute in the following terms; “(1) Subject to subsection (3), a person executing an instrument shall appear before the Registrar or such public officer or other person as is prescribed and, unless he is known to the



Registrar or the public officer or other person, shall be accompanied by a credible witness for the purpose of establishing his identity.”

82. The above provisions of law are echoed in the current legal regime to be found under Sections 43 - 46 of the *Land Registration Act*. In particular, Section 44 thereof provides that;(1)Except as otherwise provided in this Act, every instrument effecting any disposition under this Act shall be executed by each of the parties consenting to it, in accordance with the provisions of this section. (2)The execution of any instrument referred to in subsection (1), by a person shall consist of appending a person’s signature on it or affixing the thumbprint or other mark as evidence of personal acceptance of that instrument”, Emphasize added.

83. From the foregoing provisions of law, (both old and new law), it is apparent that the transfer document had been duly signed and had therefore met the requisite criteria set out under the applicable law.

84. It is noted that the 4<sup>th</sup> Defendant has given a plausible explanation that the instrument of conveyance of the suit property from Karugu to the 1<sup>st</sup> Defendant had been executed way back in February 2009, and she only inserted the date of 14<sup>th</sup> September, 2009 at the time of registration. That evidence is corroborated by DW1 who testified that at the point of signing the conveyancing document, the said instrument did not have a date. She went on to state that;

“ I got the conveyance with Mr. Karugu’s signature soon after I had signed.  
When I got it back, it had a stamp but it was still undated”

85. I find that in absence of any challenge to the signature of Karugu both in the sale agreement of 10<sup>th</sup> August, 2007 and the conveyancing document of 14<sup>th</sup> September, 2009, it follows that the latter document had been duly executed paving way for it to become a registrable instrument.”

22. While in the case of *Alberta Mae Gacci v Attorney General & 4 Others* 2006 (eKLR), the Court held that:-

“ Cursed should be the day when any crooks in the street of Nairobi or any town in this jurisdiction using forgery, deceit or any kind of fraud would acquire a legal and valid title deceitfully, snatched from a legal registered innocent proprietor. Indeed, cursed would be the day when such a crook would have a legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration....”

23. Yet in the case of *Munyu Maina v Hiram Gathiha Maina*, Civil Appeal No.239 of 2009, where the Court held that:-

“ We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”



24. In the foregoing, while relying on the legal provisions I have cited including the decisions quoted, I find that since the deceased Vendor had already disposed of the suit land to the Plaintiff, the 3<sup>rd</sup> to 6<sup>th</sup> Defendants did not acquire a proper title so as to be deemed as *bona fide* purchasers for value without notice, as the root of their said title was challenged, as the said land was not available for disposal to a third party. I opine that even if the transfer had not been registered, this could not defeat the earlier transaction the Plaintiff had with the 1<sup>st</sup> Defendant. Further, since the 3<sup>rd</sup> to 6<sup>th</sup> Defendants did not acquire a good title, they can still seek remedy against the 2<sup>nd</sup> Defendant who sold them the suit land. In the circumstances, while relying on Section 80 of the *Land Registration Act*, I find that the 3<sup>rd</sup> to 6<sup>th</sup> Defendants' title to the suit land stands revoked. I hence hold that the 1<sup>st</sup> to 6<sup>th</sup> Defendants' Counter-claim must fail and will proceed to dismiss it with costs to the Plaintiff.
25. In the circumstances, I find that the Plaintiff is indeed entitled to the orders as sought in the Plaint but since the 1<sup>st</sup> Defendant is deceased, I hold that the title to the suit land should revert to her Estate for onward transmission to him. Further, the caution subsisting on the land should be retained until the 1<sup>st</sup> Defendant's Estate transmits the suit land to the Plaintiff.
26. In the foregoing, I find that the Plaintiff has proved his case on a balance of probability and will enter Judgment in his favour as against the Defendants' in the following terms:-
- a. A declaration be and is hereby issued that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' breached the contract the 1<sup>st</sup> Defendant had with the Plaintiff.
  - b. The Plaintiff be and is hereby entitled to Specific performance as against the 1<sup>st</sup> Defendant's estate as well as the 2<sup>nd</sup> Defendant.
  - c. The Registrar of Lands Machakos be and is hereby directed to de-register title No. Donyo Sabuk/Komarock Block 1/20114 which is in favour of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants, cancel all the relevant documents relating to the same as irregular and fraudulent and revert the suit land to the Estate of Naomi Miti Muia.
  - d. Costs of the suit including the Counter-claim is awarded to the Plaintiff but to be borne by the 2<sup>nd</sup> Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 30<sup>TH</sup> DAY OF APRIL, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of;

Ms. Gulenywa for Plaintiff

Gachiengo Gitau for Defendant

Court Assistant – Simon

