



Penta Ventures Limited & 2 others v Ngotho & 2 others (Sued as the legal representatives of the Estate of the Late Anthony Athanas Ngotho) (Environment & Land Case 737 of 2013) [2024] KEELC 4355 (KLR) (29 May 2024) (Judgment)

Neutral citation: [2024] KEELC 4355 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 737 OF 2013**

**EM WASHE, J
MAY 29, 2024**

BETWEEN

**PENTA VENTURES LIMITED 1ST PLAINTIFF
COL (RTD) JAMES PETER GICHUHI 2ND PLAINTIFF
JANE GICHUHI 3RD PLAINTIFF**

AND

**ELIZABETH MUENI NGOTHO 1ST DEFENDANT
JAMES MUINDI NGOTHO 2ND DEFENDANT
BERNICE KANINI NGOTHO 3RD DEFENDANT
SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
ANTHONY ATHANAS NGOTHO**

JUDGMENT

1. The 1st to 3rd Plaintiffs herein (collectively hereinafter referred to as “the Plaintiffs”) filed a Plaint dated 20.05.2013 against the Legal Representatives of the Late Anthony Athanas Ngotho (collectively hereinafter referred to as “the Defendant”) seeking for the following Orders; -
 - a. The sum of KShs 750,000/- being the value of the property known as Mavoko Town Block 2/3801 as at the 5th November 2010, the date the same was sold, therefore being placed out of reach of the 1st Plaintiff.
 - b. An Order directed at the Defendants compelling them to issue the replacement titles over Mavoko Town Block 2/1544 and Mavoko Town Block 2/1545 through the issuance of titles Mavoko Town Block 2/1452, Mavoko Town Block 2/1453 and Mavoko Town Block 2/1454.



- c. An Order directed at the Defendants compelling them to issue the replacement titles over Mavoko Town Block 2/1529 and Mavoko Town Block 2/1530 through the issuance of titles Mavoko Town Block 2/1425, Mavoko Town Block 2/1426 and Mavoko Town Block 2/1427.
 - d. Costs of the suit.
 - e. Interest on (i) and (iv) above.
2. The facts contained in the Plaintiff filed can be summarised as follows; -
- a. The first transaction relates to the 1st Plaintiff who pleaded that on or about 05.01.2005, the Defendant sold to him a property known as Mavoko Town Block 2/3801 for a consideration of KShs 250,000/- which amount was duly settled in full.
 - b. In addition to the payment hereinabove, the 1st Plaintiff also paid the Defendant an extra KShs 15,000/- as costs of the Title processing fees of the property known as LR.No. Mavoko Town Block 2/3801.
 - c. Based on the oral Agreement for Sale outlined hereinabove and settlement of the consideration and other incidentals thereof, the Plaintiff took possession of the property known as LR.No.mavoko Town Block 2/3801.
 - d. Unfortunately, the Defendant passed away before the Title to the property known as LR.No.mavoko Town Block 2/3801 was transferred from the Defendant's name to the 1st Plaintiff and/or his assignees as anticipated.
 - e. The 1st Plaintiff in an effort to complete the transaction approached the Administrators of the Defendant seeking for the Title of the property known as LR.No.mavoko Town Block 2/3801 but was informed that the same had been sold and transferred to a third party.
 - f. The 1st Plaintiff has accused the Administrators of the Defendant of being negligent and specifically provided the particulars of their negligence under Paragraph 13 of the Plaintiff.
 - g. The 1st Plaintiff's claim against the Administrators of the Defendant as relates to the property known as LR.No.mavoko Town Block 2/3801 is a compensation of KShs 750,000/- which was the consideration paid by the third party to the Defendant as on 05.11.2010.
 - h. The second transaction relates to two properties namely LR.No.mavoko Town Block 2/1544 and LR.No.mavoko Town Block 2/1545 which were successfully transferred by the Defendant to the 1st Plaintiff.
 - i. However, the Defendant undertook a Resurvey on the Sub-divisions which exercise resulted to the cancellation of the properties known as LR.No.mavoko Town Block 2/1544 and LR.No.mavoko Town Block 2/1545.
 - j. Instead, the Defendant replaced the Plaintiff's properties known as LR.No.mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545 with three properties known as LR.No.mavoko Town Block 2/1452, LR.No.mavoko Town Block 2/1453 and LR.No.mavoko Town Block 2/1454.
 - k. At the time of filing the Plaintiff, the Administrators of the Defendant had not processed and handed over the Titles to the properties known as LR.No.mavoko Town Block 2/1452, LR.No.Mavoko Town Block 2/1453 and LR.No.LR.No.mavoko Town Block 2/1454 and therefore the 1st Plaintiff sought an order that the said titles be processed and issued to him.



