



**Matumbo Company Ltd v Wahu & another (Environment & Land Case  
25 of 2022) [2024] KEELC 4936 (KLR) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4936 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 25 OF 2022**

**JA MOGENI, J  
JUNE 24, 2024**

**BETWEEN**

**MATUMBO COMPANY LTD ..... PLAINTIFF**

**AND**

**MARY WAHU ..... 1<sup>ST</sup> DEFENDANT**

**VERONICA NYAMBURA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Matumbo Company Limited (“The Plaintiff”) a limited liability company commenced this suit by way of a Plaint dated 24/02/2013; seeking the following Orders: -
  1. A permanent injunction restraining the Defendants, their agents and or servants and people claiming under them from interfering with the plaintiff’s property proprietary rights and quiet possession of the premises known as Matumbo House.
  2. In the alternative the partnership be dissolved and the house known as Matumbo House be valued by an independent valuer and sold and the parties to the partnership be at liberty to buy the other’s interest out by mutual agreement.
  3. In the event of disagreement, the house known as Matumbo House be valued and the Plaintiff be given 40% of the proceeds and the 60% be given to the administrator of the estate of James K. Kinyanjui.
  4. Costs of the suit
  5. Any other relief the court deems fit to grant.
2. It is the Plaintiff’s contention that it is the registered proprietor of Land Parcel No LR 209/138/164, which was registered in the name of the Plaintiff in 1988. However, the 1<sup>st</sup> and 2<sup>nd</sup> defendants have



- continued to interfere with the quiet possession and ownership of the suit property by directing tenants to start paying rent to them. As a result the defendants have caused a lot of confusion and anxiety to the tenants and as a result some have vacated the plaintiff's premises without paying rent.
3. That if the defendants are not restrained there is a danger that they may cause serious damage and irreparable loss to the plaintiff and the tenants occupying Matumbo House.
  4. The 1<sup>st</sup> defendant entered appearance and filed a statement of defence through Njugi & Co. Advocates denying the allegations made by the Plaintiff. It was her contention that the partnership agreement between the plaintiff and the late James Kinyanjui (deceased) does not translate to a co-ownership and that the partnership agreement "died" with the deceased and by operation of the law.
  5. The 1<sup>st</sup> defendant also avers that if at all it is true that the plaintiff occupied the suit property then it occupied it as a tenant paying monthly rent. Further she avers that at no time did the ownership of the suit property ever change hands or at all and any purported partnerships are a nullity at law and non-existent.
  6. The 1<sup>st</sup> defendant avers that the suit property belonged to her father-in-law and has since been transferred to her late husband by transmission through probate in H.C.P&A 2636 of 2006 and H.C P&A 1355 of 2012.
  7. This matter was first filed in the High Court and later through a ruling of Justice Meoli on 28/10/2022 it was transferred to the Environment and Land Court and renumbered ELC 25 of 2022 from HCC No 37 of 2013.
  8. Judgement was entered against the 2<sup>nd</sup> defendant who in the course of the suit has remained unrepresented but she was a joint administrator with the 1<sup>st</sup> defendant.
  9. This matter had many false starts, the matter was dismissed two times for want of prosecution when it was still being handled in the High Court and once on 21/06/2023 for want of attendance and prosecution. Each time resulting in a successful application for reinstatement. The courts were extremely lenient and bent in all directions to ensure that the matter was finally heard.
  10. The hearing kicked off on 12/02/2024 even then it felt like the court was dragging a child who was reluctant to take a shower to the shower by force to clean up the child. On the date of the hearing the Counsel for the plaintiff still wanted an adjournment I found this very confounding but all in all the hearing was able to kick off.

