



Ghatahora (Suing in his capacity as the Legal representative of the Esttæ of Gurnam Singh Ghatahoba) v Exotic Crafts Limited & another (Environment & Land Case 256 of 2017) [2024] KEELC 6662 (KLR) (27 June 2024) (Judgment)

Neutral citation: [2024] KEELC 6662 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 256 OF 2017**

MD MWANGI, J

JUNE 27, 2024

BETWEEN

PARDEEP SINGH GHATAHORA (SUING IN HIS CAPACITY AS THE LEGAL REPRESENTATIVE OF THE ESTTAE OF GURNAM SINGH GHATAHOBA) PLAINTIFF

AND

EXOTIC CRAFTS LIMITED 1ST DEFENDANT

KCB BANK KENYA LIMITED 2ND DEFENDANT

JUDGMENT

1. This suit was initiated by the Plaintiff in his capacity as the Legal Representative of the estate of the late Gurnam Singh Ghatahora. The subject matter of the suit is L.R No. 209/2073 (hereinafter referred to as ‘the suit property’). The suit property was registered in the names of the late Gurnam Singh alias Gurnam Singh Ghatahora being owner of ½ share and the representatives of the late Jaswant Singh being Gurnam Singh Ghatabora and Pritam Kaur who were registered as the legal representatives of the late Jaswant Singh, the owner of the other ½ share of the suit property.
2. The Plaintiff pleaded that the late Jaswant Singh died on 30th October, 1976 leaving behind a widow and two minor children as heirs to his estate. The widow, Pritam Kaur and the late Gurnam Singh were appointed as personal representatives of his estate on 27th September, 1984. The Plaintiff averred in his Complaint that no distribution of the said estate has ever been done despite the minors having attained the age of majority. The two are Gurcharan Singh Ghatahora and Inderjeet Singh Ghatahora, who reside in the United Kingdom with their mother, Pritam Kaur. The late Gurnam Singh was therefore in charge of the management and dealings in respect of suit property prior to his death.



3. It is further pleaded that the medical condition of the late Gurnam Singh began deteriorating in the year 2012. It completely deteriorated in the year 2016 and the Plaintiff took him to India for heart surgery and other treatments. Though he returned to Kenya after the treatment in India, his condition did not improve. He eventually died on 27th January, 2017, after suffering a major heart blockage.
4. The Plaintiff asserts that, prior to his death, the late Gurnam Singh was at all material times lawfully and rightfully in possession of the suit property and was the registered owner in his capacity as proprietor of one half of the suit property and a personal representative of the estate of Jaswant Singh.
5. The Plaintiff accuses the Defendants, jointly and severally of fraudulently and illegally removing the caveat registered on the title to the suit property and registering a forged transfer of the suit property in the name of the 1st Defendant herein after the demise of the late Gurnam Singh. The particulars of illegality and fraud are pleaded at paragraph 13 of the Plaint, at paragraphs (a) – (i), which include forging the signature of the late Gurnam Singh in the sale agreement dated 18th September, 2015 and the transfer dated 16th December, 2016. Further the Plaintiff accuses the Defendants of fraudulently transferring the ½ share of the estate of the late Jaswant Singh without appropriate Court orders granting the legal representatives power to sell the deceased’s share of the suit property amongst the other particulars.
6. The Plaintiff additionally avers that the Defendants intermeddled with the suit property and unlawfully took possession of it. The particulars of intermeddling are pleaded at paragraph 14 (a) – (c). In addition to taking possession of the suit property, the Plaintiff accuses the Defendants of intermeddling with machinery and assets worth Kshs. 23,000,000/- and which have not been traced or retrieved to date.
7. The Plaintiff states that the estate of the late Gurnam Singh has suffered loss and damage as a result of the Defendant’s unlawful actions. The particulars of loss and damage are tabulated as:-
 - I. Loss of assets and machinery worth Kshs. 23 million.
 - II. Loss of suit property and or its equivalent value being Kshs. 315 million as at the year 2015.
 - III. The Defendants have threatened the Plaintiff and all beneficiaries with physical violence whenever they attempted to enter the suit property.
 - IV. The Defendants’ illegal occupation has made the suit property an eye-sore and they have defaced and devalued the suit property by mismanaging it.
8. The Plaintiff prays for a variety of orders against the Defendants, namely:-
 - a. A declaration that the transfer registered in favour of Exotic Crafts Limited vide registration No. 22779/11 on 30th January, 2017 in respect of property L.R. No. 209/7023 is irregular, unlawful and fraudulent.
 - b. A declaration that the charge registered in favour of KCB Bank Kenya Limited vide registration No. 22779/12 on 30th January, 2017 in respect of property L.R. No.209/7023 is irregular, unlawful and fraudulent.
 - c. The Chief Land Registrar is hereby ordered to cancel the aforesaid entries denoted in prayers (a) and (b) above;
 - d. A declaration that the 1st Defendant, whether by themselves or their servants or agents or otherwise howsoever, are wrongfully in occupation of the suit Property and are accordingly, trespassers on the same.



- e. A declaration that the 1st Defendant, whether by themselves or their servants or agents or otherwise howsoever, are not entitled to remain on the suit Property.
- f. A declaration that the Plaintiff as Administrator of the estate of the late Gurnam Singh alias Gurnam Singh Ghatahora is entitled to exclusive and unimpeded right of possession and occupation of the suit Property for and on behalf of the estate of the late Gurnam Singh alias Gurnam Singh Ghatahora and the estate of Jaswant Singh.
- g. A permanent injunction restraining the Defendants, whether by themselves or their servants or agents or otherwise howsoever, from remaining on or continuing in occupation of the suit Property.
- h. Vacant possession of the suit Property.
- i. General damages for trespass, illegal occupation and intermeddling with the suit premises.
- j. General damages for intermeddling with the deceased's machinery, assets on the suit premises and occasioning loss of machinery and asset worth Kenya Shillings Twenty-Five Million.
- k. Mesne profit in respect of occupation and usage of the suit property and machinery and assets for the period since 2017 till finalization of the suit, plus interest thereon.
- l. The Defendants be held jointly and severally liable for any and all loss incurred as a consequence of their negligence, misconduct, acts of fraud and intermeddling and dealing with the estate of Gurnam Singh property Land Reference Number 209/7023 contrary to the laid down procedure in respect of Estate Property.
- m. The Defendants jointly and severally do bear the costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
- n. The 3rd Defendant be ordered to surrender all Original Title Deeds held by them on account of the estate of the late Gurnam Singh alias Gurnam Singh Ghatahora.
- o. That in the alternative should this Honourable Court deem the sale as valid then the Defendants be ordered to pay into the deceased estate of Gurnam Singh Bank Account the proceeds of sale plus all accrued interest thereon as per the terms of the purported sale agreement.
- p. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
- q. Any such other or further relief as this Honourable Court may deem appropriate.