- l. The third transaction related to the 2nd and 3rd Plaintiffs in their own capacity purchasing two properties namely LR.No.mavoko Town Block 2/1529 and LR.No.mavoko Town Block 2/1530 which were duly registered in their names respectively.
 - m. Once again, the Defendant for his own reason undertook a Resurvey and the properties known as LR.No.Mavoko Town Block 2/1529 and LR.No.Mavoko Town Block 2/1530 were cancelled.
 - n. Instead, the Defendant replaced the properties registered in the names of the 2nd and 3rd Plaintiffs known as LR.No.Mavoko Town Block 2/1529 and LR.No.Mavoko Town Block 2/1530 with new properties known as LR.No.Mavoko Town Block 2/1425, Lr.no.mavoko Town Block 2/1426 and LR.No.mavoko Town Block 2/1427.
 - o. However, the 2nd & 3rd Plaintiff's claim is that the Defendant and/or the Administrators of his estate have failed, refused and or neglected to process and/or furnish the necessary title documents to the properties known as LR.No.Mavoko Town Block 2/1425, LR.No.Mavoko Town Block 2/1426 and LR.No.Mavoko Town Block 2/1427 hence this Honourable Court should compel the Defendants to do so.
3. The Plaint filed herein was duly served on the Defendants who opposed the prayers therein by filing a Statement of Defence dated 15.08.2013.
 4. The Defendants through the Defence dated 15.08.2013 responded to the Plaintiffs facts and causes of actions as follows; -
 - a. As to the first transaction relating to the property known as LR.No.Mavoko Town Block 2/3801, the Defendants denied the existence of any Agreement For Sale between the 1st Plaintiff and the Defendant herein.
 - b. The Defendants specifically denied that the property known as LR.No.Mavoko Town Block 2/3801 was ever sold to the 1st Plaintiff for a consideration of KShs 260,000/- as alleged in the Plaint.
 - c. The Defendants pleaded that the purported receipts demonstrating payments of both the consideration plus the title processing fees were forgeries and not true documents issued by the Defendant.
 - d. In addition to the above, the Defendants pleaded that there was no transfer documents prepared and/or executed by the Defendant in favour of the 1st Plaintiff in relation to the property known as LR.No.Mavoko Town Block 2/3801 and therefore no such transaction existed.
 - e. In any event, the property known as LR.No.Mavoko Town Block 2/3801 was sold to another third party and the title transferred to her name hence was not available to the 1st Plaintiff to acquire the same.
 - f. As regards the second transaction appertaining to LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545, the Defendants admitted that indeed the 1st Plaintiff was the lawful owner of the above-mentioned properties.
 - g. The Defendants confirmed in their pleadings that the properties known as LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545 were cancelled after a



Resurvey and replaced with the properties known as LR.No.Mavoko Town Block 2/1452, LR.No.Mavoko Town Block 2/1453 and LR.No.Mavoko Town Block 2/1454.

- h. As regards the third transaction, the Defendants admitted to selling and transferring the properties known as LR.No.Mavoko Town Block 2/1529 and LR.No.Mavoko Town Block 2/1530 to the 2nd and 3rd Defendants.
 - i. However, as earlier mentioned, the Defendant undertook a Resurvey and the original properties known as LR.No.Mavoko Town Block 2/1529 and LR.No.Mavoko Town Block 2/1530 were cancelled.
 - j. Instead, the Defendants replaced the properties known as LR.No.Mavoko Town Block 2/1529 and LR.No.Mavoko Town Block 2/1530 with the properties known as LR.No.Mavoko Town Block 2/1542, LR.No.Mavoko Town Block 2/1543 and LR.No.Mavoko Town Block 2/1544.
 - k. The Defendants therefore specifically denied the particulars of negligence pleaded in paragraph 13 of the Plaint as regards the property known as LR.No.Mavoko Town Block 2/3801.
 - l. Further to that, the Defendants explained that the reason why the titles known as LR.No.Mavoko Town Block 2/1452, LR.No.Mavoko Town Block 2/1453, LR.No.Mavoko Town Block 2/1454, LR.No.Mavoko Town Block 2/1542, LR.No.Mavoko Town Block 2/1543 and LR.No.Mavoko Town Block 2/1544 had not been availed to the Plaintiffs was because of the document verification process.
 - m. The Defendants therefore sought for the Plaint to be dismissed with costs.
5. After filing of the Defence herein, the pleadings closed and the matter was ready for hearing.
 6. However, before the hearing would start, the Plaintiffs and the Defendants recorded a consent to the effect that the issues relating to the properties known as LR.No. Mavoko Town Block 2/1452, LR.No.mavoko Town Block 2/1454, LR.No.Mavoko Town Block 2/1542, LR.No.mavoko Town Block 2/1543 and LR.No.Mavoko Town Block 2/1544 had been amicably resolved.
 7. The remaining properties that were still in dispute were LR.No.Mavoko Town Block 2/3801 and LR.No.Mavoko Town Block 2/1453.

Plaintiff's Case

8. The Plaintiffs' case began with the testimony of the 2nd Plaintiff who was marked as PW 1.
9. The 2nd Plaintiff introduced himself as a director of the 1st Plaintiff who was well versed with the issues of the transactions between the 1st Plaintiff and the Defendants herein.
10. The 2nd Plaintiff informed the Honourable Court that he would be testifying specifically in regards to the properties known as LR.No.Mavoko Town Block 2/3801 and LR.No.Mavoko Town Block 2/1453.
11. The 2nd Plaintiff also sought to reply on his witness statement dated 17.11.2023 which he adopted as his evidence in chief.
12. According to the 2nd Plaintiff, the 1st Plaintiff acquired two properties known as LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545.



