



**Kaniaru ((Suing as the legal representative of the Estate of Damarice Njeri Kaniaru - Deceased)) v Mwangi & another (Environment & Land Case 60 of 2017) [2025] KEELC 731 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 731 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**  
**ENVIRONMENT & LAND CASE 60 OF 2017**  
**JM MUTUNGI, J**  
**FEBRUARY 20, 2025**

**BETWEEN**

**TITUS KAMANJA KANIARU ..... PLAINTIFF**  
**(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DAMARICE NJERI KANIARU - DECEASED)**

**AND**

**DANIEL MBUGUA MWANGI ..... 1<sup>ST</sup> DEFENDANT**  
**FLORENCE WAMBUI MBUGUA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted the instant suit vide a Complaint dated 5<sup>th</sup> April 2017 and sought the following orders;
  - a. The Land Registrar Kirinyaga be ordered to cancel the Defendants' title deed for Land Parcel No. Mwea/Mutithi/Strip/1337 measuring 0.8 hectares and the land do revert to the Plaintiff, Damarice Njeri Kaniaru.
  - b. Costs of the suit and interest.
2. The Complaint by the Plaintiff pleaded that her late husband, Kamaru Mugena (deceased) was the registered owner of land parcel No. Mutithi/Strip/983 (the original suit land before subdivision). The Plaintiff averred that in order to facilitate succession of her late husband estate she approached the 1<sup>st</sup> Defendant and she entered into a Memorandum of Understanding dated 7<sup>th</sup> September 2009 where she agreed to sell to the 1<sup>st</sup> Defendant a portion of One (1) acre of the suit land for the agreed consideration of Kshs 120,000/- to finance the succession proceedings. While the succession proceedings were ongoing the Plaintiff averred that she agreed to sell to the 1<sup>st</sup> Defendant an additional One (1) Acre out of the suit



land for the consideration of Kshs 140,000/- and in that regard entered into the sale agreement dated 21<sup>st</sup> November 2012 which incorporated the terms of the Memorandum of Understanding such that the sale agreement was for Two (2) acres at the consideration of Kshs 260,000/-.

3. The Plaintiff averred that the 1<sup>st</sup> Defendant only paid her a sum of Kshs 197,000/- leaving a balance of Kshs 63,000/- unpaid. The Plaintiff further contended that notwithstanding the Defendants had not paid the full purchase price, the Defendants took advantage of Plaintiff's sickly status and elderly state and caused the suit land to be unlawfully subdivided and caused land parcel Mwea/Mutithi/Strip/1337 a portion from the suit land to be unprocedurally transferred to themselves. The Plaintiff denied that she knowingly executed any transfer documents and contended that if she did sign any documents, she never knew the purport of any such documents and she was misled by the Defendants who took advantage of her poor health and old age. She therefore prayed that the title in respect of land parcel Number Mwea/Mutithi/Strip/1337 in the name of the Defendants be cancelled and reverted to her name.
4. The Defendants in a joint statement of defence dated 26<sup>th</sup> May 2017 denied the Plaintiff's averments as per the Plaint and invited the Plaintiff to prove the same. The Defendants averred they had been in exclusive possession and had extensively developed the suit land without any protestation from the Plaintiff and contended the Plaintiff was estopped from seeking to have their title cancelled. They further pleaded the suit was statute barred.
5. The matter was heard and Titus Kamanja Kaniaru who had been substituted in place of his mother who was the Plaintiff testified as the sole witness in support of the Plaintiff's case. In his evidence he adopted and relied on the witness statement made by his mother on 25<sup>th</sup> April 2017. He affirmed that his mother needed money to institute succession proceedings in respect of her deceased husband's estate. He confirmed his mother sold an initial one (1) acre for the consideration of Kshs 120,000/- before she added another one (1) acre which was priced at Kshs 140,000/-. He stated the Defendants paid a total of Kshs 197,000/- leaving a balance of Kshs 63,000/- unpaid. The witness placed reliance on the bundle of documents filed simultaneously with the Plaint on 25<sup>th</sup> April 2017 which included the following:-
  - i. Copy of Search for Mwea/Mutithi/Strip/1337
  - ii. Copy of Search for Mwea/Mutithi/Strip/1338
  - iii. Copy of Search for Mwea/Mutithi/Strip/1339
  - iv. Copy of Search for Mutithi/Strip/983
  - v. Memorandum of Understanding dated 7<sup>th</sup> September 2009.
  - vi. Sale Agreement dated 21<sup>st</sup> November 2012.
  - vii. Demand Letter dated 25<sup>th</sup> February 2017.
6. In Cross Examination the witness confirmed that his mother had signed the agreement dated 21<sup>st</sup> November 2012 and that he also signed the agreement as a witness. The witness stated he was present when his mother was paid the money that is admitted but never witnessed the balance of Kshs 63,000/- being paid.
7. The 2<sup>nd</sup> Defendant, Florence Wambui Mbugua testified on her own behalf and on behalf of her husband (now deceased) who was the 1<sup>st</sup> Defendant. She adopted her witness statement as her evidence. She explained that the Plaintiff sold to them two (2) acres out of her land with the initial one (1) acre going for Kshs 120,000/- and the second one (1) acre going for Kshs 140,000/-. She stated that they