Responses by the Defendants

9. Both the 1st and 2nd Defendants filed their respective statements of Defence in response to the Plaintiff's case. The 1st Defendant additionally filed a Counter-claim against the Plaintiff.
10. The 1st Defendant's statement of Defence and Counter-claim is dated 27th April, 2022. The 1st Defendant, while denying the Plaintiff's claim in its entirety states that the late Gurnam Singh was a man of good mental health who understood his dealings. He entered into an agreement for sale of the suit property dated 18th September, 2015 with Tajinder Singh Karwal and Singara Singh Karwal for the sum of Kshs. 210,000,000/-. The purchasers' nominated the 1st Defendant company as the transferee vide a Deed of Nomination dated 10th November, 2016. The 2nd Defendant financed the balance of



purchase price of the suit property after the 1st Defendant had paid 10% of the purchase price as a deposit upon execution of the agreement.

11. The 1st Defendant averred that the transfer of the suit property was properly executed and attested in accordance with the law. The transfer was concurrently registered alongside the charge in favour of the 2nd Defendant who was financing the transaction. The balance of the purchase price was paid to the law firm of Archer & Wilcock, the vendors' Advocates to hold on behalf of the vendors.
12. The 1st Defendant was categorical that the sale agreement and the transfer documents were duly executed by the deceased before his demise. Clause O in the agreement for sale provided that if the parties were unable to complete the transaction as contemplated under the agreement, it would not be frustrated and the same was to be completed as nearly as possible as equates the interests intended to be pursuant to the agreement.
13. It is the 1st Defendant's position that the estate of the late Jaswant Singh had received its proportionate share of the purchase price upon completion of the sale. The 1st Defendant asserts that the Plaintiff has no authority to make any claim on behalf of the estate of Jaswant Singh which owned half of the suit property and had not complained of any wrong doing as the transaction for sale of the suit property was forthright. The Plaintiff has no authority either to purport to seek remedies on behalf of the estate of Jaswant Singh.
14. The 1st Defendant reiterated that all the parties met their obligations under the agreement for sale fully and that there was no irregularity in the transfer of the property to the 1st Defendant. The 1st Defendant denies the particulars of the alleged loss and damage by the Plaintiff. It avers that the Plaintiff has no reasonable cause of action against it.
15. The 1st Defendant further alleges that there is a will dated 25th August, 2016, in the estate of the late Gurnam Singh where the Plaintiff herein is neither the executor nor a beneficiary. He therefore has no interest in the assets of the estate of the late Gurnam Singh at all. The 1st Defendant avers that there is a dispute regarding the wills in the Succession Cause before the High Court and the Plaintiff has no instructions from the estate to sue on its behalf. He is therefore on a frolic of his own.
16. The 1st Defendant, as earlier indicated filed a Counter-claim against the Plaintiff. In the Counter-claim, the 1st Defendant reiterated the averments in his statement of Defence.
17. The 1st Defendant avers that the 2nd Defendant had agreed to further finance the development of the suit property. However, after the Plaintiff filed this suit, the 2nd Defendant became apprehensive of issuing disbursements towards development of the suit property as earlier intended. Due to the inability to carry out the envisioned subdivisions and developments, the 1st Defendant was forced to extend the loan repayment period and ended up paying interest that was higher than what it had envisioned. The 1st Defendant was also forced to seek the services of Spectral Forensic Services to establish if the signatures of the late Gurnam Singh in the agreement for sale were authentic incurring a sum of Kshs. 30,000/-.
18. The 1st Defendant tabulated the loss incurred at paragraph 62 of the statement of Defence and Counter-claim totaling to Kshs. 284,887,033/- which it claims from the Plaintiff. Additionally, the 1st Defendant prays for general damages for malicious prosecution, exemplary damages for high handedness and threats to it, punitive damages and costs of the suit.
19. The 2nd Defendant on its part too filed a statement of Defence dated 1st March, 2022 denying the Plaintiff's claim against it in its entirety. It averred that the suit property was registered in the name of



Gurnam Singh as proprietor on his own right, and as an administrator of the estate of the late Jaswant Singh together with Pritam Kaur.

20. The 2nd Defendant discloses that vide a letter of offer dated 03.08.2016, it offered the 1st Defendant banking facilities in the nature of term loans I and II, on the 1st Defendant's request. Term loan I was for Kshs. 157,500,000/- while the approved limit for term loan II was Kshs. 29,250,000/- making a total sum of Kshs. 186,750,000/-.
21. Term loan I was for purposes of financing acquisition of the suit property while term loan II was for purposes of financing subdivision of 7 go-downs on the suit property. Both loans were to be repaid in 72 consecutive monthly installments inclusive of interest and other charges.

The legal charge dated 29.12.2016 over the suit property was registered in favour of the 2nd Defendant on 30.1.2017.
22. The 2nd Defendant affirmed that the sale agreement dated 18.9.2015 and the transfer dated 16.12.2016 were both executed by the deceased before his demise. The fact that the transfer documents were registered after the Plaintiff's demise did not nullify and or invalidate the registration process as the deceased had already appended his signature on the sale agreement and transfer documents.
23. The suit property therefore does not form part of the estate of the deceased Gurnam Singh, as it is illegally owned by the 1st Defendant. The 2nd Defendant prays for the dismissal of the Plaintiff's suit.