13. However, after the two properties had been transferred to the name of the 1st Plaintiff by the Defendants, there was a Resurvey that was undertaken and the two properties were subsequently cancelled.
14. Instead, the Defendants offered the properties known as LR.No.Mavoko Town Block 2/1542, LR.No.mavoko Town Block 2/1543 and LR.No.Mavoko Town Block 2/1544 as replacements.
15. The 2nd Plaintiff stated that the Defendants had only transferred two properties known as LR.No.Mavoko Town Block 2/1542 and LR.No.Mavoko Town Block 2/1544 leaving out LR.No.Mavoko Town Block 2/1543.
16. According to the 2nd Plaintiff, the extra plot by the Defendant was to compensate the 1st Plaintiff for the inconvenience of relocation from the original properties that it had purchased.
17. The 2nd Plaintiff confirmed that the 1st Plaintiff indeed paid for the Title proceeding fees of the three properties to the Defendant's advocates.
18. Unfortunately, the Defendants only processed two titles namely for LR.No.Mavoko Town Block 2/1542 and LR.No.Mavoko Town Block 2/1544.
19. In place of the property known as LR.No.Mavoko Town Block 2/1543, the Defendant's Counsel offered to substitute the same with the property known as LR.No.Mavoko Town Block 2/1487 which was acceptable with the 1st Plaintiff.
20. However, the said property known as LR.No.Mavoko Town Block 2/1487 has not so far been transferred to the 1st Plaintiff.
21. As regards the property known as LR.No.Mavoko Town Block 2/3801, the 2nd Plaintiff testified to the effect that it was duly purchased by the 1st Plaintiff.
22. Unfortunately, the Defendant passed away before the same was transferred to the 1st Plaintiff's name.
23. When this transaction was reported to the Administrators of the Defendant's estate, the 1st Plaintiff was informed that the said property known as LR.No.Mavoko Town Block 2/3801 had already been sold to a third party.
24. The 2nd Plaintiff then presented various correspondences and receipts to confirm his interest over the property known as LR.No.Mavoko Town Block 2/3801 but the Defendants have refused to transfer the same.
25. In essence therefore, the 2nd Plaintiff sought this Honourable Court to compel the Defendants to transfer and register the two properties known as LR.No.Mavoko Town Block 2/1487 and LR.No.Mavoko Town Block 2/3801 in the name of the 1st Plaintiff.
26. In the alternative, the 2nd Plaintiff sought to have the Defendant compensate the 1st Plaintiff with the current market value of the property known as LR.No.Mavoko Town Block 2/3801 keeping in mind that the same has since been sold off.
27. In addition to the above, the 2nd Plaintiff also sought for damages and costs of the suit.
28. In support of his testimony, the 2nd Plaintiff produced the following documents as his exhibits; -
 - a. Plaintiff's Exhibit 1- Copy of the letter dated 20.06.2011 from the Defendants to the Plaintiffs herein.



- b. Plaintiff's Exhibit 2- Copy of the letter dated 23.10.2014 from the Defendants' Advocates to the 1st Plaintiff.
 - c. Plaintiff's Exhibit 3- Copy of a Banker's Cheque dated 25.11.2014 from the 1st Plaintiff to the Defendants Counsel.
 - d. Plaintiff Exhibit 4- Copy of a letter dated 12.08.2016 from the Defendant's counsel to the 1st Plaintiff's Counsel.
 - e. Plaintiff's Exhibit 5(a) (b)- Copies of Receipts for payment of the purchase price for LR.No.Mavoko Town Block 2/3801 dated 05.01.2005 & 02.06.2005.
 - f. Plaintiff's Exhibit 6- Copy of the Green Card of the property known as LR.No.Mavoko Town Block 2/3801.
 - g. Plaintiff's Exhibit 7- Copy of a letter dated 21.03.2006 from the Defendants to the 1st Plaintiff.
29. At the end of producing these exhibits, the 2nd Plaintiff concluded his evidence in chief.
 30. On cross-examination, the 2nd Plaintiff admitted being familiar with the Defendant's Counsel who he had dealt with for a long time.
 31. The 2nd Plaintiff confirmed that the issues relating to the properties known as LR.No.Mavoko Town Block 2/1425, LR.No.Mavoko Town Block 2/1426, LR.No.mavoko Town Block 2/1427, LR.No.Mavoko Town Block 2/1452 and LR.No.Mavoko Town Block 2/1454 had been fully settled.
 32. The 2nd Plaintiff informed the Honourable Court that the 1st Plaintiff was a limited liability company.
 33. The 2nd Plaintiff further stated that he was familiar with the name Venture Investment Company.
 34. According to the 2nd Plaintiff, the 1st Plaintiff's name is Penta Venture Investment Company Limited.
 35. The 2nd Plaintiff admitted that he had no Resolution from Penta Venture Investment Company Limited and/or an Authority to swear on its behalf duly sealed by the said Company.
 36. However, the 2nd Plaintiff insisted that he was the Chairman and Director of the 1st Plaintiff and therefore had the authority and powers to represent it.
 37. As regards the property known as LR.No.Mavoko Town Block 2/3801, the 2nd Plaintiff informed the Honourable Court that there was no written agreement regarding the sale and purchase of this property.
 38. The 2nd Plaintiff testified that the Vendor who is the Defendant was a person well known to him and most of their transactions were verbal.
 39. As a result of this mutual trust and understanding, the 1st Plaintiff relied on the information given to it by the Defendant and did not do any due diligence on the property known as LR.No.Mavoko Town Block 2/3801.
 40. The 2nd Plaintiff further informed the Honourable Court that there was no transfer instrument that had been signed by the Defendant in favour of the 1st Plaintiff at the time of the Defendant's death.
 41. The 2nd Plaintiff nevertheless clarified that the exercise of transferring the property known as LR.No.Mavoko Town Block 2/3801 was to be undertaken by the Defendant and consequently therefore, all the 1st Plaintiff's registration documents had been supplied to the Defendant for this exercise.