- paid a total of Kshs 197,000/- to the Plaintiff before attending the Land Control Board and that the balance of Kshs 63,000/- was paid to the Surveyor who effected the subdivisions of the suit land. She stated the Plaintiff executed the transfer after the full purchase price was paid.
8. Under Cross Examination the 2<sup>nd</sup> Defendant stated that at the time they were carrying out the transaction Damarice the original Plaintiff (now deceased) had no health issue. The witness stated that they gave Damarice (the Plaintiff) the money to pay the Surveyor. The witness maintained that they had fully paid the purchase price and had no outstanding balance.
  9. The parties filed their final written submissions following the close of the trial. The Plaintiff's submissions were dated 22<sup>nd</sup> August 2024 while those of the Defendant were dated 19<sup>th</sup> September, 2024. I have reviewed the pleadings and the evidence adduced by both parties and have considered their respective submissions and the following are the issues that arise for determination:-
    - i. Whether the Plaintiff and the Defendants had entered into a valid sale agreement?
    - ii. Whether the terms of the agreement were fulfilled by the parties?
    - iii. Whether the Defendants caused land parcel Mutithi/Strip/983 to be fraudulently subdivided and land parcel Mwea/Mutithi/Strip/1337 fraudulently transferred to the Defendant?
    - iv. What reliefs should the Court grant?
  10. There is no dispute that the parties initially entered into a Memorandum of Understanding dated 7<sup>th</sup> September 2009 where the 1<sup>st</sup> Defendant and Damarice Njeri Kaniaru entered into an Understanding where the 1<sup>st</sup> Defendant was to support the Plaintiff to finance the Plaintiff to undertake succession proceedings in regard to her deceased husband's estate and in consideration the Plaintiff was to upon completion of the Succession proceedings excise and transfer to the 1<sup>st</sup> Defendant a portion of One (1) acre out of land parcel Mutithi/Strip/983 for the price of Kshs 120,000/-. Before the terms of the Memorandum of Understanding could be fully implemented the Plaintiff and the 1<sup>st</sup> Defendant entered into a formal sale agreement dated 21<sup>st</sup> November 2012 by which the Plaintiff agreed to add an additional One (1) acre further to the one she had agreed to sell to the 1<sup>st</sup> Defendant pursuant to the Memorandum of Sale dated 7<sup>th</sup> September 2009. The aggregate purchase price for the two (2) acres was agreed would be Kshs 260,000/- and a sum of Kshs 197,000/- was paid to the Plaintiff on execution of the sale agreement leaving the balance of Kshs 63,000/- which was to be paid on or upon execution of transfer form after consent for transfer.
  11. Under the sale agreement it was the obligation of the Plaintiff as vendor to pay the subdivision fees. The 2<sup>nd</sup> Defendant stated that they paid to the Plaintiff the balance of Kshs 63,000/- which she stated the Plaintiff utilized to pay the Surveyor for the subdivision. Though there was no Mutation Form produced in evidence there is no question that land parcel Mutithi/Strip/983 that measured 2.00 Hectares was subdivided into three portions as evidenced by the copies of certificates of official search exhibited. The copy of search for land parcel Mutithi/Strip/983 dated 25<sup>th</sup> January 2017 shows the land which had already been transmitted to the Plaintiff (deceased) was subdivided and the title closed on subdivision and New Numbers 1337 – 1339 created. As per the searches land parcel Mwea/Mutithi/Strip/1337 measuring 0.80 Ha or 2 Acres approximately was registered in the name of Daniel Mbugua Mwangi and Florence Wambui Mbugua jointly while land parcels Mwea/Mutithi/Strip/1338 measuring 0.80 Ha and Mwea/Mutithi/Strip/1339 measuring 0.34 Ha were registered in the name of Damarice Njeri Kaniaru respectively.
  12. The subdivision and transfer of 2 Acres in favour of the Defendants was in conformity with the sale agreement dated 21<sup>st</sup> November 2012 Titus Kamanja Kaniaru who substituted his mother as Plaintiff



following her death signed the Memorandum of Understanding and the Sale Agreement dated 21<sup>st</sup> November 2012 as a witness and that he witnessed his mother being paid part of the purchase though he claimed he was not aware how the land was subdivided and/or how the balance of Kshs 63,000/- was paid if at all.