Evidence adduced on behalf of the plaintiff

24. This case proceeded to full hearing. The Plaintiff testified as a witness in his case. He further called a forensic document examiner as a witness in support of his case. The Defendants called a total of six witnesses.
25. The Plaintiff introduced himself as an administrator in the estate of Gurnam Singh Ghatahora (deceased). He adopted his witness statement dated 25th January, 2022 as his evidence in chief. He too produced the documents in his list of documents and supplementary list of Documents as exhibits in support of his case save for the report by the Documents' Examiner which was subsequently produced by the Examiner who testified as PW2. The valuation report in the Plaintiff's list of documents too was not produced as an exhibit.
26. The testimony of PW1 affirmed the allegations in his Plaint. He stated that he was not aware of the alleged sale of the suit property by his late father to the 1st Defendant Company. He only came to learn of it after the demise of his father who died on 27th January, 2017. The Plaintiff testified that they were contacted two weeks after his father's death and informed that the suit property had been sold. They were informed through one of their relatives prompting them to file this suit.
27. The Plaintiff's case was that his late father, Gurnam Singh alias Gurnam Singh Gatahora owned ½ share of the suit property whereas the other ½ was owned by his late uncle's estate (Estate of Jaswat Singh). The late Gurnam Singh Ghatahora and Pritam Kaur were the registered as owners in their capacity as personal representatives of the estate of Jaswat Singh.
28. PW1 further testified that his late father had been ailing since the year 2012. he had requested the Plaintiff to come to Kenya and handle their family business after his health deteriorated but the Plaintiff was unable to oblige sooner. In August, 2016, the late Gurnam Singh was taken to India for a heart surgery. Despite treatment in India, his health condition did not improve but he nonetheless returned to Kenya. The Plaintiff testified that his late father did not tell him about the alleged sale of the suit property at any one time.



29. The Plaintiff after the death of his father, and after coming across the information about the alleged sale of the suit property to the 1st Defendant conducted a search of the title. It was then that he learnt that the suit property had been erroneously and or irregularly transferred and charged on 30th January, 2017, after the death of his father.
30. It was the Plaintiff's testimony that during his lifetime, his father had always used the services of Archer & Wilcock Advocates who had in their possession the title documents of all their family properties including that of the suit property. The Plaintiff stated that his attempts to enquire about the suit property from the said law firm were met with hostility and negativity and they completely declined to provide him with any information.
31. The Plaintiff engaged the services of an expert to undertake a forensic examination of the purported transfer document and the sale agreement. The expert through his forensic report confirmed that the signatures on the documents were made by different authors hence forged. He therefore prays that the fraudulent and illegal transfer and charge registered vide entry numbers 22779/11 and 2279/12 respectively over the title to the suit property be declared unlawful and the Chief Land Registrar be ordered to cancel them.
32. Responding to questions from the Defendant's Advocates during cross- examination, the Plaintiff stated that he believed that his late father would have told him about the sale of the suit property if at all he had sold it. He confirmed that he did not have the authority of Pritam Kaur nor that of the children of the late Jaswant Singh to sue on their behalf or on behalf of the estate of the late Jaswant Singh. He was therefore only representing the estate of Gurnam Singh Ghatahora in this suit.
33. The Plaintiff denied that he had all along known where the proceeds of the sale of the suit property had been deposited. Further, he confirmed that no criminal proceedings had been preferred against the 1st Defendant or anyone else for that matter for the alleged forgery of the late Gurnam Singh's signature on the transfer documents.
34. Regarding the inventory for the alleged loss of machinery and other assets, the Plaintiff admitted that he had not explained how the said inventory was taken. It bore no signature nor a date on it. There is further no statement on the condition of the items listed therein. Further the basis of the values or figures assigned to the items has not been explained.
35. Looking at the transfer document shown to him, he confirmed that the passport size photo attached thereto was of his late father. He could not however tell if the transaction was legal or not.
36. The Plaintiff admitted that he had not adduced any evidence to demonstrate that the 1st Defendant had removed the caveat that had been lodged on the title to the suit property. His claim against the 1st Defendant therefore in that respect was baseless.
37. The Plaintiff too confirmed that the Succession Cause concerning his late father's estate was still going on in the High Court in Nairobi. The grant issued by the Court was yet to be confirmed. The matter was awaiting directions from the Court of Appeal.
38. Responding to Ms. Akong'a, Advocate for the 2nd Defendant, the Plaintiff confirmed that Pritam Kaur had passed on in the year 2022. She was survived by two sons (both adults in their late forties).
39. In the year 2015 when the sale agreement was executed, the Plaintiff could not tell if his father was in Kenya or not at the time. He had been ailing since the year 2012. The Plaintiff stated that he could not say for sure if the ailment his father was suffering from had impaired his mental capacity. There was no medical evidence to determine that.



40. The Plaintiff confirmed that his late father owned other properties yet he never consulted him about them. He also did not discuss with him any of his other legal issues. The transfer of the suit property was executed in December 2016. His late father had come back to Kenya in the month of October 2016 after his heart surgery in India. His only issue with the transfer was that his late father's signature on the transfer document was forged.
41. The Plaintiff too confirmed that his claim for Kshs. 23 million was based on estimates not a valuation.
42. In re-examination by his own Advocate, Mrs. Shabana, the Plaintiff admitted that the inventory he was relying on needed to be amended to remove items that he had actually collected from the suit property. It was not accurate.
43. PW2 was one Daniel Gutu a forensic document examiner. He testified that he received instructions from the Plaintiff's Advocates addressed to the DCI dated 22nd October 2016. He was supposed to examine the signature of the late Gurnam Singh on the transfer document and the agreement dated 18.09.2015 against his known signatures. He did the examination and arrived at the conclusion that the signatures on the agreement and the transfer document were not made by the late Gurnam Singh. He prepared a report dated 5th November 2018 which he produced as an exhibit before the Court.
44. Responding to the questions that in cross-examination by Mr. Waigwa, Advocate for the 1st Defendant, the witness admitted that he had not produced before the Court documents confirming his certification as a document examiner. He had also not indicated when he had graduated from any of the institutions indicated in his report. He had neither published any papers in that field of specialization. Though he has been attending trainings continuously he had not had occasions to present any papers in any of the trainings.
45. PW2 stated that although he had followed the four stages of forensic examination, he had not discussed them in his report. The documents sent to him were copies; not originals. The copies used were over three decades old.
46. The witness was not privy to the family history of the late Gurnam Singh. He could not tell whether he commenced alcohol or even his age. He further did not include his 'assumptions' in the report. In fact, he did not indicate all the factors he had considered to arrive at his conclusions in the report.
47. Responding to Ms. Akong'a, PW2 asserted that he used photocopied documents. The known signatures were in the passport issued to the late Gurnam Singh on 25.11.2009 and the Will dated 25.11.2009, a 2nd Will dated 14.2.1986 and an application for entry into the UK dated 27th September 2011. The documents with the questioned signatures were the agreement for sale, the transfer dated 16.12.2016 and the statutory declaration dated 21st November 2016.