### **Plaintiff's Case**

11. On 12/02/2024 satisfied that the parties could at least assemble their troops the hearing started with the plaintiff PW1 Bernard Kanyi Mwangi adopting his witness statement and list of documents. He testified that the plaintiff was registered as a company and had three directors namely John Karanja Wanjau, James Kangethe and James Kinuthia who was a business partner with the plaintiff company.
12. Upon cross-examination he stated that he has sued the 1<sup>st</sup> defendant but he has not mentioned that he is suing her on behalf of Nicholas Njenga who is her husband who died in 2012. So Mary Wahu Kihara was before the court as a wife of Nicholas Kinuthia (deceased).
13. It was his testimony that in his pleadings he has not mentioned that he is suing Mary on behalf of the estate of her late husband. Further that the partnership that had brought him to court was the one between the plaintiff and the late James Kangethe Kinyanjui but that he had not sued the administrator of the late James Kangethe.



14. He testified that he was the administrator of Douglas Mwangi who was one of the directors although he did not state so in the pleadings. He referred to the CR12 at page 77 dated 25/02/2019 and testified that the names reflected as being those of the directors are James Kangethe Waweru, Douglas Mwangi Karugu and John Karanja Waweru and that he became a director when his father died in 2002.
15. He also testified that he had authority to sue on behalf of the other directors of the plaintiff since they met and agreed orally and that though he was a director he had not produced any CR 12. It was his testimony that he did not know that James Kinyanjui's estate had been dissolved but he stated that the document at page 28 which is a Probate and Administration document showed that Mary Wahu Kihara and Veronica Nyambura Gitau were administrators. He also testified not having filed any claim in the estate of the late Nicholas Njenga nor having revoked the P & A granted to Mary and Veronica.
16. When cross-examined further he testified that James Kinyanjui gave his son Nicholas his share who in turn has given his share of this property to the 1<sup>st</sup> defendant. That he had seen the 1<sup>st</sup> defendant's title which was issued on 23/08/1993 but that they went to the Registrar to revoke it.
17. He further testified that the agreement was between the plaintiff and James Kinyanjui (deceased) and that in 2013 Justice Hatari Waweru, indicated that the plaintiff was to take 40% of the share of income and the 1<sup>st</sup> defendant was to take 60% and that he has always given this 60% to the 1<sup>st</sup> defendant.
18. In his testimony he referred to the criminal case where Bernard Kanyi and John Heho Kinuthia were charged with forgery and forcible detainer and the agreement they had prepared was found to have been a forgery. He testified that they had appealed against the court's decision.
19. On further cross-examination he testified that the title to the suit property belonged to the late Kinyanjui. He also added that he only started depositing the rent in the account in Decembers 2023 and that he has never given the 1<sup>st</sup> defendant any money.
20. In re-examination, he stated that he filed a succession cause but he had produced it as evidence in court. Further that he was in court to obtain his 40% share in the property because the partnership agreement shows the lease agreement between the plaintiff and late James Kinyanjui was revoked and the sharing was put at 50-50 and there was no dispute until 2013.
21. It was his testimony that he continued to collect rent when Nicholas Njenga passed on in 2012 and that he gave the 1<sup>st</sup> defendant her share of rent money through Irene Wachuka who was the 2<sup>nd</sup> wife to the owner of Matumbo. He stated that he was claiming the suit property LR 138/164 as proprietor.
22. PW2- John Heho Kinuthia adopted his witness statement and testified that he was entitled to his father's shares in the plaintiff company which was started by his father and others. He stated that he had filed for Succession Cause 3428 of 2003 relating to his father's property Mr. James Kinuthia Njoroge who was a founder of the plaintiff company in the 80s.
23. Upon cross-examination he stated that he had not mentioned about succession in his witness statement. Further that though he was a director in the plaintiff company he is not listed in the CR 12. Further that though James Kinyanjui is deceased he never participated in his succession cause. At the same time he never opposed the grant of Nicholas Njenga and that the grant of James Kinyanjui has never been processed according to him.
24. He testified that he noted that at page 58 of the 1<sup>st</sup> defendant's bundle there is a copy of the will showing that Nicholas Njenga Kinuthia was granted the suit property and at page 59 of the bundle. Further that at page 64 there is a copy of the grant for Nicholas Njenga where the suit property was granted to the 1<sup>st</sup> defendant Mary Wahu and James Kinuthia Njenga to hold in trust for themselves and two others.