13. The Plaintiff in his submissions contended that the Defendants obtained title to the suit land fraudulently and/or unprocedurally. In particular, the Plaintiff submitted that the Defendants did not prove and/or demonstrate that the requisite consent of the Land Control Board was obtained to effectuate the subdivision and the transfer. In essence the Plaintiff was alleging fraud on the part of the Defendants and the burden to establish and prove fraud rested with the Plaintiff. It is not enough for a party to generally allege fraud and leave it at that. Fraud is a serious indictment against a party and needs to be pleaded and the particulars of the alleged fraud given to enable the opposite party to know the case they are facing to be able to respond.
14. There are a myriad of cases respecting the standard of proof in regard to claims touching on fraud. In the case of Paul Muira & Another –vs- Jane Kendi Ikinyua & 2 Others (2014) eKLR cited by the Defendants in support of their submissions P. Nyamweya, J (as she then was) stated thus:-

“The burden of proof in this regard was on the Plaintiffs and not the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. It was held in Mutsonga –vs- Nyati (1984) KLR 425 and Koinange & 13 Others –vs- Koinange (1986) KLR 23 in this respect that allegations of fraud must be strictly proved, and though the standard of proof may not be as to require proof beyond reasonable doubt, it ought to be more than a balance of probabilities. The onus of discharging this burden is on the party alleging the fraud ---”.

In the Case of Vijay Morhjaria –vs- Nansingh Madhusingh Dabar & Another (2000) eKLR Tunoi, JA (as he then was) held:-

“It is well established that fraud must be specifically pleaded and the particulars of the alleged fraud must be stated clearly in the pleadings. The acts alleged to be fraudulent must be outlined, and it should then be indicated that these acts were executed fraudulently. It is also well established that fraudulent conduct must be distinctly alleged and proved, and it is not permissible to infer fraud solely from the surrounding facts”.

15. In the present matter the Plaintiff has neither specifically pleaded fraud and/or given any particulars of the alleged fraud. The Plaintiff generally alleged fraud without giving any particulars. The evidence adduced affirms that indeed the Plaintiff and the 1<sup>st</sup> Defendant did enter into an agreement of sale and the Plaintiff admits she received Kshs 197,000/- out of the total purchase price of Kshs 260,000/-. Regarding the balance of Kshs 63,000/- the Defendant’s stated that it was paid to the Plaintiff but was applied towards effecting the subdivision. The Plaintiff does not claim that she paid for the subdivision, yet it is clear that the original land parcel Mutithi/Strip/893 was subdivided to create Mwea/Mutithi/Strip 1337 – 1339. The Defendants got no more than the 2 Acres that they had contracted to purchase. The Plaintiff in the pleadings and in her witness statement admits she executed various documents but avers at the time she had health challenges and she was elderly and that the Defendants may have taken advantage of her to her prejudice. It is however notable the Memorandum of Understanding and the sale agreement were made in an Advocate’s Office and the Plaintiff’s son who substituted her following her demise witnessed these instruments and witnessed his mother being paid at least part of the purchase price.



16. The allegation of fraud in my view has not been proved and the evidence of the Defendants that the Plaintiff was paid the balance of Kshs 63,000/- and that the same was applied to have the subdivision effected is more probable than the Plaintiff's assertion that the balance was not paid. I believe the Defendants assertion that they paid the full purchase price of Kshs 260,000/- and that Kshs 63,000/- out of the amount was utilized towards processing the subdivision.
17. Although the Plaintiff alleged fraud in the registration of the title in regard to land parcel Mwea/Mutithi/Strip/1337 in the Defendants name, in the absence of any particulars of fraud or proof thereof, the Plaintiff in the face of Section 26(1) of the *Land Registration Act*, 2012 would be non-suited. Under Section 26(1) of the *Land Registration Act*, the title of a registered proprietor is prima facie evidence of ownership and is indefeasible and may only be challenged on grounds of fraud or misrepresentation and/or if the title is obtained illegally and/or unprocedurally through corruption. Section 26(1) (a) and (b) provide as follows:-
- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
18. The Land Registrar is the one responsible for effecting registration of all registrable instruments under the *Land Registration Act*, 2012 and before effecting any such registration has an obligation to verify that any such documents satisfy the requirements necessary for registration in relation to any consent (s) that may be required and execution as maybe necessary under any Law in terms of Section 39, 43 and 44 of the *Land Registration Act* 2012. The Defendants having been registered as proprietors of the suit land were vested with ownership rights in terms of Section 24,25 and 26 of the *Land Registration Act*, 2012 and their title could only be challenged under the provisions of Section 26(1)(a) and (b) of the said Act. The Plaintiff has not proved to the required standard that the Defendants were fraudulently registered and is not entitled to the reliefs prayed for.
19. Upon evaluation and analysis of the evidence, I am not satisfied the Plaintiff has proved her case on a balance of probabilities. The Plaintiff is not entitled to the orders sought. I accordingly dismiss the suit with costs to the Defendants.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