42. The 2nd Plaintiff confirmed that the 1st Plaintiff had made payment of the Title processing fees to the Defendant herein.
43. On being referred to Plaintiff's Exhibit 5(a), the 2nd Plaintiff affirmed that this was a payment relating to the property known as LR.No.Mavoko Town Block 2/3801.
44. According to this Exhibit, the payment was being made in cash but the payee is not indicated therein.
45. The 2nd Plaintiff informed the Honourable Court that he was present on the material day that the payment was made by one Mr.Chege.
46. The 2nd Plaintiff stated that the payment was made to the Defendant in cash on his request and the funds were received by one Regina Kyalo who was a staff of the Defendant.
47. The 2nd Plaintiff admitted that the Defendant did not sign on the acknowledgement receipt because he had authorised the said Regina Kyalo to issue the receipt.
48. The 2nd Plaintiff informed the Honourable Court that he was seeking compensation of KShs 750,000/- for the property known as LR.No.Mavoko Town Block 2/3801 because this was the value of the property when it was sold to a third party.
49. The 2nd Plaintiff sought to rely on the value in the Green Card produced as Plaintiff's Exhibit 6.
50. As regards the property known as LR.No.Mavoko Town Block 2/1453, the 2nd Plaintiff reiterated that this was a compensation plot for the relocation of their properties.
51. The 2nd Plaintiff referred to the Plaintiff's Exhibit 7 which referred to the compensation to the properties known as LR.No.Mavoko Town Block 2/1529 and LR.No.Mavoko Town Block 2/1530.
52. The 2nd Plaintiff stated that the properties known as LR.No.Mavoko Town Block 2/1542 and LR.No.Mavoko Town Block 2/1544 are Quarter Acre plots and have been duly transferred.
53. Unfortunately, the property known as LR.No.Mavoko Town Block 2/1543 which is being claimed by the 1st Plaintiff was disposed off to a third party.
54. The 2nd Plaintiff referred to the Defendants' Bundle of Documents and noted that the same had been transferred on the 10.11.1998.
55. On the other hand, the same property known as LR.No.Mavoko Town Block 2/1543 had been allocated to the 1st Plaintiff in the year 2011.
56. However, in an effort to amicably resolve this issue, the 2nd Plaintiff testified that the Administrators of the Defendant offered to replace the property known as LR.No.Mavoko Town Block 2/1543 with another property known as LR.No.Mavoko Town Block 2/1487.
57. The 2nd Defendant confirmed that he received a communication from the Defendant's advocate to this effect but he could not produce the same as it was on "A Without Prejudice Basis".
58. Referring to the Plaintiff's Exhibit 4- the Plaintiff admitted receiving a letter in the year 2016 informing him that the property known as LR.No.Mavoko Town Block 2/1453 was not available.
59. The 2nd Plaintiff further referred to the Plaintiff's Exhibit 2 which was a letter from the Defendant's Counsel with the tabulation of the expenses required for the transfer and the cancellations on it were done by the Defendant's Counsel after negotiations.
60. Thereafter, the 1st Plaintiff settled the agreed expenses through a Banker's Cheque.



61. On being referred to the Defendant's Bundle of Document dated 15.08.2013 and in particular page 11, the 2nd Plaintiff confirmed that this was a letter by the 1st Plaintiff to the Defendant dated 13.04.1999.
62. The contents of the said letter dated 13.04.1999 was to forward a Banker's Cheque for the purchase price.
63. However, the 2nd Plaintiff insisted that the purchase price for the property known as LR.No.Mavoko Town Block 2/3801 was paid in cash and issued with a receipt.
64. On re-examination, the 2nd Plaintiff confirmed that the property known as LR.No.Mavoko Town Block 2/1453 was to be registered in the name of Penta Venture Investment Limited.
65. The 2nd Plaintiff confirmed that he had supplied all the necessary Registration documents to the Defendant.
66. The 2nd Plaintiff reiterated that all the transactions with the Defendant were done on trust and friendship hence no single Agreement For Sale was ever executed between them.
67. The 2nd Plaintiff informed the Honourable Court that before he purchased the property known as LR.No.Mavoko Town Block 2/3801, he inspected the same.
68. However, later on the official search disclosed that it had been sold to a third party.
69. The 2nd Plaintiff reiterated that the titles were usually processed by the Defendant once the entire purchase price had been paid.
70. The 2nd Plaintiff insisted that the reason he is seeking for a compensation of KShs 750,000/- for the property known as LR.No.Mavoko Town Block 2/3801 was because this is the value it was sold for by the Defendant.
71. As regards the ownership of the property known as LR.No.Mavoko Town Block 2/1453, the 2nd Plaintiff referred to the Plaintiff's Exhibit 2 which clearly confirmed the properties that were to be transferred to the 1st Plaintiff.
72. On the other hand, the Plaintiff's Exhibit 4 shows that the property known as LR.No.Mavoko Town Block 2/1453 had been transferred to a third party.
73. The 2nd Plaintiff could not however state when the property known as LR.No.Mavoko Town Block 2/1453 was transferred to the said third party.
74. At the end of this re-examination, the 2nd Plaintiff was discharged from the witness box and the Plaintiffs closed their case.

Defence Case

75. The Defence case began with the testimony of the Jennifer Kamene Ngotho who was marked as DW 1.
76. DW 1 introduced herself as a daughter of the Defendant and clarified that the 1st Defendant was the Mother and wife to the Defendant while the 2nd and 3rd Defendants were her siblings.
77. DW 1 informed the Honourable Court that she had prepared two witness statements dated 15.08.2013 and 10.11.2023 of which she adopted both as her evidence in chief.
78. DW 1 further confessed to be familiar with the Plaintiffs herein as well as their claims before the Honourable Court.