25. He also testified that in the 1<sup>st</sup> defendant bundle at page 200 there is a title to the 1<sup>st</sup> defendant. It was his testimony that they tried to place a caution on the suit property but that the document he produced does not bear a received stamp nor does it show that there were any fees paid and it does not show that it was received by the Registrar.
26. He stated that he is in court to claim ownership to the suit property but he had not filed any document to attest that his father owned the suit property that he is claiming. In his testimony he stated that the lease document at page 2 showed that Matumbo/plaintiff was given as heir as stated at page 4 of the same document for Kshs 17,000 and the lease was for 5 years for a shop. That the partnership agreement confirms that the plaintiff will continue to occupy the shop at a rent of Kshs 17,000 and the property will remain in the name of James Kinuthia Kinyanjui.
27. It was his testimony that the partnership agreement has only 2 directors and that Kinuthia Njoroge (who is his father) never signed the lease nor the partnership agreement and neither is there any proof that the lease was registered.
28. He testified that he was charged with the crime of forgery and forcible detainer as shown at page 92 of the 1<sup>st</sup> defendant's bundle and he was found guilty on both counts. That from 2013 to date he takes rent from the suit property to date which is about Kshs 140,000 per month and that he gives the 1<sup>st</sup> defendant Kshs 70,000 per month but he did not have any proof to adduce in court to support his claim.
29. On re-examination he reiterated the evidence already adduced stating that he was claiming his father's share though his father was not listed as one of the directors. He re-stated that he had given his advocate documents showing bank account and mpesa statements for payments to the 1<sup>st</sup> defendant.
30. PW3 Joseph Mwangi Karanja adopted his witness statement dated 14/02/2013 he stated that he was made a director to the plaintiff company in 1988. He stated that he sued the 1<sup>st</sup> and 2<sup>nd</sup> defendants because they were disturbing tenants having gone to the suit property in 2013. He stated that his claim is based on the partnership and an agreement.
31. On cross-examination he stated that he had not been listed as a director but that the CR 12 produced at page 77 of the 1<sup>st</sup> defendant's bundle shows that the property belongs to the plaintiff. That though he did not know about the succession cause of James Kinyanjui he knows that the suit property was willed to Nicholas Njenga who in turn willed it to 1<sup>st</sup> defendant and James Kinuthia Njenga who hold it in trust for Brian Kihara Njenga and Kennedy Chege Njenga. Thus the trusteeship was passed on as is reflected in the Certificate of Title as seen at page 67.
32. It was his testimony that though they had gone to the Land's office to oppose the succession of Nicholas it never succeeded and that they have not opposed any succession in court. That when he worked with Nicholas he had no issue with him of the suit property id not present the confirmation of grant.
33. In re-examination he stated that the title to the 1<sup>st</sup> defendant, Mary Wahu was issued on 29/01/2020 and it was issued while the instant suit was still on. That he went to the Land's Office to put a caution but that the office of the Land Registrar did not place the caution and that he had no document to attest to the claim that the Registrar failed to place the caution. With this the plaintiff closed its case.

#### **Defence Case**

34. DW1- Mary Wahu Kihara – testified that she filed a defense statement dated 12/07/2021 and a witness statement on the even date which she adopted. It was her testimony that though there has been a claim by the plaintiff that Matumbo company has a share of 60% to the suit property there has been no



documents presented to her to support this claim. That Bernard Kanyi, Joseph Mwangi and Joseph Heho have also not presented any CR 12 to show their directorship nor any succession documents to how that they have a grant for the estate of their late fathers.