Evidence adduced on behalf of the defendants

48. DW1 was one Richard Mundia Kariuki, an Advocate of the High Court of Kenya. He adopted his witness statement dated 27th November 2019 as his evidence in chief. He confirmed that he is the one who handled the sale and purchase of the suit property representing the 1st Defendant while the Law firm of the Archer and Wilcock Advocates represented the vendors, the late Gurnam Singh and Pritam Kaur. The Vendors entered into an agreement for sale dated 18th September 2015 with Tajinder Singh Karwal and Singara Singh Karwal for the sale of all that property known as L.R No. 209/702 Nairobi.
49. In accordance with the terms and conditions of the said agreement, the 1st Defendant paid a deposit of Kshs. 21,000,000/= to the Vendors' Advocates to hold as stakeholders. DWI averred that his clients, Tajinder Singh Karwal and Shingara Singh Karwal nominated the 1st Defendant Company (Exotics



- Crafts Ltd) as the transferee vide a deed of nomination dated 10th November 2016. The Directors of the 1st Defendant company appeared before DW1 and executed the transfer document on 16th December 2016. It was then forwarded to the offices of the Vendors' Advocates for execution by their client. The transfer was consequently registered on 30th January 2017 by Mohammed Muigai Advocates representing Kenya Commercial Bank Ltd (the 2nd Defendant) who were financing the 1st Defendant for the balance of the purchase price.
50. DW1 testified that he was aware that Kenya Commercial Bank Ltd paid the balance of the purchase price to the Vendors' Advocates, Archer and Wilcock Advocates. All the parties met their obligations under the agreement for sale and there was no irregularity in the transfer of the suit property to the 1st Defendant. Each party, according to DW2 willingly and with full knowledge of both the agreement and the transfer completed their obligations under the agreement for the sale before the demise of the late Gurnam Singh.
 51. In cross-examination DW1 stated that he was only acting for the purchaser. He did not get to meet the Vendors. The agreement for sale of the suit property was prepared by the Advocates for the Vendors. DW1 merely approved it. He could not remember whether there was a signed power of attorney or not.
 52. DW1 was the one who had prepared the transfer of the title in the transfer, he made reference to the grant and confirmation of grant. Entry No. 3 in the title however only required the grant of letters of administration. There is none for the confirmed grant. DW1 further stated that he did not find it necessary to seek the consent of the children of the late Jaswant Singh.
 53. The deposit of Kshs. 21 million was sent from DW1's law firm to the Vendors' Advocates. Parties to the agreement mutually agreed to the extension of the completion time through not in writing.
 54. The purchasers who were individuals, nominated the 1st Defendant company as the nominee. DW1 came to learn of the death of Gurnam Singh after the completion of the transaction. Completion happened upon payment and receipt of the full purchase price. Kenya Commercial Bank Ltd paid the balance of the purchase price to the law firm of Archer & Wilcock Advocates. Completion was therefore achieved.
 55. In re-examination, DW1 confirmed seeing the grant and certificate of confirmation of grant in the Plaintiff's bundle.
 56. DW2 was one Charles Onyango Ojuok, an Advocate with the law firm of Archer & Wilcock Advocates. He adopted his witness statement filed in Court on 20th November 2019 as his evidence in chief. He confirmed representing the Vendors, the late Gurnam Singh and Pritam Kaur in the agreement concerning the sale of the suit property dated 18th September 2015 to Tajinder Singh Karwal and Singara Singh Karwal who thereafter nominated the 1st Defendant company as the transferee vide a deed of nomination dated 10th November 2016.
 57. It was DW2's testimony that the transfer was initially signed in the United Kingdom by one Pritam Kaur before a notary Public as a trustee of the estate of her late husband, the late Jaswant Singh. It was returned to the Vendors' Advocates where it was signed by the late Gurnam Singh as a transferor and as an administrator in the estate of Jaswant Singh. The document was executed before DW2. The transfer was subsequently registered on 30th January 2017 by Mohammed Muigai Advocates representing Kenya Commercial Bank Ltd contemporaneously with the charge in favour of the bank. The bank paid the balance of the purchase price to the Vendors' Advocates to hold on behalf of the vendors.



58. DW2 affirmed that all the parties met their obligations under the agreement for sale and there was no irregularity or illegality in the transfer of the suit property to the 1st Defendant. Each party willingly and with full knowledge of the contents of both the agreement and the transfer completed their obligations under the agreement before the demise of the late Gurnam Singh.
59. Responding to questions under cross-examination by Ms. Akong'a Advocate for the 2nd Defendant, DW2 stated that the late Gurnam Singh was their client. He was an administrator in the estate of Jaswant Singh too. He confirmed the certificate of confirmation of grant dated 27th September 1984.
60. In regard to the suit property, the purchase price was Kshs. 210,000,000/=. The deposit of Kshs 21,000,000/= was paid by the purchasers' Advocates Harit Sheth Advocates. The balance of the purchase price was being financed by the Kenya Commercial Bank Ltd. It was paid after the registration of the transfer in favour of the 1st Defendant and the charge in favour of the bank.
61. The estate of Jaswant Singh got 50% of the proceeds of the sale of the suit property. It was paid to Pritam Kaur who was resident in the U.K.
62. It was DW2's testimony that throughout the year 2015, the late Gurnam Singh frequented their offices. DW2 dealt with him together with his supervisor in the law firm. Whenever his supervisor was absent from the office, DW2 would see Gurnam Singh alone. DW2 was present when Gurnam Singh signed the agreement the subject matter of this suit in September 2015. The same happened in the law firm's board room. Though Gurnam Singh was old and frail, DW2 was convinced that he understood fully what he was signing. He was taken through all the clauses in the agreement. He fully understood the nature of the agreement he was entering into. He too signed the transfer document in the presence of DW2. DW2 attested it. The late Gurnam Singh provided his passport size photos for purpose of affixing on the transfer document.
63. Responding to Mrs. Shabana Advocate for the Plaintiff, DW2 confirmed that the late Gurnam Singh signed the agreement in November 2015. The transfer was registered on 30th January 2017.
64. The completion date according to the agreement was 45 days from the notification that the conditions precedent had been fulfilled. The Vendors' Advocates received an undertaking issued on behalf of Kenya Commercial Bank Ltd.
65. The late Gurnam Singh had informed the Vendors' Advocates that he had a general power of attorney to act on behalf of Pritam Kaur. DW2 could not remember seeing the power of attorney. He however, confirmed seeing correspondence from Pritam Kaur confirming receipt of her share of the sales proceeds.