79. In relation to the property known as LR.No.Mavoko Town Block 2/3801, DW 1 made reference to the Plaintiff's Exhibit 5(a).
80. According to DW 1, the said Acknowledgement Receipt was made and signed by an person unknown to the Estate of the Defendant.
81. DW 1 stated that the Defendant would always acknowledge receipt of any monies paid to him in person or in the alternative counter-sign on any receipt issued by any staff who worked for him.
82. However, the Receipt produced by the 1st Plaintiff as an acknowledgement of the purchase price by the Defendant was not signed by the Defendant in person and in line with his practice.
83. DW 1 further clarified that for every transaction the Defendant undertook, there was an Agreement For Sale to confirm the same.
84. Similarly, it was normal for the purchase price to be paid either in cash or cheque.
85. In the event a payment was made through cash, the Defendant would issue a receipt duly signed by himself and not any other person.
86. Consequently therefore, as regards the purchase of the property known as LR.No.Mavoko Town Block 2/3801 by the 1st Plaintiff, there was no Agreement For Sale confirming the transaction and the receipts were not signed by the Defendant personally.
87. DW 1 also testified that possession of any property sold by the Defendant would only be passed to the Purchaser after the payment of the full purchase price and transfer of the said title to the Purchaser's name.
88. In this instance, the 1st Plaintiff was never given possession of the property known as LR.No.Mavoko Town Block 2/3801 by the Defendant.
89. DW 1 further pointed out that the physical location of the Defendant's offices on the Plaintiff's Exhibit 5(a) and the Plaintiff's Exhibit 7 were different.
90. DW 1 informed the Honourable Court that the physical location of the Defendant's office on the Plaintiff's Exhibit 7 shows it to be on the 3rd floor while the Plaintiff's Exhibit 5 indicates the same to be on the ground floor.
91. DW 1 then proceeded to produce the following documents in support of the Defence case.
 - Defence Exhibit 1- Copy of the Certificate of Death of the Defendant issued on the 01.02.2007.
 - Defence Exhibit 2- Copy of a letter dated 21.03.2006 from the Defendant to the 1st Plaintiff.
 - Defence Exhibit 3- Copy of a Title Deed of LR.No.Mavoko Town Block 2/1545 in the name of the 1st Plaintiff.
 - Defence Exhibit 4- Copy of the Title Deed of LR.No.Mavoko Town Block 2/1544 in the name of the 1st Plaintiff.
 - Defence Exhibit 5- Copy of the letter dated 13.04.1999 from the 1st Plaintiff to the Defendant.
 - Defence Exhibit 6- Copy of the letter dated 02.11.2010 from the firm of V.Kibera on behalf of the 1st Plaintiff to the Defendant's advocates.
 - Defence Exhibit 7- Copy of a letter dated 21.03.2006 from the Defendant to the 2nd Plaintiff.



- Defence Exhibit 8- Copy of the letter dated 19.12.2011 from the 1st Plaintiff to the Administrators of the Defendant.
- Defence Exhibit 9- copy of the Official Search of the property known as LR.No.Mavoko Town Block 2/3801 dated 25.01.2012.
- Defence Exhibit 10- Copy of the Green Card of the property known as LR.No.Mavoko Town Block 2/3801 dated 25.01.2012.
- Defence Exhibit 11- Copy of a letter dated 26.01.2012 from the Defendant's Counsel to the Plaintiff's Counsel.
- Defence Exhibit 12- Copy of a letter dated 07.02.2012 from the Defendant's Counsel to the Plaintiff's Counsel.
- Defence Exhibit 13- Copy of a Certificate of Death in respect to Elizabeth Mweni Ngotho dated 14.06.2022.
- Defence Exhibit 14- Copy of Official Search of the property known as LR.No.Mavoko Town Block 2/1453 dated 27.10.2015.
92. DW 1 confirmed that the property known as LR.No. Mavoko Town Block 2/3801 was first registered on the 08.12.2000.
93. Thereafter, the property known as LR.No.Mavoko Town Block 2/3801 was vested in the Administrators of the Defendant on the 08.12.2009.
94. On the 05.11.2010, the property known as LR.No.Mavoko Town Block 2/3801 was transferred to Lucy Mwakahola by the Administrators of the Defendant.
95. DW 1 confirmed the registration of Lucy Mwakahola as the owner of the property known as LR.No.Mavoko Town Block 2/3801 through an official search dated 25.01.2012 and produced as Defence Exhibit 9.
96. DW 1 informed the Honourable Court that the Administrators of the Defendant only came to learn about the 1st Plaintiff's interest on the property known as LR.No.Mavoko Town Block 2/3801 on the 19.12.2011 through the Defence Exhibit 8.
97. At this time, the Administrators of the Defendant had already sold the property known as LR.No.Mavoko Town Block 2/3801 to a third party.
98. DW 1 testified that after the death of the Defendant, the estate received a huge number of claims from purported buyers and therefore it became crucial that each claim be scrutinised.
99. DW 1 further testified that each claimant was requested to provide the supporting documents and some claims were accepted while others were rejected.
100. DW 1 was of the view that some claimants simply wanted to take advantage of the Defendant's death to claim for properties they had not paid for.
101. As regards the property known as LR.No.Mavoko Town Block 2/1453, DW 1 stated that it was registered in the name of a third party and therefore it could not be dealt with by the Administrators of the deceased Defendant.
102. DW 1 referred to the Defence Exhibit 14 which showed that the property known as LR.No.Mavoko Town Block 2/1453 had been transferred to a third-party way back on 21.12.1998.