35. She testified that she obtained a grant that included the suit property and that she is holding in trust the said suit property as was decreed by the court. She stated that at page 64 of her bundle she filed a grant to show that they were the ones to hold the properties in trust and a copy of certificate of title which was issued. She stated that she wanted the court to declare that the plaintiffs should not collect rent which is Kshs 150,000 per month since 2012 and that the court should dismiss the plaint and that Mr Bernard Kanyi should be evicted from the suit property.
36. In cross-examination she testified that problems started when her husband Nicholas passed on. That although she was shown the partnership sharing document signed before Justice Waweru Hatari, the plaintiff company refused to pay her the 60% agreed upon. She testified that the 2<sup>nd</sup> defendant is her sister and that when her son James Kinuthia became of age Veronicah (2<sup>nd</sup> defendant) sought to be discharged and now the grant is for herself (1<sup>st</sup> defendant) and her son, James Kinuthia Njenga and her other children for whom they are holding the property in trust for.
37. It was her testimony that the title was issued on 29/01/2020 while the current case was still in court. That her husband was allotted the suit property through a will and that she was not aware that her father in-law had any agreement with the plaintiff. It was her testimony that her father in-law and his son Nicholas (her husband) managed the suit property.
38. She testified that the plaintiffs forged documents when her father in-law and husband died that there was no agreement about management of the suit property at all. She testified that her father in-law was never paid the purported Kshs 2,000,000 and that infact the alleged transaction is not genuine since the said advocate died in 2003. That the succession cause was filed by her and the grant was issued in hers and her sons' names.
39. Upon re-examination she stated that this suit has been dismissed thrice and also on 5/03/2014 the award of 60% - 40% was also dismissed. She testified that there was no objection to her grant and no injunction barring issuance of the Certificate of Title. That problems started upon the death of her husband. She referred to the judgment which is at page 152 and stated that in it the judgment stated that the partnership was a forgery and the plaintiffs were ordered out of the suit property.
40. She concluded her testimony by stating that her husband wanted to remove the plaintiffs from the suit property since they were agents. With this the 1<sup>st</sup> defendant closed her case.
41. After the close of the viva voce evidence, parties filed their respective written submissions through their advocates.

### **Analysis and Determination**

42. I have carefully analysed and considered the pleadings, the evidence tendered and the written submissions filed by all the parties together with the authorities cited and I am of considered view that the issues for determination by this court are as listed by below: -
  - i. Who is the rightful and lawful owner of the suit land?
  - ii. Whether the plaintiff is entitled to the prayers sought in the plaint.
  - iii. Who is to bear costs.



43. On the first issue, it was the plaintiff's case that it is the registered proprietor of Land Parcel No LR 209/138/164, which was registered in the name of the Plaintiff in 1988. Yet, the 1<sup>st</sup> and 2<sup>nd</sup> defendants have continued to interfere with the quiet possession and ownership of the suit property by directing tenants to start paying rent to them. In his evidence, he informed the court that he was one of the directors of the plaintiff company although the CR 12 did not show his name on record.
44. He also testified that during the time of the purchase, one James Kinyanjui entered into partnership with the plaintiff and which led to him being paid Kshs 2,000,000 and an agreement that defined the partnership where rent was to be shared on 60-40 basis between the plaintiff and the said James Kinyanjui was agreed upon.
45. However, during cross examination, the plaintiff could not explain how the suit property was granted to the 1<sup>st</sup> defendant to hold in trust for her children and why they plaintiff never objected to the issuance of confirmation of grant for which listed the suit property as one of the properties that belonged to the late Nicholas who was the son of James Kinyanjui and who willed the suit property to his son and who in turn willed it to the 1<sup>st</sup> defendant. It is through this process that the 1<sup>st</sup> defendant obtained a confirmation of grant which to date remain unchallenged.
46. Further the Certificate of title to the suit property was issued in 2020 and there was no injunctive order to stop the issuance of the title of the suit property to the 1<sup>st</sup> defendant. The PW1 to PW3 did not produce any document in court as proof that the plaintiff indeed owned the suit property. Further they did not produce any document as proof that they were directors of the suit property.
47. It was also the plaintiff's case that the money earned from the rent had never been shared with the 1<sup>st</sup> defendant as had been directed by Justice Hatari Waweru. Even though the plaintiff claimed that it owned the suit property, the process of acquisition if at all was not presented before the court and the claim seemed muddled in a confusion. It was upon the plaintiff to go beyond the simple claim and show how the said claim has accrued. There was no agreement for sale, there were no transfer and application for consent to transfer. Interestingly and as it could be seen right from the plaint, the evidence and the written submissions, the plaintiff was mute on the process of how if at all it could have acquired the suit land through purchase.
48. Further the process they seemed to want to claim conferred ownership was also the subject of a criminal case whose decision this court cannot ignore. PW1 and PW2 were indeed found to have forged the partnership agreement document and were convicted. Yet the partnership agreement seemed to be the live-line that the plaintiff seemed to be relying on.
49. Section 107 of the [Evidence Act](#), provides:
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."
50. In the absence of documents supporting the plaintiff's claim of ownership, I am not persuaded that the plaintiff is the lawful owner of the suit land. In the case of [Munyu Maina v Hiram Gathiba Maina](#), Civil Appeal No 239 of 2009, the Appeal Court held that: -