Court's Directions

66. At the close of the hearing, the Court directed the parties to file written submissions. All the parties complied and filed their respective comprehensive submissions. I must thank the Advocates for the parties for their well written submissions.

Submissions by the parties

67. The Plaintiff's submissions are dated 1st February, 2024. The Plaintiff submitted on 7 issues which I will briefly highlight herebelow:
 - a. The late Gurnam Singh's mandate to execute sale agreement dated 18th September, 2015 for the late Pritam Kaur.



68. The Plaintiff submits that the 1st Defendant in its evidence purported that its directors entered into an agreement with the deceased Gurnam Singh. However, the Plaintiff points out that the agreement furnished denotes Gurnam Singh executed the same in his capacity as one of the registered proprietors of the suit property, and as one of the administrators of the estate of the late Jaswant Singh and as holder of Power of Attorney for the Co-administrator Pritam Kaur. The Plaintiff avers that there was no evidence presented that Gurnam Singh held a registered Power of Attorney for Pritam Kaur. Further that no Power of Attorney reference number had been noted in the agreement to confirm he actually had the capacity to execute the sale agreement on behalf of Pritam Kaur.

b. Whether the late Gurnam Singh signed the sale agreement dated 18th September, 2015 and the transfer dated 16th December, 2016 or whether they were forged.

69. The Plaintiff submits that according to the forensic examination conducted by a qualified forensic document examiner, the purported signature of Gurnam Singh on the sale agreement and the transfer document was forged. The Plaintiff urges the Court to uphold the findings of the expert witness. The Plaintiff insinuates that his expert witness used more superior technology than the 1st Defendant's expert witness to arrive at his conclusion.

c. Whether consideration was paid for the suit property was paid by the 1st Defendant.

70. It is the Plaintiff's submissions that the Defendants did not provide any evidence of remission of the balance of the purchase price that was allegedly to be financed by the 2nd Defendant either to the vendors or the Vendors' Advocates, Archer & Wilcock Advocates. Further that the mere fact that the estate of Jaswant Singh is not a party to this suit does not exonerate the 1st Defendant from adducing evidence of the ½ share of the purchase price and hence the mere claim that the estate of Jaswant Singh is not complaining is not sufficient evidence to show that they fulfilled their obligation in respect of the purported purchase of the suit property. The Plaintiff asserts that the 1st Defendant is obliged to confirm that the full purchase price has been paid to validate its claim of being a purchaser for value.

d. Whether the sale agreement of 18/09/2015 was frustrated

71. The Plaintiff submits that the sale agreement vide the special conditions therein provided that completion was to be 45 days from the date of fulfillment of the condition precedent in clause 3 of the agreement being the discharge of charge against the title, removal of the notification of charge by the commissioner of income tax and removal of the caveat. It is the Plaintiff's submissions that these conditions were not fulfilled within the time agreed. No evidence of execution of the completion date has been adduced. The Plaintiff therefore submits that there has been no evidence adduced that the sale had not been rescinded.

e. Whether the appropriate completion and transfer documents were obtained, legally transferred to the 1st Defendant and charged to the 2nd Defendant.

72. The Plaintiff reiterates that the process of registration of the transfer and charge was commenced after the demise of the late Gurnam Singh hence the said property was a free property of the deceased that required compliance with the [*Law of Succession Act*](#). The process was irregular.



f. Intermeddling with the Deceased's Property

73. It was the Plaintiff's case that the 1st Defendant had intermeddled with the suit property and occasioned loss to the estate of the deceased Gurnam Singh through loss of assets, motor vehicle and machinery belonging to the estate of the deceased.

g. 1st Defendant's Counter-claim

74. The Plaintiff terms the 1st Defendant's counter-claim as baseless. There were no injunctive orders deterring the 2nd Defendant from advancing the 1st Defendant any loans. Furthermore, the 1st Defendant's witness admitted that they had not obtained any approval of the proposed subdivision of the go-down. They had not therefore complied with the conditions for the grant of the alleged loan. The Plaintiff too points out that the computations by the 1st Defendant are baseless having not been done by an expert valuer.

h. General damages, punitive damages, and exemplary damages for malicious prosecution, high-handedness and threats to the 1st Defendant.