103. On cross-examination, DW 1 admitted that she was not working at the Defendant's offices before his death.
104. However, DW 1 would from time to time visit her deceased father's office which was located on the Ground Floor of Studio House.
105. The Defendant's office later moved from the Ground Floor to the 3rd Floor of the same building.
106. According to the Defence Exhibit 7, the physical offices of the Defendant were located on the 3rd Floor of Studio House.
107. Referring to the Plaintiff's Exhibit 5(a) & (b), DW 1 denied knowledge of any person called Regina Kyallo working for the Defendant.
108. DW 1 affirmed that she knew most of the employees of the Defendant but none was called Regina Kyallo.
109. According to DW 1, if any receipts were to be issued on behalf of the Defendant, the same would be done by one Anne.
110. Unfortunately, DW 1 did not have any receipt of payment signed by the person known as Anne before the Honourable Court.
111. DW 1 similarly did not have any Receipt signed by the Defendant with her in Court on that material day.
112. DW 1 also failed to provide any written Agreements for Sale that the Defendant had executed with other third parties.
113. On being referred to the Defence Exhibit 12, DW 1 confirmed that the letter was authored by the brother.
114. Again being referred to Plaintiff Exhibit 5 (a) (b), DW 1 admitted that the said Receipts had not be subjected to any forensic examination to verify if the same were forged or not.
115. As regards the property known as LR.No.Mavoko Town Block 2/1453, DW 1 was referred to the Plaintiff's Exhibit 1.
116. DW 1 stated that according to this letter, the estate of the Defendant had agreed to transfer the property known as LR.No.Mavoko Town Block 2/1453 to the 1st Plaintiff.
117. Unfortunately, the Administrators discovered that the property known as LR.No.Mavoko Town Block 2/1453 had already been transferred to a third party on the 21.12.1998.
118. DW 1 informed the Honourable Court that the Letters of Administration of the Defendant were confirmed in the year 2009 and a rectification done in the year 2014.
119. DW 1 admitted that the 1st Plaintiff had actually paid for the title processing fees of three properties including the property known as LR.No.Mavoko Town Block 2/1453.
120. DW 1 concluded her cross-examination by stating that the Defendant had no reason to show why the 1st Plaintiff was not entitled to the property known as LR.No.Mavoko Town Block 2/1453.
121. On re-examination, DW 1 clarified that the property known as LR.No.Mavoko Town Block 2/1543 was not transferred to the 1st Plaintiff because it belonged to a third party.



122. DW 1 further stated that the Administrators were ready and willing to transfer the replacement titles including the property known as LR.No.Mavoko Town Block 2/1543.
123. As regards the property known as LR.No.Mavoko Town Block 2/3801, DW 1 position was that all the properties that had legitimate receipts were transferred to the rightful owners.
124. However, the property known as LR.No.Mavoko Town Block 2/3801 was never transferred to the 1st Plaintiff as the Receipts produced as Plaintiff's Exhibit 5 (a) and (b) were issued by someone who was unknown to the Administrators of the Defendant.
125. DW 1 confirmed that when the Defendant passed away, there was communication to all persons who had dealings with him to present their claims for verification and thereafter titles would be issued.
126. Consequently, the Plaintiffs must have been aware of the verification process and the issuance of the titles by the administrators.
127. DW 1 concluded her evidence by reiterating that the Defendant would always counter-sign on any receipt that was issued by someone else to verify that indeed the funds had been properly received.
128. At the end of this re-examination, DW 1 was discharged from the witness box and the Defence closed their case as well.
129. Parties then filed their final submissions and exchanged the same.
130. The Honourable Court has carefully perused the pleadings herein, considered the testimonies of the witnesses, the exhibits produced at the hearing and the submissions of the parties and the issues for determination can be summarised as follows;-

Issue No. 1- Is the 1st plaintiff entitled to the property known AS LR.No.Mavoko Town Block 2/1543 from the Defendant?

Issue No. 2- Is the 1st plaintiff entitled to the property known as LR.No.Mavoko Town Block 2/3801 from the Defendant?

Issue No. 3- IS the 1st Plaintiff Entitled to the Prayers Sought in the Plaintiff?

Issue No. 4- Who should bear the costs of this suit?
131. The Honourable Court having identified the above-mentioned issues for determination, the same will now be discussed hereinbelow.

Issue No. 1- Is the 1st Plaintiff entitled to the property known as LR.NO.MAVOKO TOWN BLOCK 2/1543 From The Defendant?

132. The first issue for determination is whether or not the 1st Plaintiff is entitled to the property known as LR.No. Mavoko Town Block 2/1543.
133. The 2nd Plaintiff who testified as a Director of the 1st Plaintiff informed the Honourable Court that the Defendant had sold two properties known as LR.No. Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545 to the 1st Plaintiff.
134. The two properties known as LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545 were duly transferred by the Defendant to the 1st Plaintiff who took possession thereof.