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the



legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”(with emphasis)

51. The plaintiffs filed their written submissions dated 30/04/2024, through Messrs Benedict Odhiambo Oloo & Co Advocates and submitted that the Plaintiffs have proved their case on the required standard and urged the court to enter judgement in their favour against the defendant. They further submitted that the defendant violated the doctrine of Lis Pendens and stated that the 1<sup>st</sup> defendant participated in a transfer of the suit property to themselves while the instant suit was pending and which is against the said doctrine.
52. The Plaintiffs further submitted that they did not participate in the Succession Cause 2036 of 2006 since the plaintiff was not an heir to estate of the Late James Kinyanjui and that their claim is not for the stock of 60% of the company but 40% of the plaintiff company which they submit they are entitled to.
53. The 1<sup>st</sup> Defendant through the Law Firm of Messrs Njugi B.G & Co. Advocates, filed his submissions dated 29/05/2024, and submitted that the Plaintiffs have not proved their case on the required standard. He urged the court to dismiss the instant case with costs. The 1<sup>st</sup> defendant identified three issues for determination touching on proprietorship of the plaintiff and whether there is a legal partnership including the issue of whether the plaintiff is entitled to the orders sought.
54. The 1<sup>st</sup> Defendant’s submissions are that the suit property belonged to James Kinuthia Kinyanjui (deceased) who upon his demise and through succession cause 2636 of 2006 the suit property distributed his estate as the per the will and so the property was passed to the 1<sup>st</sup> defendant’s husband who by the time of his passing the suit property which he had inherited from his father was then through Succession Cause 1355 of 2012 passed to the 1<sup>st</sup> defendant.
55. He avers that the plaintiff’s claim is hinged on a lease agreement dated 23/08/1993 and a partnership dated 16/05/1998. That the said Lease Agreement was for 5 years and 3 months and was not renewed. Further the averment is that the lease agreement was for renting shop on the suit property but not own the suit property. Besides the 1<sup>st</sup> defendant avers that the lease agreement was not registered and can thus not be used to confer protection against the alleged rights of third parties. They relied on the case of *Mega Garment Limited v Mistry Jadva Parbat & Co. (EPZ) Ltd* 2016 eKLR.
56. 1<sup>st</sup> defendant also submitted that they produced a Certificate of Title which is at page 124-126 of the bundle and this attests to the 1<sup>st</sup> defendant being the registered proprietor whose rights are protected under section 24, 25(1) and 26 of the *Land Act* 2012. Thus that the 1<sup>st</sup> defendant is the absolute proprietor of the suit property
57. On the issue of partnership 1<sup>st</sup> defendant submitted that it was the 1<sup>st</sup> defendant’s submissions that the plaintiffs failed to prove that the purported shares in the plaintiff company were transferred to the plaintiffs who claim their fathers were directors.
58. The Court has carefully considered the available evidence, the exhibits on record, the rival written submissions, the cited authorities and the relevant provisions of law and makes the following findings:-
59. There is no doubt that the suit property herein LR No 209/138/164, was initially owned by the Late James Kinuthia Kinyanjui who died in 2006. Further there is no doubt that the said James Kinuthia Kinyanjui left behind a Will and vide a confirmation dated 12/05/2008 his son Nicholas Njenga Kinuthia and 3 others were confirmed as administrators of his estate. Upon the demise of her husband Nicholas Njenga the 1<sup>st</sup> defendant took out letter of administration and subsequently got a