75. The Plaintiff submits that the 1st Defendant has not proved any threat, or high handedness (whatever it means).

Submissions by the 1st defendant

76. On its part, the 1st Defendant identified five (5) issues for determination, namely,
- i. Whether the suit survives without the inclusion of the estate of Jaswant Singh as a party.
 - ii. Whether the deceased properly executed the sale agreement and transfer.
 - iii. Whether the deceased's property forms part of the deceased's estate.
 - iv. Whether the Plaintiff can seek opposed prayers in the same suit, and
 - v. Whether the 1st Defendant has proved its counterclaim on a balance of probabilities.
77. On the 1st issue, the 1st Defendant submits that the estate of Jaswant Singh has not raised any issue with the sale of the suit property. It also points out that at the time of inception of the suit, Ms. Pritam Kaur was still alive but did not authorize the Plaintiff to sue on her behalf or on behalf of the estate of Jaswant Singh. The Plaintiff did not make the estate of Jaswant Singh parties in the present proceedings either.
78. It is the Plaintiff's case that Section 61 of the *Land Registration Act*, 2012 provides for the procedure for dealing with a tenancy in common, where the proprietor has died. The personal representative is entitled to be registered by transmission as proprietor in place of the deceased and the registration relates back to and takes effect from the date of death of the proprietor. It is the 1st Defendant's case that the orders sought affect the original owners including the estate of Jaswant Singh. An order affecting a party cannot issue without giving the party a right to be heard. It is the 1st Defendant's case that the Plaintiff's suit ought to be dismissed.
79. On the 2nd issue, the 1st Defendant submitted that the evidence presented before the Court proved that the late Gurnam Singh voluntarily entered into the agreement for sale of the land and executed the same as well as the transfer document while he was of sound mind fully aware of what he was doing.
80. On the genuineness of the signatures, the 1st Defendant relies on the evidence of Charles Ojuok, Advocate, who confirmed that the deceased executed the agreement and the transfer before him and



- he affixed his stamp and signature. The Advocate testified that he saw the late Gurnam Singh sign the documents in person before him.
81. Reacting to the evidence by the expert witness; the document examiner who gave evidence on behalf of the Plaintiff, the 1st Defendant averred that the witness did not provide any evidence demonstrating his alleged expertise in documents examination. Further that his testimony was challenged by the expert it brought before the Court and who arrived at a different conclusion.
82. On the 3rd issue, the 1st Defendant averred that my predecessor who had the conduct of this case, Okong'o J, had made a ruling where he had observed that he was not persuaded in the circumstances of this case that the suit property formed part of the estate of the deceased. The said ruling has not been appealed from. He therefore submits that the issue whether the suit property formed part of the estate of the deceased is res-judicata.
83. The 1st Defendant in addressing the 4th issue pointed out that the Plaintiff is on a fishing expedition because at one point he invites the Court to find that the sale of the suit property was irregular while on the other hand he asks for the sales proceeds.
84. Regarding its counter-claim, the 1st Defendant submits that this suit by the Plaintiff created uncertainties for the disbursements intended by the bank and prevented the construction of the go downs, causing significant financial losses to the 1st Defendant in form of foregone rental income, principal, interests and penalty interests paid to the financing bank – a total of Kshs. 284,887.033.15 as at 30th March, 2022. The 1st Defendant states that the Plaintiff's suit was baseless from the onset.
85. The 2nd Defendant in its submissions identifies issues as hereunder:-
- i. Whether the deceased executed the sale agreement and the transfer.
 - ii. Whether the suit property forms part of the estate of the deceased.
 - iii. Whether the suit property was under-valued.
 - iv. Whether the Plaintiff is entitled to damages for trespass
 - v. Whether the Plaintiff is entitled to damages for loss of machinery.
86. On the 1st issue, the 2nd Defendant states that the Plaintiff alleges that the signatures appearing on the aforesaid documents are forged. It is on that basis that he seeks the declaration to issue that the transfer to the 1st Defendant and the registration of the charge registered in favour of the 2nd Defendant bank was irregular, unlawful and fraudulent.
87. The 2nd Defendant submits that the fact that the transfer may have been registered at a later date is not itself evidence of fraud. The 2nd Defendant relied on the case of Christopher Ndaru Kagina v Esther Mbandi Kagina & Another (2016) eKLR where Mativo, J (as he then was) stated that he who alleges fraud must prove it. Further that allegations of fraud must be strictly proved. This has not been satisfied in this case.

Issues for Determination

88. Having considered the pleadings filed in this case, the evidence adduced at the hearing and the submissions filed by the parties herein, the Court identifies the following issues for determination;
- a. Whether the Plaintiff's suit as framed is sustainable without the involvement of the estate of Jaswant Singh.



- b. Whether the transfer of the suit property to the 1st Defendant and the concurrent charge of the title to the 2nd Defendant was lawful.
- c. Whether the Plaintiff is entitled to the alternative prayer.
- d. Whether the 1st Defendant's counter-claim is merited.

Analysis and Determination.

I. Whether the Plaintiff's suit as framed is sustainable without the involvement of the estate of Jaswant Singh.

89. As earlier enumerated in this judgment, the Plaintiff essentially seeks declarations to the effect that the transfer of the title to the suit property to the 1st Defendant and contemporaneous registration of the charge in favour of Kenya Commercial Bank Ltd on 30th May, 2017 was irregular, unlawful and fraudulent. Consequently, the Plaintiff prays that the Chief Land Registrar be ordered to cancel the aforesaid entries. The Plaintiff too in the Plaint sought for an order for a declaration that he, as administrator of the estate of the late Gurnam Singh alias Gurnam Singh Ghatahora is entitled to exclusive and unimpeded right of possession of and occupation of the suit property for and on behalf of the estate of the late Gurnam Singh alias Gurnam Singh Ghatahora and the estate of Jaswant Singh.
90. This is in spite of the fact that the Plaintiff had in his own Plaint pleaded that the suit property, L.R.No.209/7023 was registered in the name of the late Gurnam Singh Ghatahora being owner of ½ share of the suit property and the personal representatives of the estate of Jaswant Singh, the owner of the other ½ share of the suit property. The late Gurnam Singh and the late Jaswant Singh were tenants in common. Each party's share of the suit property was therefore distinct, known and identifiable. Again, the Plaintiff had filed this suit in his capacity as the legal administrator of the estate of Gurnam Singh. He has no locus therefore to pretend to claim on behalf of the estate of the late Jaswant Singh or his beneficiaries.
91. Despite pleading that the late Gurnam Singh Ghatahora owned half of the suit property, the Plaintiff in this suit seeks orders against the entire subject property without involving the owner of the other ½ share of the suit property. If the orders sought by the Plaintiff were granted, they would affect the whole title to the suit property.
92. The Plaintiff's limited grant was restricted to filing suit on behalf of the estate of the late Gurnam Singh Ghatahora. He has no locus standi to purport to sue for and or on behalf of the estate of or the beneficiaries of the late Jaswant Singh. He too has no authority to hold property on behalf of the estate of Jaswant Singh as he seeks to by his prayer for an order for a declaration that he is entitled to exclusive and impeded right of possession and occupation of the suit property for and on behalf of the estate of Jaswant Singh.
93. The Plaintiff ought to have applied to join the estate of Jaswant Singh who were definitely going to be affected by the orders sought in this suit. He too had an opportunity to amend his suit appropriately to seek reliefs in respect of the ½ share owned by the late Gurnam Singh Ghatahora only but he did not do so.
94. It is trite that parties are bound by their pleadings and must not be allowed to depart from their pleadings. The Court in the case of Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR, cited the decision of the Malawi Supreme Court of Appeal in Malawi Railways Ltd Vs. Nyasulu [1998] MWSC 3, in which the learned judges quoted