135. However, after the 1st Plaintiff was registered and took possession of LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545, the Defendant's properties was Resurveyed and the titles LR.no.mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545 cancelled.
136. The Defendant instead allocated the 1st Plaintiff the properties known as LR.No.Mavoko Town Block 2/1452, LR.No.Mavoko Town Block 2/1453 and LR.No.Mavoko Town Block 2/1454 in replacement of the earlier ones.
137. The 1st Plaintiff testified that the Estate of the deceased Defendant has so far only transferred the properties known as LR.No.Mavoko Town Block 2/1452 and LR.No.Mavoko Town Block 2/1454 leaving out the property known as LR.No.Mavoko Town Block 2/1453.
138. The 1st Plaintiff pleaded that he is the rightful owner of the property known as LR.No.Mavoko Town Block 2/1453 and the same should be transferred to it forthwith.
139. In response to the 1st Plaintiff's claim over the property known as LR.No.Mavokot Town Block 2/1453, the Defendants admit under paragraph 12 of the Defence that indeed the 1st Plaintiff is entitled to the said property.
140. However, during the testimony of the DW 1, it came out clear that the property known as LR.No.Mavoko Town Block 2/1453 had already been transferred to a third part way back in 1998.
141. In essence therefore, the property known as LR.No.Mavoko Town Block 2/1453 was no longer available for transfer to the 1st Plaintiff.
142. The 1st Plaintiff in his testimony admitted that actually he was informed by the Administrators of the Defendant about the unavailability of the property known as LR.No.Mavoko Town Block 2/1453.
143. In an effort to resolve this dispute, the 2nd Plaintiff testified that another property known as Lr.no.mavoko Town Block 2/1487 had been offered by the Administrators of the Defendant but so far the same had also not been transferred.
144. A perusal of the Defence filed by the Administrators of the Defendant in this matter confirms that indeed the 1st Plaintiff was entitled to the property known as LR.No.Mavoko Town Block 2/1453 after its two properties known as LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 1545 were cancelled.
145. This admission in the Defence coupled with the testimony of DW 1 to the effect that the Administrators of the Defendant were willing to transfer the said property known As Lr.no.mavoko Town Block 2/1543, it is clear that the 1st Plaintiff is entitled to the said property.
146. However, both the 1st Plaintiff and the Defendants have produced evidence that the said property known as LR.No.Mavoko Town Block 2/1543 is a private property and can not therefore be transferred to the 1st Plaintiff.
147. While the 1st Plaintiff testified that an alternative known as LR.No.mavoko Town Block 2/1487 had been offered in write by the Administrators of the Defendant, the Defendants objected to the said letter being produced on the basis that it was written on "without prejudice basis".
148. Be as it may, the Defendants have an obligation to avail another property within the same sub-division to replace the property known as LR.No.Mavoko Town Block 2/1543.



149. It was the intention of the 1st Plaintiff and the Defendant that the cancelled properties known as LR.No.Mavoko Town Block 2/1544 and LR.No.Mavoko Town Block 2/1545 would be compensated by three parcels of land in favour of the 1st Plaintiff.
150. In essence therefore, this Honourable Court is of the considered finding that the 1st Plaintiff is entitled to one Quarter of an acre property within the sub-division known as LR.No.Mavoko Town Block 2 belonging to the Defendant herein.
151. In the alternative, if the administrators of the Defendant do not have any available property within LR.No.Mavoko Town Block 2, then the 1st Plaintiff should be compensated at the market value of a Quarter an Acre within the same sub-division known as LR.No.Mavoko Town Block 2.

Issue No. 2- Is the 1st Plaintiff Entitled to the Property Known As Lr.no.mavoko Town Block 2/3801 from the Defendant?

152. The second issue for determination is whether or not the 1st Plaintiff is entitled to the property known as LR.No.Mavoko Town Block 2/3801.
153. According to the 1st Plaintiff's pleadings and his testimony, the property known as LR.No.Mavoko Town Block 2/3801 was purchased from the deceased Defendant on or about 05.01.2005.
154. The 1st Plaintiff stated that the Agreement for sale was never done in writing by the Defendant.
155. However, the Purchase price for the property known as LR.No.Mavoko Town Block 2/3801 was paid through the receipt produced as Plaintiff's Exhibit 5(a) and the Title processing fees paid through the Plaintiff's Exhibit 5 (b).
156. The Defendants on the other hand have disputed the validity of the Plaintiff's Exhibit 5 (a) and (b).
157. DW 1 who is a daughter of the Defendant expressly stated that the receipts issued by one Regina Kyallo who is unknown to the Estate of the Defendant.
158. DW 1 insisted that all the receipts for monies received were signed by the Defendant himself and even if it was issued by an employee, he still would counter-sign on the same.
159. Unfortunately, in this instance, the 1st Plaintiff's receipts produced as Plaintiff's Exhibit 5 (a) and (b) did not bear any signature by the Defendant.
160. In other words, DW 1 confirmed that such receipts would not be acceptable to the Estate of the Defendant as payments for the property known as LR.No.Mavoko Town Block 2/3801.
161. In addition to the above, DW 1 informed the Honourable Court that the property known as LR.No.Mavoko Town Block 2/3801 had already been sold and transferred to third parties on the 05.11.2010.
162. Consequently, by the time the 1st Plaintiff was forwarding his documents claiming ownership of the said property known as LR.No.Mavoko Town Block 2/3801, the Administrators of the deceased Defendant had already transferred to a third party.
163. In essence, the property known as LR.No.Mavoko Town Block 2/3801 was no longer available for sale.
164. To be able to tackle this issue fully, the first aspect to be considered would be what is the implication of a land transaction that has not been reduced into writing by the parties as required under the Law of Contract.



165. Section 3 (3) of the Law of Contracts Act provides as follows;-

“No suit shall be brought upon a contract for the disposition of an interest in land unless; -

- a. The Contract upon which the suit is founded; -
 - i. Is in writing
 - ii. Is signed by all the parties thereto; and
- b. The signature of each party signing has been attested by a witness who is present when the contract was signed by such a party.”

166. The above section in the [Law of Contract Act](#) was enacted and came into force on the 1st of June 2003.

167. Referring to the Plaintiff's Exhibits 5(a) and (b), it is clear that the purported Purchase Price of the property known as LR.No.Mavoko Town Block 2/3801 was made on the 05.01.2005.