confirmation of grant on 24/102016. The suit property was one of the properties that was bequeathed to the 1<sup>st</sup> defendant.

60. Further it is evident that the suit property never belonged to the plaintiff since there is no evidence presented so far to support this averment. And it is also not in doubt that the suit property was transferred to the 1<sup>st</sup> defendant to hold in trust for three other beneficiaries. That the plaintiffs forged documents when her father in-law and husband died that there was no agreement about management of the suit property LR No 209/138/164. That as a result of the forgery the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were arrested and charged with the crime of forgery and forcible detainer as shown at page 92 of they were both found guilty on both counts.
61. The charges in Criminal case No 1271 of 2019 related to forgery and forcible detainer with respect to the transfer of the suit property to the 1<sup>st</sup> Defendant. On their part the plaintiffs have held the position that the suit property belongs to the plaintiff company and that the 1<sup>st</sup> defendant's proprietorship should be cancelled.
62. It is trite law that "He who alleges must prove." See Sections 107 and 109 of the [Evidence Act](#).

" 107

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

63. The Plaintiffs are the ones who have alleged and therefore the onus was upon them to call sufficient evidence to prove their case on the required standard of balance of probabilities.
64. The Court finds the evidence of the Plaintiffs herein shifty, full of mere allegations.
65. Consequently, the court finds that in answer to issue No 1, that the suit property does not belong to the plaintiff.
66. Having found that the plaintiffs are not the owners of the suit property, it follows that the prayers that the plaintiff sought cannot be granted. The 1<sup>st</sup> Defendant title is registered under the [Registration of Title Act](#) Cap 281 (now repealed). As the Court had held earlier, section 23(1) of the said Act provides that such Certificate of title or registration is conclusive evidence that the registered proprietor is the absolute and undefeasible owner of such parcel of land. The 1<sup>st</sup> Defendant is such an owner, but, his title can be impeached on the grounds of fraud or misrepresentation. See the case of [Joseph N. K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others](#) (1997) eKLR where the Court held

"Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title."



67. In same breath, The *Land Registration Act* is very clear on issues of ownership of land and at Section 24(a) of the *Land Registration Act* it provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

68. Further, Section 26 (1) of the *Land Registration Act* states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

69. Thus the law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

70. The court in the case of *Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & another* (2013) eKLR held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The court in the case while considering the application of section 26(1) (a) and (b) of the *Land Registration Act* rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

71. The Plaintiffs needed to prove that the 1<sup>st</sup> Defendant registration was obtained through fraud or misrepresentation. They failed to do so.

72. For the above reasons, this court arrives at a finding that the Plaintiffs are not entitled to the prayers sought in the Plaint.

73. On costs as provided by Section 27 of the *Civil Procedure Act*, costs are granted at the discretion of the Court. However, it is also trite that costs do follow the event and is awarded to the successful litigants. The Plaintiffs have failed to prove their case on the required standard and therefore the 1<sup>st</sup> defendant is the successful litigant and is entitled to costs of this suit.

74. Consequently, the Plaintiffs case is dismissed entirely with costs to the 1<sup>st</sup> defendant herein.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 24<sup>TH</sup> JUNE 2024.**



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**MOGENI J**

**JUDGE**

**In the presence of:**

Mr. Njugi for 1<sup>st</sup> Defendant

No appearance for Plaintiff

Caroline Sagina – Court clerk assistant

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**MOGENI J**

**JUDGE**