with approval from an article by Sir Jack Jacob entitled “The Present Importance of Pleadings.” The same was published in [1960] Current Legal problems, at P174 whereof the author had stated that;

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made.

Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The Court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the Court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

95. The Plaintiff’s case as framed is legally flawed and untenable since the orders sought are not capable of being granted to the Plaintiff. The Plaintiff’s claim is beyond what the estate of the late Gurnam Singh is entitled to. This is enough to strike out the Plaintiff’s suit. The Plaintiff however was judicious in conceiving his suit and sought an alternative prayer. I will address the alternative prayer later on in this judgment.
96. Before I move to consider the 2nd issue, I must also state that the prayer by the Plaintiff that this Court declares him as entitled to exclusive and unimpeded right of possession and occupation of the suit property on behalf of the estate of the late Gurnam Singh Ghatahora, is beyond the jurisdiction of this Court. It is the jurisdiction of the Succession Court to decide what is to be done with and who is entitled to remain in possession of any property that is considered property of the estate of a deceased person.
97. As I have already said, the finding on the first issue is enough to dispose of this suit. However, and as good practice demands, I will proceed to consider the other identified issues.

B. Whether the transfer of the suit property to the 1st Defendant and the concurrent charge of the title to the 2nd Defendant was lawful.

98. The Plaintiff challenges the registration of the suit property in favour of the 1st Defendant and the charge of the title in favour of the 2nd Defendant on the four (4) main grounds, namely,
 - i. That the signature of the late Gurnam Singh appearing on the agreement for sale and the transfer document was forged.
 - ii. That the transfer to the 1st Defendant and charge in favour of Kenya Commercial Bank Ltd were registered after the demise of Gurnam Singh.
 - iii. That there was no evidence of payment of the consideration to the vendors or their Advocates.



- iv. That the agreement for sale was not performed within the completion time agreed.
 - v. That the suit property under-valued.
99. The Plaintiff called as a witness the document examiner whose evidence I have tabulated in this judgment. In response, the 1st Defendant called an expert witness who challenged the findings of the Plaintiff's expert witness. Additionally, the 1st Defendant called as its witness an Advocate who testified that the late Gurnam Singh personally and physically signed the contended documents before him and he went ahead to attest the said documents confirming that they were signed in his presence by the late Gurnam Singh.
100. Regarding expert witnesses, I need to state that the opinion of an expert witness is not binding on the Court and the same must be considered alongside the other evidence presented before the Court.
101. The Court of Appeal in the case of *Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko Civil Appeal No. 203 of 2001 [2007] 1 EA 139* held that:
- “... such opinions (expert opinions) are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified although a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so.” (Emphasis mine).
102. In *Parvin Singh Dhalay vs. Republic [1997] eKLR; [1995-1998] 1 EA 29*, the court held that:
- “It is now trite law that while the courts must give proper respect to the opinions of experts, such opinions are not, as it were, binding on the courts and the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so.”
103. The evidence of the document examiner called by the Plaintiff must therefore be considered alongside the other evidence presented before the Court. I must note, as the 1st Defendant rightly pointed out in his submissions that the Plaintiff's witness did not present his credentials to prove his expertise before the Court. The Court has no basis to confirm his expertise in documents examination.
104. Further, I have carefully evaluated the evidence of the Advocate who attested the transfer document. He was consistent and categorical even in cross-examination that the deceased appeared before him and physically signed the documents before him.
105. Considering the totality of the evidence presented before me, I am persuaded that indeed the deceased executed with his own hand the transfer document. The allegations of forgery by the Plaintiff have not been substantiated.
106. Undoubtedly, the transfer and the charge were registered on 30.01.2017 after the late Gurnam Singh had died on 27.01.2017. The registration was effected by the Advocates for the 2nd Defendant.
107. Registration of the duly executed transfer and charge document after the demise of the late Gurnam Singh, on its own is not evidence of irregularity and fraud when the deceased had in his lifetime sold, transferred, disposed or in any manner given out his proprietary right in the suit property, whether the transfer had been registered or not.



108. I agree with the decision by Wambilyanga J (as he then was) in the case of John Senema Sirimami - vs – Okero Oyienga & Ano (2019) eKLR, where he rejected a suit to contest a transfer of a title where the evidence demonstrated that the father of the Applicant had entered into a sale agreement of a portion of the suit property therein in 1968. Consent to subdivide and transfer the specific portion had also been obtained. The deceased died in 1974 and the transfer was registered in 1992.
109. Mutungi J, dealing with an application for review many years after, observed that since the transfer had been executed before the death of the Plaintiff's father, the same could be presented for registration even after his death. He stated that a transfer takes effect from the date of its execution. The registration of the transfer is merely to vest the interest transferred on the transferee but otherwise the transferor transfers his proprietary interest as soon as he executes the transfer instrument.
110. It is now clear to all and sundry that the proceeds of the sale were indeed paid to the Vendors' Advocates, Archer & Wilcock Advocates. The half (½) share of the proceeds belonging to the estate of Jaswant Singh was paid to Pritam Kaur. The parties in this case, in the course of the proceedings agreed that the amount that was due to the late Gurnam Singh that was still held by the law firm of Archer & Wilcock Advocates be deposited in an interest earning account in the names of the Advocates of the parties.
111. The question whether the proceeds of sale were paid or not is therefore a non-issue as far as this case is concerned.
112. On the question whether the suit property was undervalued and whether the transaction was performed within the time stipulated in the agreement, the burden of proof was on the Plaintiff as the party who was alleging, to prove the allegation on a balance of probability.
113. In the case of Muriungi Kanoru Jeremiah vs Stephen Ungu M'mwarabua [2015] eKLR, the court with regard to the burden of proof stated that;
- “. As I have already stated, in law, the burden of proving the claim was the appellant's including the allegation that the respondent did not pay the sum claimed as agreed; i.e. into the account provided.....The trial magistrate was absolutely correct in so holding and did not shift any legal burden to the appellant.....The appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove.”
114. In this case, no proof was offered in support of the allegation of undervaluation of the suit property. The allegation was therefore not proved. The Halsbury's Laws of England, 4th Edition, Volume 17, at paras 13 and 14 has this to say on the legal burden of proof.
- “The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case.”
115. Regarding the claim of non-performance of the agreement, the purchaser was at liberty to complete the agreement even after the expiry of the completion period as long as the agreement was not rescinded. The Plaintiff attempted to shift the burden of proof to the 1st Defendant by alleging that the 1st Defendant did not provide evidence that the agreement was not rescinded.