168. If there was any Oral Agreement between the Defendant and the 1st Plaintiff, then such an Oral Agreement can only be said to have been entered on 05/01/2005.

169. Unfortunately, by this time, Section 3 (3) of the [Law Of Contract Act](#) has already commenced operation within the Republic of Kenya.

170. In the case of Patrick Tarzan Matu & another-Versus- Nassim Shariff Abdulla & 2 Others (2009) eKLR, the Honourable Court struck out the suit for being contrary to Section 3 (3) of the Law of Contract by stating as follows;-

“...The applicant in this case has satisfied me that there is no agreement between her and the plaintiffs in terms of the provisions of Section 3(3) of the [Law of Contract Act](#) which the plaintiffs can enforce against her.

The plaintiffs are urging the view that their claim for damages for breach of the contract of sale is sound.

With respect, that view cannot be correct. The claims are made pursuant to an agreement that is contra statute or at the very least does not comply with the law. So, the very foundation of their claim is untenable.”

171. In another case of Silverbird Kenya Limited -Versus- Junction Limited & 3 others (2013) eKLR, the Honourable Court commented as follows regarding Contracts that do not conform to Section 3 (3) of the Law of Contract; -

“...In my view it matters not that the plaintiff had been let into possession of the premises if the contract pursuant to which the plaintiff was granted possession was not validated in accordance with the law. The letter of 19th August 2009 in my view does not satisfy the requirements of Section 3(3) of the [Law of Contract Act](#) to be the foundation of the plaintiff's claim against the defendants.

Section 3(3) of the [Law of Contract Act](#) is indeed couched in mandatory terms and does in fact divest the court of jurisdiction in instances where there is no compliance as in the instant case. In the circumstances and by reason of the [Law of Contract Act](#), the plaintiff's suit must fail for being in contravention of Section 3(3) of the [Law of Contract Act](#), Cap 23 Laws of Kenya.”



172. Lastly, this Honourable Court also cites the Defendants authority known as Leo Investment Limited-Versus- Estuarine Estate Limited.
173. On the guidance of the above cited authorities, this Honourable Court is of the considered finding that the 1st Plaintiff's cause of action against the Defendants is founded on an Oral Agreement which contravenes the express provisions of Section 3 (3) of the Law of Contract and can not sustain the proceedings before this Honourable Court.
174. Consequently, this Honourable Court does not have any jurisdiction to proceed and evaluate any evidence placed by the 1st Plaintiff on the basis of the purported Oral Agreement entered into on the 05.01.2005 because to do so would be devoid of statutory jurisdiction.
175. In conclusion, the 1st Plaintiff's claim for the property known as LR.No.Mavoko Town Block 2/3801 based on the Oral Agreement entered into on the 05.01.2005 is dismissed forthwith.
- Issue No. 3- Is the 1st Plaintiff Entitled to the Prayers Sought in the plaint?
176. The third issue for determination is whether or not the 1st Plaintiff is entitled to the prayers sought in the Plaint.
177. As earlier mentioned, some of the prayers in the Plaint had been compromised before the hearing began and only two properties proceeded for litigation.
178. The ownership of the first property known as LR.No.Mavoko Town Block 2/1453 was fully discussed in Issue No. 1 and determined that the 1st Plaintiff was entitled to the said property.
179. As regards the ownership of the property known as LR.No.Mavoko Town Block 2/3801, the same was discussed under Issue No. 2 and the suit by the 1st Plaintiff against the Defendants was dismissed.
180. In essence therefore, the 1st Plaintiff only succeeds in relation to the property known as LR.No.Mavoko Town Block 2/1453.

Issue No. 4- Who should bear the costs of this suit?

181. On the issue of costs, it is settled law that costs follow the event.
182. On the claim for the property known as LR.No.Mavoko Town Block 2/1453, the 1st Plaintiff has been successful in proving his claim against the Defendants.
183. On the second claim for the property known as LR.No.Mavoko Town Block 2/3801, the Defendants have successfully defended the 1st Plaintiff's claim.
184. Both the 1st Plaintiff and the Defendants are entitled to costs from the proceedings relating to LR.No.Mavoko Town Block 2/1453 and LR.No.Mavoko Town Block 2/3801 respectively.
185. That being the case, then it would only be reasonable that each party bears its own costs to enable this litigation come to an end.

Conclusion

186. In conclusion therefore, this Honourable Court hereby makes the following Orders in determination of this suit;-



- a. The 1st Plaintiff is entitled to one quarter of an acre plot within the sub-division known as LR.No.Mavoko Town Block 2 belonging to the defendants herein in replacement of the property known as LR.No.Mavoko Town Block 2/1453.
- b. In the event the defendants do find a replacement of the one quarter plot entitled to the 1st plaintiff within the sub-division known as lr.no.mavoko town block 2, then the same shall be transferred and registered in the name of the 1st plaintiff within 90 days from the date of this judgement.
- c. In the alternative, if the defendants shall not replace the 1st Plaintiff's property known as LR.No. Mavoko Town Block 2/1453 within a period of 90 days as specified hereinabove, then the defendants are directed to compensate the 1st plaintiff with an amount equivalent to the market value of a quarter of an acre plot within the same sub-division known as Mavoko Town Block 2 within 60 days from the expiry of the initial 90 days herein.
- d. Each party will bear its own costs.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 29TH OF MAY 2024.

EMMANUEL.M.WASHE

JUDGE

In the Presence of:

Court Assistant: Mr. Ngeno

Advocates for the Plaintiffs: Ms. Cherono

Advocates for the Defendants: Mr. Maina