116. I find that interesting because it was the Plaintiff who was insinuating that the agreement was rescinded. Parties by their conduct as in this case may be deemed to have extended the completion period especially because none of them exercised their right to rescind the agreement.
117. Consequently, the Court finds and holds that the Plaintiff has not proved fraud, forgery or illegality. While at it, it necessary to state that fraud must be strictly proved.
118. The standard of proof of fraud though not beyond reasonable doubt as in criminal cases is certainly beyond the balance of probabilities. The Court of Appeal in the case of Kuria Kiarie and 2 others – versus- Sammy Magera [2018] eKLR, held as follows,

“The Law is clear and we take it from the case of Vijay Morjaria vs. Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi JA (as he then was) states as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, off 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.”

119. As regards the standard of proof of fraud, the Court of Appeal in Kinyanjui Kamau vs. George Kamau [2015] eKLR, stated that: “It is trite Law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs. Ndolo [2008], KLR (G & F) 742, wherein the Court stated that; “... we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary Civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases ...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts”.
120. Having come to the above finding, it goes without saying that the Plaintiff is not therefore entitled to the orders sought. The sale of the suit property to the 1st Defendant was valid and lawful.
121. This now brings me to the alternative prayer.

D. Whether the Plaintiff is Entitled to the Alternative Prayer.

122. The Plaintiff prays that if the Court finds that the sale and charge of the suit property is valid, then, the Defendants be ordered to pay the proceeds of the sale to the estate of the Deceased, Gurnam Singh.
123. The 2nd Defendant concluded its submissions with the statement that the Plaintiff should concentrate on the proceeds of the sale and no more. Indeed, none of the Defendants disputed that the estate of Gurnam Singh was entitled to the proceeds of the sale of the suit property.
124. I need to be specific though; only half of the proceeds of the sale of the suit property should be paid to the Estate of the late Gurnam Singh who owned half share of the suit property; the other half belonged to the estate of the late Jaswant Singh and was duly paid to the late Pritam Kaur, from the evidence before the Court.
125. As I stated earlier on, it is the mandate of the Succession Cause to determine how the property of the estate of the deceased should be handled and distributed. Therefore, this Court declares that the



monies held in the joint account in the name of the Advocates for the parties herein belongs to the estate of the late Gurnam Singh Ghatahora. It shall remain in the account until the Succession Court determines on its distribution amongst the other assets of the estate of the late Gurnam Singh.

D. Whether the 1st Defendant's Counter-claim against the Plaintiff is merited.

126. I have carefully evaluated the Counter-claim by the 1st Defendant against the Plaintiff with a view to establishing what exactly the 1st Defendant's cause of action is. The 1st Defendant complaint against the Plaintiff is that the Plaintiff by filing this suit before this Court caused the 2nd Defendant bank to reconsider its offer to fund the 1st Defendant for a project it was intending to undertake causing it loss in form of the rental income that it had projected upon completion of the proposed project.
127. Article 50 of *the Constitution* of Kenya upholds the right of every person to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court of law, or if appropriate, another authorities independent and impartial tribunal or body.
128. The Plaintiff by filing this suit was exercising that right under the provisions of Article 50 of *the Constitution*. He cannot and should not be punished for exercising his constitutional right.
129. Having considered the 1st Defendant's Counter-claim against the provisions of Article 50 of *the Constitution*, it is my finding that the Counter-claim does not disclose a reasonable cause of action against the Plaintiff. In any event, the claim, which has been framed as a special damages claim is speculative. Calling a finance expert as a witness to justify the claim does not amount to specific proof which is required of claims for special damages.
130. The 1st Defendant's Counter-claim against the Plaintiff is hereby dismissed.

What Orders on should the Court issue on Costs?

131. Costs follow the cause. However, the Court has the discretion to order appropriately considering the circumstances of the particular case. In this case, considering that the Plaintiff's case only succeeds partially and the 1st Defendant's Counter-claim fails; I consider it appropriate that each of the two parties bear its own costs. The 2nd Defendant was a necessary party in these proceedings and should also bear its own costs.
132. The conclusion is that the court makes the following orders;
 - a. The Plaintiff's claim against the Defendants but for the alternative prayer fails.
 - b. Half of the proceeds of the sale of the suit property held in the joint account in the names of the Advocates for the parties herein belongs to the estate of the late Gurnam Singh Ghatahora. The monies shall remain in the said joint account until the Succession Court determines on its distribution amongst the other assets of the estate of the late Gurnam Singh Ghatahora.
 - c. The 1st Defendant's Counter-claim against the Plaintiff is dismissed.
 - d. Each party shall bear its own costs.

JUDGEMENT DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JUNE 2024.

In the virtual presence of:

M.D. MWANGI JUDGE

Mrs. Shabana for the Plaintiff



Mr. Waigwa for the 1st Defendant Ms. Akong'a for the 2nd Defendant Court Assistant: Yvette.

M.D. MWANGI JUDGE

